

Communications Excise Tax; Section 4251

Notice 2004-57

The Internal Revenue Service (Service) has received inquiries concerning the scope of the communications excise tax imposed by § 4251 of the Internal Revenue Code. These inquiries were precipitated, in part, by conflicting results in recent litigation. *Compare American Bankers Ins. Group v. United States*, 308 F. Supp. 2d 1360 (S.D. Fla. 2004), *appeal docketed*, No. 04-10720-EE (11th Cir. Feb. 12, 2004) *with Office Max, Inc. v. United States*, 309 F. Supp. 2d 984 (N.D. Ohio 2004). This notice confirms that the Service will continue to assess and collect the tax under § 4251 on all taxable communications services, including those communications services similar to those at issue in the cases.

Persons paying for taxable communications services (taxpayers) are required to pay the tax to a collecting agent (the person receiving the payment on which tax is imposed), and collecting agents are required to pay over the tax to the United States Treasury and to file the required returns. Taxpayers may preserve any claims for overpayments by filing administrative claims for refund with the Service pursuant to § 6511.

Failure to pay the tax to the collecting agent may result in the imposition of penalties, as well as interest.

DRAFTING INFORMATION

The principal author of this notice is Cynthia A. McGreevy of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. McGreevy at (202) 622-3130 (not a toll-free call).