

26 U.S.C.A. § 6700



I.R.C. § 6700

Effective: October 23, 2004

United States Code Annotated [Currentness](#)

Title 26. Internal Revenue Code ([Refs & Annos](#))

Subtitle F. Procedure and Administration ([Refs & Annos](#))

Chapter 68. Additions to the Tax, Additional Amounts, and Assessable Penalties

▢ [Subchapter B](#). Assessable Penalties

▢ [Part I](#). General Provisions.

→ § 6700. Promoting abusive tax shelters, etc.

(a) Imposition of penalty.--Any person who--

(1)(A) organizes (or assists in the organization of)--

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement, or

(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and

(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)--

(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or

(B) a gross valuation overstatement as to any material matter,

shall pay, with respect to each activity described in paragraph (1), a penalty equal to the \$1,000 or, if the person establishes that it is lesser, 100 percent of the gross income derived (or to be derived) by such person from such activity. For purposes of the preceding sentence, activities described in paragraph (1)(A) with respect to each entity or arrangement shall be treated as a separate activity and participation in each sale described in paragraph (1)(B) shall be so treated. Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.

(b) Rules relating to penalty for gross valuation overstatements.--

(1) Gross valuation overstatement defined.--For purposes of this section, the term "gross valuation overstatement" means any statement as to the value of any property or services if--

(A) the value so stated exceeds 200 percent of the amount determined to be the correct valuation, and

(B) the value of such property or services is directly related to the amount of any deduction or credit allowable under chapter 1 to any participant.

(2) **Authority to waive.**--The Secretary may waive all or any part of the penalty provided by subsection (a) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that such valuation was made in good faith.

(c) **Penalty in addition to other penalties.**--The penalty imposed by this section shall be in addition to any other penalty provided by law.

CREDIT(S)

(Added [Pub.L. 97-248, Title III, § 320\(a\)](#), Sept. 3, 1982, 96 Stat. 611, and amended [Pub.L. 98-369](#), Div. A, Title I, § 143(a), July 18, 1984, 98 Stat. 682; [Pub.L. 101-239, Title VII, § 7734\(a\)](#), Dec. 19, 1989, 103 Stat. 2403; [Pub.L. 108-357, Title VIII, § 818\(a\)](#), Oct. 22, 2004, 118 Stat. 1584.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Acts. [Senate Report No. 97-494](#), [House Conference Report No. 97-760](#), and Statements by Legislative Leaders, see 1982 U.S.Code Cong. and Adm.News, p. 781.

1984 Acts. [House Report No. 98-432](#), [House Conference Report No. 98-861](#), Statements by Legislative Leaders, and Two Related Reports, see 1984 U.S.Code Cong. and Adm.News, p. 697.

1989 Acts. [House Report No. 101-247](#), [House Conference Report No. 101-386](#), and Statement by President, see 1989 U.S.Code Cong. and Adm.News, p. 1906.

2004 Acts. [House Conference Report No. 108-755](#), see 2004 U.S. Code Cong. and Adm. News, p. 1341.

Amendments

2004 Amendments. Subsec. (a). [Pub.L. 108-357, § 818\(a\)](#), at the end, inserted the following new sentence: "Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed."

1989 Amendments. Subsec. (a). [Pub.L. 101-239, § 7734\(a\)\(3\)](#), in closing par. substituted penalty equal to the lesser or \$1,000 or 100% of gross income derived from activity, for penalty equal to the greater of \$1,000 or 20% of such gross income, and added sentence relating to treatment of activities described in par. (1)(A).

Subsec. (a)(1)(B). [Pub.L. 101-239, § 7734\(a\)\(1\)](#), inserted "(directly or indirectly)" following "participates".

Subsec. (a)(2). [Pub.L. 101-239, § 7734\(a\)\(2\)](#), inserted "or causes another person to make or furnish" following "makes or furnishes".

1984 Amendments. Subsec. (a). [Pub.L. 98-369](#) substituted "20 percent" for "10 percent".

Effective and Applicability Provisions

26 U.S.C.A. § 6700

2004 Acts. [Pub.L. 108-357, Title VIII, § 818\(b\)](#), Oct. 22, 2004, 118 Stat. 1584, provided that: "The amendment made by this section [amending subsec. (a) of this section] shall apply to activities after the date of the enactment of this Act [Oct. 22, 2004]."

1989 Acts. Section 7734(b) of [Pub.L. 101-239](#) provided that: "The amendments made by this section [amending subsec. (a) of this section] shall apply to activities after December 31, 1989."

1984 Acts. Section 143(c) of [Pub.L. 98-369](#) provided that: "The amendments made by this section [amending subsec. (a) of this section and section 7408 of this title] shall take effect on the day after the date of enactment of this Act [July 18, 1984]."

1982 Acts. Section 320(c) of [Pub.L. 97-248](#) provided that: "The amendments made by this section [enacting this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982]."

CROSS REFERENCES

Action to enjoin promoters of abusive tax shelters, see [26 USCA § 7408](#).

Civil actions for refund, see [26 USCA § 7422](#).

Jurisdiction of Claims Court in cases involving refunds of tax shelter promoter, see [28 USCA § 1509](#).

LAW REVIEW COMMENTARIES

[Limitations proposal for civil tax penalties under §§ 6700 and 6701 of the Internal Revenue Code. Mark S. Stein, 19 Ohio N.U.L.Rev. 57 \(1992\).](#)

[Limiting losses attributable to nonrecourse debt: A defense of the traditional system against the at-risk concept. Glenn E. Coven, 74 Cal.L.Rev. 41 \(1986\).](#)

[Redefining attorney's role in abusive tax shelters. \(1985\) 37 Stan.L.Rev. 889.](#)

LIBRARY REFERENCES

American Digest System

Internal Revenue k5219.50.

Key Number System Topic No. 220.

Corpus Juris Secundum

[CJS Internal Revenue § 16](#), Minimization, Avoidance, or Evasion of Liability -- Acquisitions Made to Evade or Avoid Income Tax.

[CJS Internal Revenue § 821](#), Grounds for Penalties and Amount Thereof, Generally.

[CJS Internal Revenue § 841](#), Actions to Recover Penalties Paid.

RESEARCH REFERENCES

ALR Library

[157 ALR, Fed. 313](#), Debts Arising from Tax Penalties as Exceptions to Bankruptcy Discharge Under [§ 523\(A\)\(7\)\(A\) and \(B\) of Bankruptcy Code of 1978 \(11 U.S.C.A. § 523\(A\)\(7\)\(A\) and \(B\)\)](#).

[117 ALR, Fed. 75](#), Construction and Application of [§ 7430 of Internal Revenue Code](#), Providing for Award of Costs and Fees to Prevailing Parties in Connection With Determination, Collection, or Refund of Any Tax Or...

[114 ALR, Fed. 377](#), Construction and Application of [26 U.S.C.A. § 6701](#) Imposing Civil Penalties on Persons Aiding and Abetting Understatement of Tax Liability.

[84 ALR, Fed. 433](#), Validity, Construction, and Application of Provisions for Assessment and Review of Civil Penalty Against Taxpayer Who Files Frivolous Income Tax Return ([26 U.S.C.A. §§ 6702-6703](#)).

[84 ALR, Fed. 852](#), Attorney's Disclosure, in Federal Proceedings, of Identity of Client as Violating Attorney-Client Privilege.

[27 ALR, Fed. 407](#), Construction and Application of Provision of [Rule 9\(B\), Federal Rules of Civil Procedure](#), that Circumstances Constituting Fraud or Mistake be Stated With Particularity.

[147 ALR 142](#), Liability to Penalty Imposed for Failure to Pay Tax of One Who in Good Faith Contested Its Validity.

[140 ALR 797](#), Doctrine of Res Judicata in Income Tax Cases.

[101 ALR 204](#), Motive to Avoid, Limit, or Postpone Income Tax by Transaction Which Otherwise Affects Incidence of that Tax.

Encyclopedias

[6 Am. Jur. Proof of Facts 2d 1](#), Misrepresentation of Expertise by Tax Return Preparation Service.

[68 Am. Jur. Proof of Facts 3d 333](#), Proof of Manufacturer's Liability for Defective Software.

[79 Am. Jur. Proof of Facts 3d 1](#), Proof of Facts Establishing a Claim for Trade Libel or Product Disparagement Under § 43(A) of the Lanham Act, 15 U.S.C.A. Section 1125(a).

[13 Am. Jur. Trials 1](#), Defending Federal Tax Evasion Cases.

[20 Am. Jur. Trials 255](#), Preparing a Federal Income Tax Case for Trial.

[45 Am. Jur. Trials 113](#), Third-Party Accountant Liability--Prospective Financial Statements Used in Securities Offerings.

[Am. Jur. 2d Federal Courts § 2300](#), Tax Refund Cases and Other IRS Proceedings; Generally.

[Am. Jur. 2d Federal Tax Enforcement § 372](#), Disposition of Review of Jeopardy Levy or Assessment; Finality of Decision -- Illustrative Cases.

[Am. Jur. 2d Federal Tax Enforcement § 460](#), Reasonable Cause for Failure to Pay Estimated Income Tax.

[Am. Jur. 2d Federal Tax Enforcement § 464](#), Appeals of Penalties and Other Additions to Tax to IRS Appeals Office.

[Am. Jur. 2d Federal Tax Enforcement § 938](#), Concurrent Jurisdiction.

[Am. Jur. 2d Federal Tax Enforcement § 1051](#), Particular Actions Prohibited.

[Am. Jur. 2d Federal Tax Enforcement § 1191](#), Jurisdiction and Venue.

[Am. Jur. 2d Federal Tax Enforcement § 1192](#), Evidence and Burden of Proof.

[Am. Jur. 2d Federal Taxation P 71801](#), Penalty on Promoters of Abusive Tax Shelters.

[Am. Jur. 2d Federal Taxation P 71805](#), Amount of Abusive-Promoter Penalty.

Forms

[Nichols Cyclopedia of Legal Forms Annotated § 2.1736](#), Registration of Real Estate Tax Shelters.

[8 West's Federal Forms § 13141](#), Claims Over Which the Court of Federal Claims Lacks Jurisdiction.

[9 West's Federal Forms § 14134](#), Reports and Decisions of the Tax Court.

[1 West's Legal Forms DIV. I § 3.6](#), Taxpayer Appeal Process.

[2 West's Legal Forms DIV. VII § 13.2](#), Form vs. Substance and the Problems of Classification and Reclassification of Transactions Between Related Parties.

[3 West's Legal Forms DIV. VII § 29A.1](#), S Corporation Tax Shelters.

[1A West's Legal Forms DIV. III § 7.188](#), Tax Shelters.

[1D West's Legal Forms DIV. IV § 6.169](#), Tax Shelters.

Treatises and Practice Aids

[Bankruptcy Service Lawyers Edition § 25:491](#), Penalties -- Illustrative Particular Applications in Which Subordination Denied.

[Bankruptcy Service Lawyers Edition § 12:1443](#), Tax Liability -- Penalty and Interest.

[Casey Federal Tax Practice § 13A:39](#), Tax Shelters.

[Casey Federal Tax Practice § 13A:41](#), Judicial Review.

[Casey Federal Tax Practice § 13A:44](#), Contesting Penalties.

[Casey Federal Tax Practice § 2:01.80](#), Constitutional Issues -- Freedom of Speech.

[Casey Federal Tax Practice § 3:08.57](#), -- -- Penalties and Sanctions.

[Casey Federal Tax Practice § 3:42.60](#), -- --Amended Returns.

[Casey Federal Tax Practice § 3:64.50](#), Enjoining Tax Shelters.

[Federal Procedure, Lawyers Edition § 19:81](#), Tax-Refund Cases and Other IRS Proceedings.

[Federal Procedure, Lawyers Edition § 48:725](#), Disposition of Review of Jeopardy Levy or Assessment; Finality of

Decision -- Illustrative Cases.

[Federal Procedure, Lawyers Edition § 48:829](#), Reasonable Cause for Failure to Pay Estimated Income Tax.

[Federal Procedure, Lawyers Edition § 48:833](#), Appeals of Penalties and Other Additions to Tax to IRS Appeals Office.

[Federal Procedure, Lawyers Edition § 48:1307](#), Concurrent Jurisdiction.

[Federal Procedure, Lawyers Edition § 48:1420](#), Particular Actions Prohibited.

[Federal Procedure, Lawyers Edition § 48:1570](#), Jurisdiction and Venue.

[Federal Procedure, Lawyers Edition § 48:1571](#), Evidence and Burden of Proof.

[Mertens: Law of Federal Income Taxation § 4:15](#), Retroactivity.

[Mertens: Law of Federal Income Taxation § 55:4](#), Procedure for Penalty Assessments.

[Mertens: Law of Federal Income Taxation § 55:55](#), Tax Shelters.

[Mertens: Law of Federal Income Taxation § 55:59](#), Penalty for Promoting Abusive Tax Shelters.

[Mertens: Law of Federal Income Taxation § 56:01](#), Overview.

[Mertens: Law of Federal Income Taxation § 56:02](#), Legislative History.

[Mertens: Law of Federal Income Taxation § 56:80](#), Overview.

[Mertens: Law of Federal Income Taxation § 57:04](#), General Assessment Period.

[Mertens: Law of Federal Income Taxation § 23A:33](#), Taxpayers Entitled to Depreciation.

[West's Federal Administrative Practice § 827](#), Subject Matter Jurisdiction -- Tax Cases.

[West's Federal Administrative Practice § 1640](#), Penalties -- Civil Penalties.

NOTES OF DECISIONS

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Amendment to Internal Revenue Code increasing penalty for selling fraudulent tax shelters from 10% to 20% of gross income applied to gross income derived from fraudulent tax shelter after effective date of amendment, even though shelter was only promoted before effective date of amendment. [Gang v. U.S., N.D.Ill.1992, 783 F.Supp. 376](#). Internal Revenue  5201


[2.](#) Abusive tax shelter

Program sold by promoters which encouraged purchasers to take steps to avoid federal income taxation, by removing themselves from federal income and social security tax systems, was "tax shelter," within meaning of statute penalizing persons who promote abusive tax shelters. [U.S. v. Raymond, C.A.7 \(Wis.\) 2000, 228 F.3d 804](#), certiorari denied [121 S.Ct. 2242, 533 U.S. 902, 150 L.Ed.2d 230](#). Internal Revenue  5219.50



Tax protest group which, among other activities, espoused various tax-avoidance schemes could constitute an "abusive tax shelter" such that district court could grant an injunction against the group's unofficial leader. [U.S. v. Kaun, C.A.7 \(Wis.\) 1987, 827 F.2d 1144](#). Internal Revenue  4441


Income tax return preparer engaged in conduct that would subject him to liability under statute imposing penalty on any person who organizes any abusive tax shelters or other abuse tax avoidance schemes; preparer organized at least two tax-avoidance plans or arrangements within meaning of statute, he made numerous "false" or "fraudulent" statements through his plans concerning tax benefits, which he knew were false and fraudulent, and false and fraudulent statements found in schemes concerned material matter. [Abdo v. U.S. I.R.S., M.D.N.C.2002, 234 F.Supp.2d 553](#), affirmed [63 Fed.Appx. 163, 2003 WL 21154241](#), certiorari denied [124 S.Ct. 1068, 540 U.S. 1120, 157 L.Ed.2d 915](#). Internal Revenue  5219.50

Informational program that provided instructions for avoiding federal income taxation by illegal means was "abusive tax shelter" that its promoters could be enjoined from selling; program instructed purchaser to send pre-printed and personalized documents to various officials of United States government and to claim status as non-resident alien or sovereign, and stated that funds earned from labor were not income and that federal government did not have power to tax citizens of the 50 states. [U.S. v. Raymond, E.D.Wis.1999, 78 F.Supp.2d 856](#), affirmed [228 F.3d 804](#), certiorari denied [121 S.Ct. 2242, 533 U.S. 902, 150 L.Ed.2d 230](#). Internal Revenue  4441; Internal Revenue  5245


Association's warehouse bank was "abusive tax shelter" for which association could be penalized, even though it claimed that its materials were mere advocacy against income tax; emphasis by association and bank on account holders privacy and common-law rights of contract were messages that account holders could avoid Internal Revenue Service (IRS), and several members of association were convicted of tax crimes. [National Commodity and Barter Association/National Commodity Exchange v. U.S., D.Colo.1993, 843 F.Supp. 655](#), affirmed [42 F.3d 1406](#), certiorari denied [116 S.Ct. 52, 516 U.S. 807, 133 L.Ed.2d 17](#). Internal Revenue  5219.50


Membership and active participation in "commodity and barter association" constituted promoting of abusive tax shelters for which penalty could properly be assessed under 26 U.S.C.A. § 6700, and the penalty became obligation of participating members as partners and against the organization as the partnership; because IRS did not know iden-


tivity of participating members, it was appropriate to proceed against the organization to make the assessment. [National Commodity and Barter Ass'n v. U.S., D.Colo.1986, 625 F.Supp. 920](#). Internal Revenue  5203; Internal Revenue  5219.50


Corporation and its president promoted abusive tax shelter within the meaning of 26 U.S.C.A. § 6700, where they promoted investment plan in connection with which they made gross valuation overstatements as to material matters of correct valuations of master sound recordings based upon sales which were not bona fide, and each such gross overvaluation statement related directly to amount of deduction of credit allowable to participant in investment plan. [U.S. v. Mid-South Music Corp., M.D.Tenn.1985, 624 F.Supp. 673](#). Internal Revenue  4441


3. False or fraudulent statements

Promoters' statements in advertisement for materials designed to aid purchasers in avoiding federal income taxation, including representations that payment of income tax was voluntary activity and that individuals could not be legally compelled to file tax returns or submit to tax investigations or penalties, were false or fraudulent statements concerning benefits of tax shelter, and thus supported finding that promoters promoted abusive tax shelter. [U.S. v. Raymond, C.A.7 \(Wis.\) 2000, 228 F.3d 804](#), certiorari denied [121 S.Ct. 2242, 533 U.S. 902, 150 L.Ed.2d 230](#). Internal Revenue  5219.50

Abusive tax shelter promoter's knowingly false portrayal of his tax shelter as company with its center of gravity in Brazil was material to deductibility of cruzeiro notes; thus, representations with respect thereto constituted violations of statute which prohibits making of false or fraudulent statements in connection with organizing abusive tax shelter. [U.S. v. Campbell, C.A.5 \(Tex.\) 1990, 897 F.2d 1317](#). Internal Revenue  5219.50

District court, in considering United States' request for a permanent injunction against the unofficial leader of a tax protest group, did not abuse its discretion in determining that the leader made statements relating to tax benefits available through group, that he knew or had reason to know were false or fraudulent, notwithstanding leader's claim that he never personally endorsed tax-avoidance plans contained in material distributed by group. [U.S. v. Kaun, C.A.7 \(Wis.\) 1987, 827 F.2d 1144](#). Internal Revenue  4441

Conduct of defendant, who organized an association and sold tax avoidance plan or arrangement and who, in connection therewith, made false or fraudulent representations about allowability of any deduction or credit, excludability of any income, or the securing of any other tax benefit which defendant knew or had reason to know were false or fraudulent, was subject to penalty under 26 U.S.C.A. § 6700 establishing a penalty for promoting abusive tax shelters. [U.S. v. White, C.A.8 \(Minn.\) 1985, 769 F.2d 511](#). Internal Revenue  5219.50

Statements in income tax preparation products, stating that 100% of all the customer's family's expenses for medical, dental, vision, weight loss, chiropractic care, allowances, clothing, school supplies, lessons, college education, and weddings could be deducted as business expenses were "false or fraudulent," within the meaning of statute providing for a penalty for selling tax preparation products containing false statements regarding tax matter, where statements were not qualified by stating that those expenses had to be ordinary and necessary to the customer's home business, and inextricably linked to the production of income, in order to be deductible. [Anderson v. I.R.S., E.D.Tex.2006, 442 F.Supp.2d 365](#). Internal Revenue  5219.50

Allegations regarding when provider of commercial tax products, which allegedly encouraged and assisted customers to commit willful failure to file an income tax return, promoted his products at tax-related seminars, how provider sold his products, and which products contained false representations that paying income tax was optional, satisfied rule that fraud be pled with particularity, and, thus, stated claim under statute penalizing any person "who makes or furnishes or causes another person to make or furnish a statement with respect to the securing of any other

tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter." [U.S. v. Hempfling, E.D.Cal.2006, 431 F.Supp.2d 1069](#). Federal Civil Procedure ⚡ 636

Individual who promoted tax-avoidance scheme titled "corporation sole" met "false or fraudulent" criterion of Internal Revenue Code section prohibiting promotion of abusive tax shelters by marketing, as tax-exempt, entities that did not independently qualify as religious or other charitable organizations under Code; individual advertised scheme as available for corporations that had social, fraternal, agricultural or recreational purposes, that were able to carry on any type of business, and that were established for benefit of their founders, and expressly stated that persons could assign income to corporations tax-free and could deduct "contributions" to corporations on their individual income tax returns. [U.S. v. Harkins, D.Or.2004, 355 F.Supp.2d 1175](#). Internal Revenue ⚡ 4441; Internal Revenue ⚡ 5245

By stating purchase price of corporation's distributorships, which were declared illegal tax shelters by Internal Revenue Service, sellers of distributorships made "statement as to the value" of distributorships within meaning of statutes which provide for imposition of penalty against any person who organizes any plan or arrangement and makes or furnishes gross valuation overstatement as to any material matter. [American Technology Resources v. U.S., E.D.Pa.1989, 709 F.Supp. 610](#), affirmed [893 F.2d 651](#), rehearing denied, certiorari denied [110 S.Ct. 2176, 495 U.S. 933, 109 L.Ed.2d 505](#). Internal Revenue ⚡ 5219.50

Corporations and individual involved in sound recording lease program made false statements to investors within meaning of 26 U.S.C.A. § 6700, governing promotion of abusive tax shelters, concerning availability of deductions and credits to investors by investing in program, where investors were told that they would be in business and manufacturing and distributing records based on partial interest they leased in master recordings, although testimony of several witnesses indicated that it would be impossible for investors with partial interest to attempt to distribute album, and investors were told that start-up distribution expenses could be as little as \$200, but testimony indicated that distribution could not be obtained from minimum payment of \$200. [U.S. v. Music Masters, Ltd., W.D.N.C.1985, 621 F.Supp. 1046](#), affirmed [816 F.2d 674](#). Internal Revenue ⚡ 5219.50

Statements by website operator regarding tax savings that taxpayers could realize under his interpretation of Internal Revenue Code and his marketing of products designed to frustrate employers' withholding of federal taxes constituted conduct subject to penalty under Internal Revenue Code, and thus preliminary injunction against operator was warranted, where operator knew or had good reasons to know that his statements to effect that United States citizens did not have to pay federal taxes on income earned in United States were false or fraudulent, operator continued to operate his website and sell kits and publications expressly designed to prevent Internal Revenue Service from assessing and collecting federal taxes after suit was brought against him, and operator gave no assurances that he would change his behavior in future. [U.S. v. Cohen, W.D.Wash.2004, 222 F.R.D. 652](#), reconsideration denied. Internal Revenue ⚡ 4441

4. Gross valuation overstatements

Penalty for promoting abusive tax shelter applies to either gross valuation overstatements or false or fraudulent statements. [In re MDL-731 Tax Refund Litigation of Organizers and Promoters of Inv. Plans Involving Book Properties Leasing, C.A.2 \(N.Y.\) 1993, 989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue ⚡ 5219.50

Tax shelter promoter's representation of value of contracts in tax shelter at \$600,000, when their actual value was closer to \$5,000 to \$15,000, constituted violation of statute prohibiting making or furnishing gross valuation overstatement in connection with abusive tax shelter. [U.S. v. Campbell, C.A.5 \(Tex.\) 1990, 897 F.2d 1317](#). Internal Rev-

enue ↪ 5219.50

Value placed on distributorships by promoters was directly related to amount of reduction allowable to buyers under Internal Revenue Code, and imposition of penalty for gross valuation overstatement was warranted. [American Technology Resources v. U.S., C.A.3 \(Pa.\) 1990, 893 F.2d 651](#), rehearing denied, certiorari denied [110 S.Ct. 2176, 495 U.S. 933, 109 L.Ed.2d 505](#). Internal Revenue ↪ 5215

Finding that corporation, which was in chain of corporations selling tax shelter which was eventually leased to taxpayers/investors, made or furnished gross valuation overstatement was sufficiently supported by statements in tax shelter offering memorandum that corporation would deliver to offeror appraisals of value of shelter and later statement in memorandum that appraisals had been delivered. [U.S. v. Philatelic Leasing Ltd., C.A.2 \(N.Y.\) 1986, 794 F.2d 781](#). Internal Revenue ↪ 4441

Investment credit received by investors solicited by participant in tax shelter sales was based upon representations in brochures distributed by participant as to value of property involved in shelter program and, accordingly, such representations were "directly related to the amount" of investment credit, as required for imposition of liability on participant under Internal Revenue Code provision imposing penalty on persons providing a "gross valuation overstatement." [Mattingly v. U.S., E.D.Mo.1989, 722 F.Supp. 568](#). Internal Revenue ↪ 5215

Even though ascertaining "correct valuation" for corporations's territorial distributorships, which were declared illegal tax shelters, was difficult, penalties could be imposed against sellers of distributorships under statute which provides for imposition of penalties against any person who organizes any plan or arrangement or participates in sale of interest in plan or arrangement and makes or furnishes gross valuation overstatement as to any material matter; evidence indicated that stated value exceeded correct valuation by at least 2,000%. [American Technology Resources v. U.S., E.D.Pa.1989, 709 F.Supp. 610](#), affirmed [893 F.2d 651](#), rehearing denied, certiorari denied [110 S.Ct. 2176, 495 U.S. 933, 109 L.Ed.2d 505](#). Internal Revenue ↪ 5219.50

For purpose of statute providing penalty for making or furnishing gross valuation overstatements in promoting tax shelter, statements of contract price are statements of value; to offer object or service at specified price is to implicitly represent that object is worth that price. [U.S. v. Campbell, N.D.Tex.1988, 704 F.Supp. 715](#), affirmed as modified on other grounds [897 F.2d 1317](#). Internal Revenue ↪ 5219.50

Furnishing of gross valuation overstatements with regard to tax shelter was conduct subject to penalty within meaning of 26 U.S.C.A. § 6700, governing promotion of abusive tax shelters. [U.S. v. Music Masters, Ltd., W.D.N.C.1985, 621 F.Supp. 1046](#), affirmed [816 F.2d 674](#). Internal Revenue ↪ 5219.50


5. Investment plans


Investment programs offered in connection with sound recording lease program in 1982 and 1983 were "investment plans" within meaning of 26 U.S.C.A. § 6700, governing promotion of abusive tax shelters, where leasing programs, under which investors purchased one or more leasehold units in sound recordings, were promoted to investors. [U.S. v. Music Masters, Ltd., W.D.N.C.1985, 621 F.Supp. 1046](#), affirmed [816 F.2d 674](#). Internal Revenue ↪ 5219.50


6. Material matters

False statements in income tax preparation products, stating that 100% of all the customer's family's expenses for medical, dental, vision, weight loss, chiropractic care, allowances, clothing, school supplies, lessons, college education, and weddings could be deducted as business expenses were "material," within the meaning of statute providing for a penalty for selling tax preparation products containing false statements regarding material matters; such statements were relevant to the availability of tax benefits and would induce a reasonably prudent consumer to purchase


the products. [Anderson v. I.R.S., E.D.Tex.2006, 442 F.Supp.2d 365](#). Internal Revenue  5219.50

If particular statement has substantial impact on decision-making process or produces substantial tax benefit to taxpayer, matter is properly regarded as "material" within meaning of Internal Revenue Code section providing for penalties against tax advisors who make false representations regarding material tax matters. [U.S. v. Estate Preservation Services, E.D.Cal.1998, 38 F.Supp.2d 846](#), affirmed [202 F.3d 1093](#). Internal Revenue  5219.60


Absence of substantial tax benefits in "family preservation trust" scheme promoted as a plan to reduce taxation established materiality of representations for purposes of statute prescribing penalty for promotion of abusive tax shelters. [U.S. v. Smith, W.D.La.1986, 657 F.Supp. 646](#), affirmed [814 F.2d 1086](#). Internal Revenue  5219.50


Representations of two corporations and individuals that they would not be party to agreements between sound recording lessees and distributors were false and/or fraudulent and were "material matters," within meaning of 26 U.S.C.A. § 6700, governing promotion of abusive tax shelters, because sound recording lessor's involvement in business activities that were alleged to be business of investors might cause lease arrangements to be reclassified by Internal Revenue Service thereby threatening investors' ability to claim investment tax credits that were passed to them through lessor. [U.S. v. Music Masters, Ltd., W.D.N.C.1985, 621 F.Supp. 1046](#), affirmed [816 F.2d 674](#). Internal Revenue  5219.50


7. Sound recording lease program

Sound recording lease program was "abusive tax shelter" within meaning of 26 U.S.C.A. § 6700, governing promotion of abusive tax shelters, where statements of value of sound recordings in investment programs were gross valuation overstatements and investment programs represented that each investor would be eligible to claim investment tax credit based on percentage of their investment in sound recording and amount purportedly paid for sound recording. [U.S. v. Music Masters, Ltd., W.D.N.C.1985, 621 F.Supp. 1046](#), affirmed [816 F.2d 674](#). Internal Revenue  5219.50


8. Persons liable


Promoter of tax shelter is, in essence, strictly liable for grossly overstating the value of property or services based upon which an investor will attempt to take a deduction or credit, although Commissioner of Internal Revenue has the authority to waive the penalty if the promoter acted in good faith. [Autrey v. U.S., C.A.11 \(Ga.\) 1989, 889 F.2d 973](#), rehearing denied [897 F.2d 537](#). Internal Revenue  5219.50


Promoter, who recruited tax preparers to market investments in certain companies to their clients, recruited salespeople to solicit tax preparers and to sell interests in the promoted companies and who referred individuals to the valuation statements contained in promotional offering materials, was subject to penalty for promoting abusive tax shelters, notwithstanding his claim that he did not know that valuations were gross overstatements. [Gates v. U.S., C.A.8 \(Ark.\) 1989, 874 F.2d 584](#). Internal Revenue  5219.50


Seller of income tax preparation products was subject to statutory penalty for selling tax preparation products containing false statements regarding material matters; seller conceded that his products qualified as a plan or arrangement under penalty statute, the products contained false statements, such as advising customers that all expenses for medical care, weddings, clothing, and college education could be deducted as business expenses, seller knew or had reason to know of the falsity of the statements, and the statements were material. [Anderson v. I.R.S., E.D.Tex.2006, 442 F.Supp.2d 365](#). Internal Revenue  5219.50

Penalties for promotion of abusive tax shelters could be imposed on both a subchapter S corporation, an entity legally separate from its shareholders, and its two shareholders; shareholders were not individually liable for penalties


imposed on the corporation nor was corporation responsible for penalties imposed on the shareholders. [In re Tax Refund Litigation, E.D.N.Y.1991, 766 F.Supp. 1248](#), affirmed in part, reversed in part [989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue  5203

Taxpayers who participated in sale of interests in energy control systems and furnished to purchasers seller's brochures that overvalued energy control systems were liable for penalty in sum of commissions received, regardless of whether there was reasonable lack of knowledge of overvaluation. [MOK Partners v. U.S., N.D.Ill.1987, 673 F.Supp. 918](#). Internal Revenue  5220


Defendant could not be held liable under abusive tax shelter statute, where there was no evidence that defendant directly and personally made or furnished the gross valuation overstatements to any investor, notwithstanding claim that statute should be broadly construed to hold an individual liable if another with whom he has associated has made or furnished statements described in statute. [U.S. v. Turner, E.D.Wis.1985, 601 F.Supp. 757](#), affirmed [787 F.2d 595](#). Internal Revenue  5203


Defendant, the cofounder and director of a club advocating four plans for evading income tax and promising to help new members file amended tax returns based upon one or more of them, was subject to penalty for organizing tax avoidance plan or arrangement, where defendant had made false or fraudulent statements regarding plans, and statements concerned "material matter." [U.S. v. Savoie, W.D.La.1984, 594 F.Supp. 678](#). Internal Revenue  5219.50



9. Burden of proof

Once Internal Revenue Service (IRS) established that taxpayers promoted abusive tax shelters and the only remaining issue was the amount of gross income derived by the taxpayer, burden of proof was on taxpayer challenging penalty assessment; there was no reason to regard IRS calculation of taxpayer's gross income with any more suspicion than other types of penalties based on tax deficiencies. [In re Tax Refund Litigation, E.D.N.Y.1991, 766 F.Supp. 1248](#), affirmed in part, reversed in part [989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue  5233

10. Injunction

Injunction was appropriate remedy to prevent recurrence of defendant's conduct which violated 26 U.S.C.A. § 6700 establishing a penalty for promoting abusive tax shelters. [U.S. v. White, C.A.8 \(Minn.\) 1985, 769 F.2d 511](#). Internal Revenue  4441

Commercial marketing of pure equity trust, which was, for federal tax purposes, essentially a sham and afforded no tax benefits, on basis that it afforded such benefits tended to both mislead and to result in violations of law, and thus was properly enjoined. [U.S. v. Buttorff, C.A.5 \(Tex.\) 1985, 761 F.2d 1056](#). Internal Revenue  4441

Injunctive relief was warranted in Internal Revenue Service (IRS) action against individual who promoted tax-avoidance scheme titled "corporation sole," which violated Internal Revenue Code's prohibition against abusive tax shelters; activities in question caused harm to federal treasury since Internal Revenue Service (IRS) realistically could not collect all back taxes owing from scheme, individual had reason to know that her activities were illegal, and there was likelihood of continued illegal activity absent injunction since individual had not acknowledged illegality of conduct nor denied any allegations against her but instead had responded to IRS' suit with frivolous filings. [U.S. v. Harkins, D.Or.2004, 355 F.Supp.2d 1175](#). Internal Revenue  4441; Internal Revenue  5245

Government was entitled to preliminary injunction against defendant who allegedly promoted abusive tax shelters; defendant assisted customers in evading federal tax liabilities and Internal Revenue Service (IRS) collection efforts through the fraudulent use of trusts and business entities, resulting in claimed loss of at least \$43 million in tax rev-

enues. [U.S. v. Stephenson, W.D.Wash.2004, 313 F.Supp.2d 1054](#). Internal Revenue ↪ 4441

Government was entitled to a preliminary injunction prohibiting promoters of abusive tax shelters from engaging in future promotions of abusive tax shelters; government's documentation showed that defendants organized or sold, or participated in the organization or sale of a plan or arrangement which assisted customers to file or submit false federal income tax returns and W-2 forms based on argument that imposition of a validly enacted income tax by Congress violated the taxing clauses of the Constitution, and that recurrence of the violations was likely in view of facts that defendants each participated in the sale and promotion of the scheme which involved over 3,000 individuals and an estimated \$56 million in attempted tax evasion, that each had done so knowingly and on numerous occasions, that each was unapologetic and that each was involved directly with the scheme as a matter of employment. [U.S. v. Schiff, D.Nev.2003, 269 F.Supp.2d 1262](#), reconsideration denied, affirmed [379 F.3d 621](#), certiorari denied [126 S.Ct. 334, 163 L.Ed.2d 46](#). Internal Revenue ↪ 4441; Internal Revenue ↪ 5245

Injunction would issue against promoters of abusive tax shelters, despite promoter's assurances that they would no longer sell informational program that provided instructions for avoiding federal income taxation by illegal means; promoters were responsible loss of federal income tax revenue of over \$691,000 as result of failure of some purchasers to file federal income tax returns, promoters' conduct contributed to need for government to incur considerable administrative expenses in undertaking taxpayer delinquency investigations, and promoters did not acknowledge that program ran afoul of any law. [U.S. v. Raymond, E.D.Wis.1999, 78 F.Supp.2d 856](#), affirmed [228 F.3d 804](#), certiorari denied [121 S.Ct. 2242, 533 U.S. 902, 150 L.Ed.2d 230](#). Internal Revenue ↪ 4441; Internal Revenue ↪ 5245

Government was entitled to injunction against vice president of corporation that marketed trusts as tax shelters, where he was active in soliciting new sales agents for corporation, received compensation for sales of trusts, made material false statements regarding tax benefits to be derived from trusts and charitable foundations, was licensed Certified Public Accountant (CPA) who knew, or should have known, that tax advice regarding trusts was false, and as CPA focussing on individual tax returns was likely to confront similar abusive tax shelter schemes. [U.S. v. Estate Preservation Services, E.D.Cal.1998, 38 F.Supp.2d 846](#), affirmed [202 F.3d 1093](#). Internal Revenue ↪ 4441; Internal Revenue ↪ 5245

Injunctive relief was appropriate to prevent corporations and individuals involved in sound recording lease program which was abusive tax shelter from engaging in further conduct subject to penalty under 26 U.S.C.A. § 6700, governing the promotion of abusive tax shelters, in order to prevent them from making further representations concerning validity of deductions and credits taken by investors in program on their income tax returns, and because there was no indication that they would cease from activities complained of. [U.S. v. Music Masters, Ltd., W.D.N.C.1985, 621 F.Supp. 1046](#), affirmed [816 F.2d 674](#). Internal Revenue ↪ 4441

In Government's action for injunction against defendants for promoting abusive tax shelters by making "gross valuation overstatement as to any material matter" in connection with sale of tax shelter, evidence that defendants' "arm's length" negotiations concerning sale of "stamp masters" were largely a fabrication and that market for "stamp masters" was virtually nonexistent supported finding that "stamp masters" involved in tax shelter scheme had no substantial value and were "grossly overvalued" under terms of statute so as to entitle Government to injunctive relief against defendants. [U.S. v. Philatelic Leasing, Ltd., S.D.N.Y.1985, 601 F.Supp. 1554](#), affirmed [794 F.2d 781](#). Internal Revenue ↪ 4441

Injunctive relief was appropriate in order to assure that defendant did not engage in conduct in violation of abusive tax shelter statute, where evidence established that defendant was involved in marketing of overvalued energy management systems, and that he had a history of such involvement. [U.S. v. Turner, E.D.Wis.1985, 601 F.Supp. 757](#), affirmed [787 F.2d 595](#). Internal Revenue ↪ 4441

Attorney's customers relied on his opinion letters in "opting" out of federal taxes, and as a "reliance defense" against the Internal Revenue Service (IRS), and thus, attorney's letters were used in connection with material matter under the Internal Revenue Code (IRC), as would warrant permanent injunction against attorney under IRC section prohibiting promotion of abusive tax shelters, where letters resulted in understatement of tax liability. [U.S. v. Rivera, C.D.Cal.2003, 2003 WL 22429482](#), Unreported. Internal Revenue ↪ 4441

11. Amount of penalty

Commissions paid by promoter to sales representatives could not be excluded from promoter's gross income when calculating size of penalty for promoting abusive tax shelter. [In re MDL-731 Tax Refund Litigation of Organizers and Promoters of Inv. Plans Involving Book Properties Leasing, C.A.2 \(N.Y.\) 1993, 989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue ↪ 5220

In calculating the penalty to be imposed against a general partnership for its promotion of abusive tax shelters, the penalty could be computed on a "transactional" basis, not an "annual" basis, based on the total income the general partnership derived from promotional activities it engaged in during the year of the assessment, even if the monies themselves were not received during those periods. [In re Tax Refund Litigation, E.D.N.Y.1991, 766 F.Supp. 1248](#), affirmed in part, reversed in part [989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue ↪ 5220

Statute providing penalty for promoting abusive tax shelters "equal to the greater of \$1000 or 20 percent of the gross income derived" did not allow for a penalty of \$1000 for each sale of an investment. [Weir v. U.S., N.D.Ala.1989, 716 F.Supp. 574](#). Internal Revenue ↪ 5220

Penalty to which promoter was subject for promoting abusive tax shelter was \$1,000 per sale; statutory \$1,000 penalty was not flat minimum penalty assessed without regard to number of interests sold. [Johnson v. U.S., E.D.Mich.1988, 677 F.Supp. 529](#), appeal dismissed [875 F.2d 862](#). Internal Revenue ↪ 5220


Penalty for sale of abusive tax shelter is a \$1,000 minimum penalty applied only when 20% of the income derived from the taxpayer's overall sales activity is less than \$1,000 and statute does not provide for penalty of \$1,000 per sale of interest in abuse of tax shelter; declining to follow [Waltman v. United States, 618 F.Supp. 718 \(M.D.Fla.\)](#), [Spriggs v. U.S., E.D.Va.1987, 660 F.Supp. 789](#), affirmed [850 F.2d 690](#). See, also, [Bond v. U.S., C.A.9 \(Cal.\) 1989, 872 F.2d 898](#). Internal Revenue ↪ 5220



Taxpayer who allegedly sold 30 prohibited "interests" to investors in a fraudulent tax shelter could be assessed the greater of \$1,000 or 10% of gross income derived from each "sale" of the prohibited interests, under 26 U.S.C.A. § 6700 providing for maximum penalty of the greater of \$1,000 or 10% of gross income derived from an "activity" which involves a gross valuation overstatement as to any material matter. [Waltman v. U.S., M.D.Fla.1985, 618 F.Supp. 718](#). Internal Revenue ↪ 5220


Abusive tax shelter penalties are calculated on one-time, nontransactional basis, on all tax shelter income actually received or reasonably expected to be received at time of assessment. [In re Bowen, Bkrcty.D.Utah 1988, 84 B.R. 214](#). Internal Revenue ↪ 5220


12. Knowledge and intent

Seller of tax preparation products, which contained false statements, knew or had reason to know that the statements were false, supporting penalty against seller; seller relied almost exclusively for advice regarding the products on another tax preparer who had a financial stake in the products, seller failed to obtain professional opinion from others on the validity of his products, seller admitted that he saw a pamphlet distributed by the Internal Revenue Service


(IRS) warning people about the problems with the products, no IRS publication approved the type of advice advocated in the products. [Anderson v. I.R.S., E.D.Tex.2006, 442 F.Supp.2d 365](#). Internal Revenue  5219.50

Individual who promoted tax-avoidance scheme titled "corporation sole," which advertised tax-exempt status for corporations that did not independently qualify as religious or other charitable organizations under Internal Revenue Code, met state-of-mind criterion of Code section prohibiting promotion of abusive tax shelters; individual's knowledge of falsity of statements made on behalf of scheme could be inferred from fact that she was completely uncooperative with Internal Revenue Service (IRS) counsel, refusing to answer questions or respond to discovery, and from her persistent use of disruptive tactics throughout IRS' lawsuit. [U.S. v. Harkins, D.Or.2004, 355 F.Supp.2d 1175](#). Internal Revenue  4441; Internal Revenue  5245


For purpose of statute providing penalty for persons promoting tax shelters who knowingly furnish false or fraudulent statements respecting availability of any tax benefits or make gross valuation overstatements, United States must prove scienter as to false or fraudulent statements, but need not show scienter to hold person liable for gross valuation overstatements. [U.S. v. Campbell, N.D.Tex.1988, 704 F.Supp. 715](#), affirmed as modified on other grounds [897 F.2d 1317](#). Internal Revenue  5219.50

Individual allegedly engaged in promoting and selling abusive tax schemes knew or had reason to know that statements regarding benefits to be derived from participation in his tax scheme were false or fraudulent, as would warrant permanent injunction against individual under Internal Revenue Code section prohibiting promotion of abusive tax shelters, where he was licensed attorney who had been practicing for 30 years, and even cursory research would reveal that his "opinions," that private-sector employees were exempt from federal taxation, that the Internal Revenue Service (IRS) had no authority to assess and collect taxes, and that paying taxes was voluntary, were without merit and had been universally rejected by courts. [U.S. v. Rivera, C.D.Cal.2003, 2003 WL 22429482](#). Unreported. Internal Revenue  4441


13. Deference to agency interpretation

Internal Revenue Service's interpretation of statute, which authorized penalty equal to greater of \$1,000 or 10% of gross income derived by person who participates in sale of interest in entity and furnishes gross valuation statement in connection with such sale, was entitled to deference, unless interpretation was inconsistent with legislation. [Hill v. U.S., W.D.Mich.1989, 720 F.Supp. 95](#). Internal Revenue  3037

14. Notice of assessment

Even if notice of assessment and demand for payment of penalty for selling interest in abusive tax shelters were deficient in failing to indicate period for which assessment was imposed, taxpayer, who had actual knowledge, was not misled, and thus, notice, which also demanded more than seven times the correct amount, was not invalid. [Sage v. U.S., C.A.5 \(Tex.\) 1990, 908 F.2d 18](#). Internal Revenue  5225

15. Limitations

"Catch-all" five-year statute of limitations for enforcement of civil penalties does not apply to assessment of penalties by the IRS for promoting abusive tax shelter; assessment is not an "action, suit or proceeding" within the limitations statute, nor is it "enforcement" of a penalty, but merely determination and recordation of amount owed. [Capozzi v. U.S., C.A.2 \(Conn.\) 1992, 980 F.2d 872](#). Internal Revenue  5230

Internal Revenue Code's (IRS's) three-year limitations period for tax assessments does not apply to assessment of penalties for organizing or participating in sale of abusive tax shelter, and only curb on penalty assessment power of IRS for sale of abusive shelters is doctrine of laches. [Sage v. U.S., C.A.5 \(Tex.\) 1990, 908 F.2d 18](#). Internal Revenue

☞ 5230

No statute of limitations applies to assessment of penalties for promoting abusive tax shelters. [Hargrove & Constanzo v. C.I.R., E.D.Cal.2006, 2006 WL 3176142](#). Internal Revenue ☞ 5230

There was no statute of limitations on the government's imposition of penalties for promotion of abusive tax shelters; authorizing statute penalized conduct alone and did not depend upon filing of a return, the government enjoyed special protection from statute of limitations, and the authorizing provision was essentially an anti-fraud provision. [In re Tax Refund Litigation, E.D.N.Y.1991, 766 F.Supp. 1248](#), affirmed in part, reversed in part [989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue ☞ 5230

Consents to extend statute of limitations during partnership proceeding by attorney-in-fact for tax matters partner were valid, despite partnership's contention that criminal investigation against tax matters partner created a conflict of interest which removed tax matters partner's authority to act, since neither partner nor his attorney-in-fact was aware of existence of criminal investigation, and sanctions for promoting abusive tax shelter interests had been imposed prior to execution of consents; Final Partnership Administrative Adjustment (FPAA) was made while period of limitations for making assessments attributable to partnership remained in suspense. [Madison Recycling Associates v. C.I.R., U.S.Tax Ct.2001, 2001 WL 339433](#), Unreported, affirmed [295 F.3d 280](#). Internal Revenue ☞ 4579

[16. Double tax](#)

Penalties for promoting abusive tax shelter could not be assessed against both income general partnership received for arranging shelters and that same income which general partners later received from partnership; imposing penalty on both general partners and partnership based on same income constituted unauthorized double tax. [In re MDL-731 Tax Refund Litigation of Organizers and Promoters of Inv. Plans Involving Book Properties Leasing, C.A.2 \(N.Y.\) 1993, 989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue ☞ 3021


Imposition of penalties for promotion of an abusive tax shelter on both the gross income derived by a general partnership and the gross income derived by its two general partners was invalid "double tax"; both penalties were assessed by the Internal Revenue Service (IRS), pursuant to the same section of the Internal Revenue Code, for the same conduct, on the same people, and for the same underlying policy reasons, and effect of penalties fell upon the same individuals. [In re Tax Refund Litigation, E.D.N.Y.1991, 766 F.Supp. 1248](#), affirmed in part, reversed in part [989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue ☞ 5219.50


[17. Gross income](#)

Taxpayers who were shareholders in subchapter S corporation met their burden of proving that they transferred their interests in the corporation to their respective wives and thus were entitled to have corporation's posttransfer income excluded from gross income base on which penalty for promotion of abusive tax shelters was calculated; schedules K-1 attached to corporate tax return for the following year indicated that the wives were stockholders in the corporation for that year, the president and remaining shareholder of the corporation testified that transfer occurred at the time alleged by taxpayers, and that he had specifically ordered transfer because taxpayers had each received a notice that they were the subject of a government investigation. [In re Tax Refund Litigation, E.D.N.Y.1991, 766 F.Supp. 1248](#), affirmed in part, reversed in part [989 F.2d 1290](#), certiorari denied [114 S.Ct. 439, 510 U.S. 964, 126 L.Ed.2d 373](#). Internal Revenue ☞ 5219.50


[18. Jurisdiction](#)

26 U.S.C.A. § 6700

Taxpayers whose suit for refund of penalties assessed for engaging in abusive tax shelter transactions was dismissed for lack of jurisdiction, after failure to timely file in district court, could not secure jurisdiction by payment of penalty for one of the transactions, pursuant to narrow exception to jurisdictional rule for "divisible" assessments, as penalties were not assessed on each individual transaction, but were assessed based on yearly aggregate of abusive tax shelter sales. [Korobkin v. U.S., C.A.9 \(Cal.\) 1993, 988 F.2d 975](#). Internal Revenue  5246

District court had subject matter jurisdiction over federal government's action to enjoin defendants from participating in abusive tax schemes, even though federal government had not formally accepted jurisdiction over land on which prohibited conduct occurred; government was not seeking to act as exclusive sovereign over particular land, but rather to exercise national powers delegated to it by states. [U.S. v. Kahn, M.D.Fla.2004, 304 F.Supp.2d 1353](#). Internal Revenue  4441

19. Abatement of action

Death of taxpayer did not abate Internal Revenue Service's (IRS) action against taxpayer alleging promotion of "off-shore employee-leasing" (OEL) abusive tax shelters, and seeking penalties under Internal Revenue Code provisions prohibiting promotion of such shelters and prohibiting aiding and abetting understatement of tax liability; provisions in question were not penal in nature. [Estate of Reiserer v. U.S., W.D.Wash.2005, 229 F.R.D. 172](#), stay granted [2005 WL 1667751](#). Internal Revenue  5237

26 U.S.C.A. § 6700, **26 USCA § 6700**

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