

IRS Fact Sheet

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Son of Boss Settlement Initiative

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The Internal Revenue Service today announced a settlement initiative for Son of Boss investors through June 21.

The Service concluded in Announcement 2004-46 that for efficient tax administrative reasons, it will offer Son of Boss investors an opportunity to quickly close out their tax disputes. Under its terms, eligible taxpayers must concede 100 percent of the claimed artificial tax losses and in some cases accept the imposition of a penalty. Participating taxpayers will be allowed to treat as a loss their out-of-pocket transaction costs, typically promoter and professional fees.

The settlement initiative establishes a three-tiered penalty structure.

- Taxpayers will pay no penalty if they voluntarily disclosed the Son of Boss transaction under Announcement 2002-2.
- For taxpayers who did not come forward under that Announcement, the mandatory penalty will be:
 - 10 percent for those whose Son of Boss investment reflects the first and only abusive tax shelter investment.
 - 20 percent for those who have participated in other abusive transactions listed by the IRS.

As a part of the closing procedures, taxpayers will be required to provide the IRS with a statement, under penalties of perjury, identifying their participation, if any, in other listed transactions.

Promoters and others who received fees in connection with the Son of Boss transaction and also invested in Son of Boss deals will not be eligible. Also ineligible will be taxpayers in cases in which the Service has informed the taxpayer (or the Tax Matters Partner of a TEFRA partnership) that the Service has designated, or is considering designating, the Son of Boss transaction for litigation in accordance with Chief Counsel procedures for designating cases for litigation.

Additional details on the Son of Boss initiative include:

Election Process

Son of Boss investors must follow a three-step process to participate in the settlement initiative:

- **Participation Election.** A written election must be made no later than June 21, 2004, and submitted under penalties of perjury. There will be no extensions of this time and the Announcement spells out the five items of information that must be included in the Notice of Election.
- **Additional Information—60 Days.** Taxpayers eligible to participate will be notified and given 60 days to provide additional information and documentation, again under penalties of perjury. The requested information and documentation will allow the Service to calculate the additional taxes, interest and any penalties due as a result of the taxpayer's participation in the initiative. The Service may grant additional time for this process if good cause is shown.
- **Closing Agreement and Payment—30 Days.** After receipt of the taxpayer's requested information and documentation, the Service will prepare a closing agreement under § 7121 of the Code reflecting the terms of the settlement, which must be signed and submitted within 30 days. The Service may extend this period for good cause. The closing agreement will provide that: (a) providing inaccurate information about tax benefits claimed from other listed transactions, including other Son of Boss transactions, is misrepresentation of a material fact within the meaning of § 7121(b) of the Code, and (b) 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 expects participants to make full payment of taxes, interest and any penalties at the time of execution of the closing agreement. Those who don't make full payment then will be required to provide detailed and complete financial statements and conclude other financial arrangements acceptable to the Service prior to the execution of the closing agreement. Failure to conclude acceptable financial arrangements will render the investor ineligible to participate.

Dispute Resolution Procedures

Those not participating will receive a Notice of Deficiency or Notice of Final Partnership Administrative Adjustment, as appropriate, (a) disallowing all tax benefits and attributes claimed from the Son of Boss transaction, including out-of-pocket costs and fees, and (b) assessing appropriate maximum penalties, including those under §6662 or §6663 of the Code.

Under the IRS Procedural Rules applicable to the administrative appeals process (26 C.F.R. § 601.106(f)(2)), the IRS has concluded that to achieve uniformity and enhance overall compliance with the tax laws, Appeals consideration will not be available to Son of Boss investors.

Appeals' role is to independently review the litigation hazards in a particular case and then attempt to settle the case in a fair and impartial manner. "We viewed Son of Boss transactions as clearly abusive and, for sound administrative reasons, concluded that the resolution terms should be set with bright-line clarity to facilitate a quick resolution," IRS Commissioner Mark W. Everson said.

Potential related criminal investigations of Son of Boss transactions also made conventional Appeals case review problematic.

"The approach that we followed here should in no way be viewed as having set a precedent for subsequent resolution strategies," Everson cautioned.

Statute of Limitation Issues

In connection with Son of Boss transactions, tax advisers often developed complex legal structures and tax return formats designed to obscure discovery of the transaction by the IRS. The IRS will carefully scrutinize Son of Boss tax returns to determine the potential application of the 6-year statute of limitations provision for substantial omission of income.

Particular attention will be paid to the structure used by taxpayers to implement the Son of Boss transaction and whether the return on its face provides a reasonable basis for the IRS to identify the existence of the Son of Boss transaction, or the reporting involved the concealment of transactions through, for example, the use of grantor trusts to report only a net gain or loss.