

Part III – Administrative, Procedural, and Miscellaneous

Son of Boss Settlement Initiative

Announcement 2004-46

Section 1. Purpose and Scope of Initiative

The Internal Revenue Service announces a settlement initiative for taxpayers to resolve transactions described in Notice 2000-44, 2000-2 C.B. 255, and substantially similar transactions (Son of Boss transactions).

The Service has determined that Son of Boss transactions are abusive and were designed, marketed, and undertaken solely to create tax benefits unintended by any reasonable interpretation of the tax laws. The Service believes that it will prevail in litigation on the merits of these transactions and that the imposition of penalties will be upheld. For efficient tax administration reasons, however, the Service offers taxpayers an opportunity to resolve their civil tax liabilities under this initiative and avoid litigation.

Section 2. Terms of Initiative

(a) Tax Adjustments—

- (1) Taxpayers will concede all claimed tax benefits and attributes, including basis adjustments, from the Son of Boss transaction.
- (2) Taxpayers will be allowed to treat (i) their net out-of-pocket costs and fees as a long-term capital loss, or (ii) one-half of their net out-of-pocket costs and fees as an ordinary loss, in the year those costs and fees were paid or accrued. If tax benefits, including benefits attributable to those costs and fees, were claimed in a year barred by the period of limitations on assessment, the costs and fees will be allowed only to the extent they exceed the tax benefits claimed in the barred years.

(b) Application of Penalties—

- (1) Taxpayers who properly disclosed their Son of Boss transaction under Announcement 2002-2, 2002-2 C.B. 304, will not pay a penalty on the underpayment attributable to that Son of Boss transaction.
- (2) Taxpayers who did not properly disclose their Son of Boss transaction under Announcement 2002-2 and who:
 - (i) Did not directly or indirectly claim tax benefits from any other listed transaction, including any other Son of Boss transaction, will pay a penalty

- of 10 percent of the underpayment attributable to the Son of Boss transaction; or
- (ii) Directly or indirectly claimed tax benefits from another listed transaction, including any other Son of Boss transaction, will pay a penalty of 20 percent on the underpayment attributable to the Son of Boss transaction.

For purposes of this announcement, a “listed transaction” is a transaction that is the same as, or substantially similar to, one identified by the Service under section 6011 and the Treasury regulations as of the date the taxpayer submits the Notice of Election, regardless of whether (a) the Service had identified the transaction as a listed transaction at the time the taxpayer entered into the transaction, or (b) the transaction is (or was) required to be disclosed by the taxpayer as a listed transaction pursuant to the regulations (including the temporary regulations) under section 6011.

Section 3. Eligibility Requirements

All taxpayers that claimed tax benefits in a manner described in Notice 2000-44 are eligible to participate in this initiative except:

- (1) Persons who (i) organized or participated directly or indirectly in the sale or promotion of any Son of Boss transaction, (ii) received fees for organizing, selling or promoting one, (iii) were partners in a partnership, or employees of a person, that engaged in activities described in (i) or (ii) of this paragraph at the time they participated in the Son of Boss transaction, or (iv) were related to a person described in this paragraph within the meaning of section 267(b), other than section 267(b)(1), at the time they participated in the Son of Boss transaction.
- (2) All partners in entities subject to the unified partnership audit and litigation provisions of sections 6221 through 6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA partnerships), that include a partner described in paragraph (1) of this section who directly or indirectly claimed tax benefits in a manner described in Notice 2000-44 with respect to those TEFRA partnerships.
- (3) Taxpayers who, individually or as a partner in a TEFRA partnership, are a party in a court proceeding to determine the tax treatment of the Son of Boss transaction.
- (4) Taxpayers where the Service has informed the taxpayer, or the tax matters partner of a TEFRA partnership in which the taxpayer was a partner, that the Service has designated, or is considering designating, the Son of Boss transaction for litigation.

Section 4. Required Procedures for Electing Participants

(a) Notice of Election

Taxpayers participating in this initiative must notify the Service of their election by sending the Notice of Election, as set out below, on or before June 21, 2004. The Notice of Election must be sent by certified mail or designated delivery service (within the meaning of section 7502(f)) to:

INTERNAL REVENUE SERVICE
Attn: Announcement 2004-46
1901 Butterfield Road, Ste. 310
Downers Grove, IL 60515

If the taxpayer, or a TEFRA partnership in which the taxpayer was a partner, is under examination, the taxpayer also must provide a copy of the Notice of Election to the examining agent.

The Notice of Election must be prepared under penalties of perjury and:

- (1) State that the taxpayer elects to participate in the settlement initiative in Announcement 2004-46;
- (2) Include the taxpayer's name, taxpayer identification number (TIN), current address, and daytime telephone number, and, if under examination, the name, address, and daytime telephone number of the examining agent. If a tax practitioner will represent the taxpayer, the practitioner must provide a completed Form 2848 or other valid power of attorney;
- (3) Include the name and TIN of all other entities known to the taxpayer that directly or indirectly were parties in the Son of Boss transaction, and for each TEFRA entity, the name, address, and daytime telephone number of the tax matters partner;
- (4) State whether the taxpayer claims qualification for a penalty of 0 percent, 10 percent or 20 percent; and
- (5) Either (i) identify all listed transactions in which the taxpayer directly or indirectly claimed tax benefits (for example, a spouse filing jointly with a participant in a listed transaction, or as a trust beneficiary that entered into a listed transaction), or (ii) state that the taxpayer did not directly or indirectly claim tax benefits in any other listed transaction.

(b) Additional Information and Documentation – 60 days

Upon receipt and review of an election to participate, the Service will notify the taxpayer by mail whether the taxpayer is eligible to participate in this initiative. The notification will include a request for additional information and documentation. The taxpayer must submit all requested information under penalties of perjury to the Service within 60 days of the date of mailing by the Service. The Service may grant an extension for good cause to taxpayers who request additional time within the 60-day period.

(c) Closing Agreement and Payment – 30 days

After receiving the requested information, the Service will prepare a closing agreement under section 7121 reflecting the terms of the settlement. The closing agreement will provide that (1) without limitation as to the otherwise applicable effect of section 7121(b), providing inaccurate information about tax benefits claimed from other listed transactions, including other Son of Boss transactions, as required in the Notice of Election, is a misrepresentation of a material fact within the meaning of section 7121(b), and (2) the taxpayer waives all defenses to the assessment and collection of the tax liabilities determined under this initiative, including the applicable penalty and interest.

The Service will mail the closing agreement to the taxpayer who must sign and return it to the Service within 30 days of the date of mailing by the Service. The Service may grant an extension for good cause to taxpayers who request additional time within the 30-day period. Full payment of the liabilities under this initiative must be made by the date the closing agreement is executed. Any taxpayer not making full payment must submit complete financial statements and agree to other financial arrangements acceptable to the Service before the Service will execute the closing agreement. A taxpayer will be ineligible to participate in this initiative if an agreement regarding an acceptable financial arrangement cannot be reached.

(d) Other Matters

- (1) Denial of a taxpayer's request to participate in this initiative is not subject to judicial review.
- (2) Execution of a closing agreement under this initiative does not preclude the Service from investigating any associated criminal conduct or recommending prosecution for violation of any criminal statute.

Section 5. Dispute Resolution Procedures for Nonparticipants

Appeals Office consideration will not be available for Son of Boss transactions. For all taxpayers ineligible or not participating in this initiative, the Service will (a) develop the cases, (b) disallow all tax benefits and attributes claimed from the Son of Boss transaction, including out-of-pocket costs and fees, (c) determine appropriate penalties, including those under section 6662 or section 6663, and (d) issue a Notice of Deficiency or Notice of Final Partnership Administrative Adjustment, as appropriate.

The Office of Chief Counsel will closely coordinate Son of Boss cases by treating them as if they were designated for litigation under Chief Counsel procedures for designating cases for litigation. Likewise, in refund and TEFRA partnership suits handled by the Department of Justice, Chief Counsel expects to recommend against any settlement more favorable to the taxpayer than is provided in this initiative. Department of Justice regulations require Assistant Attorney General approval of any settlement contrary to the Chief Counsel's recommendation. Consequently, taxpayers should not expect to settle their cases on better terms if they proceed to litigation, whether in the Tax Court or in other forums.

Section 6. Paperwork Reduction Act

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1885. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number. The collection of information in this announcement is in section 4 entitled REQUIRED PROCEDURES FOR ELECTING PARTICIPANTS. This information is required to apply the terms of the settlement set forth in this announcement. The information will be used to determine whether the taxpayer has reported the disclosed item properly for income tax purposes. The collection of information is required to obtain the benefit described in this announcement. The likely respondents are businesses or other for-profit institutions, small businesses or organizations, and individuals.

The estimated total annual reporting burden is 5000 hours.

The estimated annual burden per respondent varies from 3 hours to 7 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 1000.

The estimated frequency of responses is one time per respondent.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

CONTACT INFORMATION

For additional information regarding this announcement, including answers to frequently asked questions, see www.irs.gov, or contact Paul Zamolo of the Office of Division Counsel (SB/SE) at (415) 744-9217 (not a toll-free number) or James Fee of the Office of Division Counsel (LMSB) at (215) 597-3442 (not a toll-free number).