



FROM THE OFFICE OF PUBLIC AFFAIRS

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TREASURY SHUTS DOWN "SON OF BOSS" ABUSIVE TAX SHELTER

The Treasury Department and the Internal Revenue Service on Friday issued a notice to shut down another abusive tax shelter that is being marketed and sold. This new scheme is similar in design to the so-called Bond and Option Sales Strategy, or BOSS tax shelter, which the Treasury and IRS shut down last December with Notice 99-59.

"Despite these steps, the use of abusive tax schemes will continue to unfairly raise the tax burden on the American people," Treasury Secretary Lawrence H. Summers said. "Until we have an overall legislative solution in place, we are sure to see further generations of this and other abusive tax shelters."

As in the BOSS shelter, this new scheme uses a series of contrived steps (in this case involving interests in a partnership) to generate artificial tax losses designed to offset income from other transactions. Notice 2000-44 issued today would deny taxpayers the purported losses resulting from this shelter transaction because they do not represent bona fide losses reflecting actual economic consequences as required under the tax law. The notice informs taxpayers and promoters that appropriate penalties may be imposed on participants in these transactions. The notice also warns that taxpayers and promoters who participate in these transactions and willfully conceal their efforts on tax returns may be subject to criminal penalties.

Background

In one variant of this transaction, a taxpayer purchases a call option and simultaneously writes a similar offsetting call option. The offsetting option positions are then transferred to a partnership. Under the position advanced by the promoters of this arrangement, the taxpayer purports to have a positive basis in the partnership interest equal to the cost of the purchased call options, even though the taxpayer's net economic outlay to acquire the partnership interest and the value of the partnership interest are nominal or zero. This is because they claim that the taxpayer's basis in the partnership interest is not reduced for the partnership's assumption of the taxpayer's obligation with respect to the written call options. This artificially high tax basis in the partnership is then used to claim deductible losses (that can be used to shelter other income) by immediately selling the taxpayer's partnership interest, even though the taxpayer has incurred no corresponding economic loss.
