

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION

	)	
FREEDOM PATH, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3:14-cv-01537-D
	)	
INTERNAL REVENUE SERVICE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**UNITED STATES’ OPPOSITION  
 TO PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Contrary to Freedom Path’s argument, Revenue Ruling 2004-6 is not constitutionally invalid on its face. Freedom Path seeks partial summary judgment regarding its claims in Counts VI and VIII of the second amended complaint. In Count VI, Freedom Path seeks: (1) a declaration that the “facts and circumstances” test in Revenue Ruling 2004-6 is void for vagueness in violation of the due process clause of the Fifth Amendment and (2) an injunction enjoining the IRS from using that test. (Doc. 49-1 ¶¶ 185, 202.) In Count VIII, Plaintiff alleges that the “facts and circumstances” test of Revenue Ruling 2004-6 “is unconstitutionally vague and/or overbroad in violation of the First Amendment.” (Doc. 49-1 ¶ 196.)

The main rulings on which Freedom Path relies – which involve prohibitions on speech in the face of criminal penalties – simply do not apply here. Revenue Ruling 2004-6 prohibits no speech; it merely aids in determining whether a tax is owed for activity that Congress has chosen not to subsidize. Understood in that appropriate context, Revenue Ruling 2004-6 is sufficiently clear in its terms to give fair notice of its requirements, and its objective factors do not make it readily susceptible to arbitrary application. As a result, Revenue Ruling 2004-6 is not

unconstitutionally vague. Revenue Ruling 2004-6 also is not facially overbroad, as it does not substantially burden protected speech. As a result, Freedom Path's motion for partial summary judgment should be denied.

DATED: November 2, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on November 2, 2016, I electronically filed the United States' Opposition to Plaintiff's Motion for Partial Summary Judgment with the Clerk of the Court using the ECF system, which will send notification of such filing to the following counsel for plaintiff: Chris K. Gober, Michael T. Hilgers, Orrin Harrison III and Jason Torchinsky.

s/ Laura M. Conner  
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