

???????? C-58/09

Leo-Libera GmbH

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Finanzamt Buchholz in der Nordheide

(?????? ?? Bundesfinanzhof ??? ?? ????? ?????????????? ??????????)

«?????? ?????????? ?????????????? ?????????? – ?????? ?????????????? ?????? – ??????
2006/112/?? – ?????? 135, ?????????? 1, ??????? ?? – ???????? ??? ??????????, ??????
??? ?????? ??????? ?????????? – ?????????????? ??? ??? – ???????? ?????????? ??? ??????
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????????? ???? ??????????

????????????? ?????????? – ?????????? ??? ?????????? – ?????? ?????? ?????????? – ?????
????????? ??? ?????????????? ?????? – ?????????? – ?????????? ??? ????????????, ??????
??? ?????? ??????? ??????????

(?????? 2006/112 ??? ??????????, ??? 135 § 1, ?????? i)

?? ?????? 135, ?????????? 1, ??????? ??, ??? ?????? 2006/112 ??? ??????????, ??? 28??
????????? 2006, ??????? ?? ?? ????? ?????? ?????? ?????????????? ?????, ??? ??
?????? ??? ? ??????? ??? ?????? ?????? ?? ?????????? ??? ?????????????? ??? ?? ??? ?? ???
????????? ??? ?? ?? ??, ??? ?????? ?????????? ?? ?? ??? ??????, ??? ?????? ??
????????? ?? ??????????? ?? ??? ?? ?? ??? ?????? ?????? ?????? ?????? ?????? ??????.

?????????, ? ?????? ?????????????? ????? ?????????????? ????? ?????????????? ?????????????? ??? ?????? ?????? ?? ???
??? ?????????? ? ?? ?????????????? ??? ?????????? ???????, ?????????? ??? ?????????? ??? ?????????? ??? ??
????? ?????? ?? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?? ??????????
?? ?????????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ??
????????? ?????? ?????????? ??? ?? ?????? ?? ?????? ??? ?????????? ??? ? ?????????? ?????? ?? ??????????
????????? ??? ?????? ?????????? ?? ?????????? ?????????? ?????????? ?????????????? ?????????????? ??????
??????????, ?????? ???, ?? ?????????? ??? ?????????? ?? 50 % ??? ??????
????????? ??? ?????????? ?????????????? ??? ?????????????? ?????? ?????????? ?????? ?????? ?????? ??
????????? ?? 50 % ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????????????? ??? ??
????????? ??? ?????????? ?????? ?????????? ?? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ??
????????????? ??? ?????????? ??? ??? ??? ???. ???????, ? ??? ??? ??? ??????????
??????????, ??? ??? ?????? ?? ?????????? ?????????? ??? ?????????? ??? ?????????? ??????????????
????? ??? ?????????? ??? ?????? ?? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??
??, ??? ?????????? ??? ???????, ?? ? ??? ??? ?????? ?????????? ??? ??? ??? ?????? ??? ??
????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?? ??? ??
????????? ??? ?????? ??? ?????? ???????, ?????? ?????? ?? ??? ??? ?????? ?????????? ??? ?? ??? ??
?? ?????????? ??? ?????? ???, ?? ?????????? ?? ??? ?????? 135, ?????????? 1, ?????????? ??, ???
??????? 2006/112 ??? ?? ?????? ?????????? ?????????? ??? ?????? ??? ?????????? ?????? ?????????????? ???
????? ??? ?????? ?????? ?????????? ??????????????????.

(???. ??????? 26-27, 34-35, 39 ??? ???????.)

?????? ?? ?????????? (????? ????)

??? 10?? ?????? 2010 (*)

«?????? ??????? ?????????????? ?????????? – ????. ?????????????? ?????? – ?????
2006/112/?? – ????. 135, ?????????? 1, ??????? ?? – ?????????? ??? ??????????, ??????
?? ?????? ?????? ?????? – ?????????? ??? – ?????? ?????? ?????????? ??? ??????
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???? ?????? C?58/09,

??. ?????????? ?????? ?????? ?????????????? ?????????? ?????? ??? ?????? 234 ??,
?? ??????? ?? Bundesfinanzhof (?????????) ?? ?????? ??? 17?? ?????????? 2008, ? ??????
????????? ??? ?????????? ??? 11 ?????????? 2009, ??? ?????? ??? ??????

Leo-Libera GmbH

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Finanzamt Buchholz in der Nordheide,

??. ?????????? (????? ????),

????????? ????. A. Tizzano, ?????? ????????, E. Levits, A. Borg Barthet, J.?J. Kasel
(???????) ??? M. Berger, ????????,

?????? ??????????: Y. Bot

?????????: B. Fülop, ??????? ??????????,

?????? ????. ??? ?????? ?????????? ??? ?????? ??? ??' ?????????? ?????????? ???
4?? ?????? 2010,

????????? ????. ??? ?????????? ??? ????????:

- ? Leo-Libera GmbH, ?????????????? ??? ?? B. Hansen, Rechtsanwalt,
- ? ?????????? ????????, ?????????????? ??? ?? M. Lumma, C. Blaschke ??? B. Klein,
- ? ??????? ????????, ?????????????? ??? ?? L. Van den Broeck ??? C. Pochet,
????????????? ??? ?? P. Vlaeminck, Y. T'Jampens ??? A. Hubert, advocaten,
- ? ????????, ?????????? ??? ?? D. O'Hagan, ?????????? ??? ?? N. Travers,
?L,

- ? ?????????? ??? ??????? ??????????, ?????????????? ??? ??? S. Ossowski,
????????????? ??? ??? N. Shaw, barrister,
- ? ?????????? ???????, ?????????????? ??? ??? ?. ??????????????,
???? ?????? ??? ?????? ?????????? ??? ??????? ??? ?????? ??? ??? ?? ??????????
??? 11?? ?????? 2010,
- ?????? ??? ??????
- ??????
- 1 ? ?????? ?????????? ?????????????? ?????? ??? ?????????? ??? ?????? 135,
????????? 1, ??????? ?, ??? ?????? 2006/112/?? ??? ??????????, ??? 28?? ??????????
2006, ?????? ?? ?? ????? ?????? ????? ?????????????? ??? (?? L 347, ?. 1).
- 2 ? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? Leo-Libera
GmbH (??? ????: Leo-Libera) ??? ??? Finanzamt Buchholz in der Nordheide (?????????
????????? ????: Finanzamt), ??????? ?? ??? ?????? ??? ???
????????????? ??? (??? ????: ???) ??? ?????? ??? ?? ?????????? ?????? ?????? ??
?? ?????????? ??? (?????????????).
- ?? ?????? ??????
- ? ?????????? ??? ??????
- 3 ?? ????? 131 ??? ?????? 2006/112 ?????? ?? ????:
- «?? ?????????? ??? ?????????? ??? ?????? 2 ??? 9 ?????????? ?? ??? ??????????
????? ?????????? ??? ?????? ??? ??? ?????????? ??? ?????????? ?? ??? ?????? ???
?? ?????????? ??? ??? ??? ????? ?????? ??? ??? ?????? ??? ?????????? ??? ?? ??????????
????? ?????????? ??????????, ?????????? ?? ??????????»
- 4 ?? ????? 135, ?????????? 1, ??????? ?, ??? ?????? 2006/112 ?????????? ?? ????:
«?? ?????? ??? ?????????? ??? ?????????? ??? ???????:
- [...]
- ?) ?? ??????????, ?????? ??? ?????? ?????? ?????? ??????????, ?? ??? ?????????? ??? ??????
??? ?????????? ??? ??? ?????? ??? ?????????? ??? ??? ?????? ????.».
- 5 ??? ??? ??? ?????? 2006/112, ? ?????? ?????? ????
????????? ??? ?????? ??? ?? ??? 13, B, ??????? ???, ??? ?????? ?????? 77/388/?? ??
?????????, ??? 17?? ????? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????
??? ?????? ??? ?????? ?????? ?????? – ?????? ?????? ??? ?????????? ????.
?????: ?????????? ?????? ??? (?? ????. ???.. 09/001, ?. 49, ??? ????: ??? ?????). ??
????? 135, ?????????? 1, ??????? ?, ??? ?????? 2006/112 ??? 13, B, ?????????? ???, ???
????? ?????? ?????????? ??? ?????? ??????????.
- ? ?????? ????????
- 6 ?? ????? 1, ?????????? 1, ?????? 1, ?????? ??????, ??? ?????? ??? ?????? ??????
????????? (Umsatzsteuergesetz 2005, BGBl. 2005 I, ?. 386), ??? ?????? ??? ?????? ???

????????????? ?????????????? ??? ?????????? ??? ?????? (??? ????: UStG), ??????????
??? «?? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????????????? ?????
????????????? ??? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????????? ??? ??????» ?????????? ???.

7 ??? ??? 5 ????? 2006, ?? ??? 4, ?????? 9, ?????? b, ??? ??? ?????? ????,
????? ??? ?????? ??? ?????? ??? ?????? 1, ?????? 1, ?????? 1, ??????????????
??? ????:

«?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
?????????, ??? ???? ?? ?????????????? ??? ?? ?????????? ?????? ????, ??
????? ?????????? ?? ?? ?????????? ??? ?? ??????. ??? ?????????? ??? ??????????
????? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

8 ??? ??? ?????? ??? 17? 2005, C?453/02 ??? C?462/02, Linneweber
??? ?????? (????? 2005, ?. I?1131), ?? ??? 4, ?????? 9, ?????? b, ???
Umsatzsteuergesetz 2005 ?????????? [Gesetz zur Eindämmung missbräuchlicher
Steuergestaltungen (StEindämmG), ?? 28? 2006 (BGBI. 2006 ?, ?. 1095)] ??
????????? ??? ??? 6 ????? 2006. ??? ??? ?????????? ????:

«?? ?????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ???, ??? ?????? ???».

9 ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? UStG ??? ??? ?????? ???
????????? ??? ?????? [Rennwett- und Lotteriegesetz (??? ????: RennwLottG)], ??? ???
????????? ??? ?????? ??? ?????? ?????? (????????? ??????????), ??
????????? oddset, ?? ?????? ??? ?? ??????.

? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ????

10 ? Leo-Libera ?????????? ??? ?????? ?????? ?????????? ?? ?????? slot
(?????????). ??? ?????? ??? ??? ??? ?????? ??? 2007, ??? ?????? ??? ??????
????? ?????? ??? . ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Finanzamt,
????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ??? ?????? ??? ?
????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ???, ? ?????? ??? ???
????? 4, ?????? 9, ?????? b, ??? Umsatzsteuergesetz 2005 ??? ??? StEindämmG ???
????????? ??? ?? ?????? ???.

11 ?????? ? Finanzamt ?????? ??? ?????? ??? ?? ??????, ? Leo-Libera ??????
????? ??? ?????? ??? Finanzgericht. ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???' ?????? ??? ??????
4, ?????? 9, ?????? b, ??? UStG. ?? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? 135, ?????? 1, ?????? ??, ???
2006/112 ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ???.
??????.

12 ??? ??????? ??? ??????? ??? ???????????, ??? ?????? ??????? ??????? ???
Bundesfinanzhof, ? Leo-Libera ??????????? ???, ??? ?? ????? 135, ??????????? 1, ???????
??, ??? ??????? 2006/112, ?? ?????? ??? ??????????? ?? ??????????? ?????? ?? ???????????
??? ?? ???????, ??? ?????? ?????? ?? ??????????? ??? ??? ?? «????? ??????
??????». ???????, ?? ??????? ?????????? ??????? ?? ?????????? ??? ?????????? ??? ??
?????????? ??? ???. ???????, ??? ?????? ??????????? ?? ?????????? ??????? ?? «?????
?????? ???????». ???, ??? ?????? ???, ??????? ?? ?? ?????????? ??????????? ???????,
?????????? ??? ?? ??????? ?? 63 % ??? ??????? ??? ?????? ?????????? ??????? ???????
??? ??????????? ??? ?? ??????? ??? ?? ?????? ??????? ??????, ?????????? ??? ??
?????????? ??? ?? ?????????? ??? ?????????? 2006/112. ? ??????? ??????????? ???????
??? ???, ???????, ??????? ??? ?? ?????????? ??????. ???????, ? ??????? ???
?????????? ??? ?? ??????? ??? ?????????? ???????????, ??????? ?? ???????????????
???????? ?? ?????? ?????? ?? ??????? ?????????? ?? ?????? ?? ?? ??????? ???????, ?? ??
???????? ?? ?????????? ??? ?? ???????.

13 ?? Bundesfinanzhof (?????????? ??? ?????????? ???????????) ??????????? ???????????
?? ??? ?? ??????? ??? ?? 4, ?????? 9, ??????? b, ??? UStG ?? ?? ??????? ????.
??????, ?? ?? ??? ??????????? ???, ??????? ??? ?? ?????? 13, B, ??????? ???, ??
????? ???????, ??? ??????????? ??? ?? ???????????, ? ??????? ??? ?? ???????????
?????? ??????? ???, ???' ????, ?? ??????????? ??? ?? ??? ???. ?? ??? ???????????
?????????? ?? ??? ?? 135, ??????????? 1, ?????????? ??, ??? ??????? 2006/112,
?????? ? ?????????? ??? ?? ?????????? ?????? ?????? ???????????.

14 ???, ?? 4, ?????? 9, ??????? b, ??? UStG ??????????? ?? ?? ??????? ??? ??
?????????? ???, ??? ?? ??????? ?? ?? ???????????, ??? ?? ??????? ?? ?? ???????????
???????? ?? ??? ?? ??????? ??? ??????? ?? ?? ??????????? ?? ?? ??????????? ?? ??
?????? ?? ?? ??????? ??? ??????? ?? ?? ??????????? ?? ?? ??????????? ?? ?? ?? ??
??????.

15 ?? ?????? ??????????? ???????????, ???????, ??? ? ??????? ???????????, ??? ??
?????????? ??????????? ?? 2006, ??????? ?? ??????????? ??????????? ??? ?? ???????????
?? ??????? ???.

16 ??? ??? ??????? ???, ?? Bundesfinanzhof ??????? ?? ?? ??????? ??? ?? ???????
??? ??????? ??? ??????? ??? ??????? ??? ??????? ????:
«????? ??? ?????? ?? 135, ??????????? 1, ??????? ??, ??? ??????? 2006/112 [...] ???
?????????? ??? ?? ?????? ??? ?? ??????? ??? ??????? ?? ?? ??? ?? ???????????????
??? ?? ??? ?????? ??????? ?????????? (??????????) ??? ??????, ??? ?? ?? “?????
?????? ??????” ??????????? ??? ?? ???????;»

??? ??? ??????? ??????? ??? ??????? ??? ????????

17 ?? ??????? ??? ??????? ??? ??????? ??? ??????? ??? ??????? ??? 17 ??????? 2010, ?
Leo-Libera ?????? ??? ??????? ??? ??????? ??? ???????, ???' ??????? ??? ??
61 ??? ??????? ???.

18 ???????, ?????? ?? ??????? ??? ??????? ??? ??????? ??? ??????? ?? ??????? ???
?????????? ??? ??????? ??? ???????, ??????? ?? ?? ?????? 61 ??? ???????
??????????, ?????? ?????? ??? ?? ??????? ??? ??????? ??????? ?? ?? ??? ?? ??????? ???
????????? ??? ?????? ??????????? ??? ?? ??????? ??? ??????? ??????? ??? ??
????????? (????????? ??? 10?? ??????????? 2000, C-270/97 ??? C-271/97, Deutsche Post,

?????? 2000, ?. ?-929, ????? 30, ????? ??? ??? 18?? ?????? 2002, C?299/99, Philips, ?????? 2002, ?. ?-5475, ????? 20).

19 ?? ???????????, ?? ??????????, ???? ?????? ?? ???? ?????? ???????????, ?????? ?? ????
?? ??????? ?? ???? ?? ???? ?????? ?????????? ?? ???? ?? ???? ?????? ?? ???? ?? ???? ?????? ??
????????? ?? ???? ?? ???? ?????? ?????????????? ?????????? ?? ???? ?? ???? ? ?????? ?? ???? ?????????? ??
????????? ?? ???? ?? ???? ?????? ?????????? ?? ???? ?? ???? ?? ???? ?????? ?????????? ?? ????.

20 ????? ????????, ?????? ?? ??????????? ? ?????? ?? ??? ?????? ?????? ?????? ?? ??????????
? ?????? ????.

??? ??? ?????????????????? ?????????????

21 ?? ?? ??????? ???, ?? ?????? ??????????? ?????? ???' ?????? ?? ?? ?????? 135,
?????????? 1, ??????? ??, ??? ?????? 2006/112 ??? ?????? ??? ???? ?? ???? ??
?????????? ?? ?????????? ?? ?????? ??? ?? ?????????? ??? ?????????????? ??? ?? ???
?? ?????????? ?? ?? ?? ?? ?????? ??, ?????????? ' ?? ?? ??
?????????? ?? ?? ?? ?? ?????? ??????? ???????.

22 ???.???.???????.???????????.???.??????????.????, ??????.???'?????.???.???????????????.???,
?????.???.???????????.???.?????????????, ???.???????????.???.???????????????????.???.???
???????????????.???.???????????.???.????????? 135, ????????????.1, ???.????????? 2006/112 ??????.???
???????????????.???.????, ??????????.???.???.???????????.???.????.?????????????.???????????????.???.???
?????.???.???.??.???.???????????????.???.????.?????.???????????.???.???????????????????.???.???
?????.???.?????.???.???????????????.???.????.????? (??., ???'?????????.???.????.???.????.?????.
?????.???.???.13???.????????? 2006, C-89/05, United Utilities, ??????.2006, ?.!#6813, ??????.21).

23 ????????, ? ??????? ?? ?????????????? ??? ?? ??? ????? ?????????? ?????? ?? ?????
?????? ?? ??? ????? ?????? ??? ????? ?????????? ?? ?? ??? ????? ?????????? ?? ?? ??????
?? ?????????? ?? ??? ????? ?? ?????????? ?????????????? ? ?????? ??????????
????????? ?? ??? ????? ?? ?????????? ??? (??., ???' ???????, ??????????????
?????? United Utilities, ????. 22).

24 ?????? ?????? ?????????????? ?? ??????????????, ??????? ??? ????? ?????? ??????? ????????, ?????? ?
????????????? ??? ? ?????????? ??? ?????? ?????????? ?????????????? ??? ?????? ?????? ??????????
???????, ??????? ? ?????????? ??? ??? ?????????????? ?????????????? ??? ?????? ?????? ??? ??????? ???
????????????? ?? ?????? ???????, ??? ??? ??? ?? ??????? ?????????????? ?????????????? ??????????????
????????????? ??? ?????????? ?????? ??? ?????? ??? ???, ??? ?????? ?????? ?????????? ?????? (?????????????
??????? United Utilities, ????? 23).

25 ??? ?? ??????? ??? ??????? ??????, ??????? ?? ??????????? ?? ?? ??? ?????? ??? ???????
?????? ?? ??????????? ?? ?????? ?????????? ??? ??????????? ?? ?? ??? ??? ?????????? ??
????? 135, ??????????? 1, ???????? ??, ??? ??????? 2006/112 ??? ?????? ?????? ??? ?????? ???
????? ??? ??????? ????, ??????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??????????????
????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ??????????? ?? ?? ??? ?? ??? ?????? ??????, ??? ???????
????????? ??? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ???
????????? ???.

26 ???????, ?????? ??' ????? ?? ?????????????? ??? ?? ???? ?? ?????? ?? ?????? 135,
?????????? 1, ??????? ??, ??? ?????? 2006/112 ?????????? ??? ? ?????? ???
?????????? ??? ?????????? ?????????? ??? ?????? ??? ?? ??? ??? ?????? ??
?????????? ??? ?????????? ???????, ?????????? ??? ?????????? ??? ?? ??? ??? ?????? ??

???????????? ???? ?????????????? ???? ?? ????? ???? ?????? ?????? ???? ?????? ?? ?????????? ???? ?? ??????????

27 ???????, ?????????? ? ?????????? ??? ?? ?????? ??? ?????? 135, ?????????? 1,
????????? ?, ??? ?????? 2006/112 ??? ?????? ?????? ?????? ??? ?? ?????? ?? ??????
?? ?????? ??? ? ?????????? ?????? ??? ?????? ??? ?????? ?? ?????? ??????
????????? ?????????? ?????? ??????????, ?????? ?????, ?? ?????????? ???
????????? ?? 50 % ??? ?????? ?????? ??? ?????????? ?? 50 % ??? ?????? ?????? ???
????????? ??? ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ?? ??.

28 ??? ??????? ??, ?? ??????? ?? ???? ?? ?????????? ??? ???? ?????????????? ??? ???? ???? ???? ?
????????? ??? ? ?????????????? ??? ?????????? ??? ???? ?????? ?????? ?????? ??????,
???' ?????, ?? ?????????????? ??? ??? ??? (?., ?????? ?????, ?????????? ??? 11?? ??????
1998, C2283/95, Fischer, ?????? 1998, ?. ??3369, ????? 25, ????? ??? Linneweber ???
????????, ?????????????, ????? 23), ??? ?????, ?????????? ????? ??? ?????????????
??? ?? ????? 135, ?????????? 1, ?????????? ?, ??? ?????? 2006/112 ?????, ????? ??? ??
????? ?????????? ??? ????? ?????????? ? ?? ??? ????? ?????, ?? ?????? ??? ????? ???
????????? ??? ?? ??????????.

29 ????????, ????, ????, ?????, ??? ?????? ??? ?????????? ??????????, ?????? ??
????????? ???, ??? ?????? ??? ?????? ?????????? ?????????, ?? ??? ?????? ??? ?????? ???
????????? ?? ?????????? ??? ?????????????? ??? ?? ?????? ??? ?????????? ??? ?????????? ??
????? 135, ?????????? 1, ??????? ??, ??? ?????? 2006/112 (????????????????? ??????????
Fischer, ????? 25, ????? ??? Linneweber ??? ????????, ??? 23), ????? ?????????? ??????
????????? ?????????? ? ????? ??? ?????? ?????????? ?? ?????????????? ?????? ? ??????
????????????? ?????? ??? ?????? ? ?? ??? ?????????? ??? ?? ?????????? ??? ?????? ??
????????? ??? ?? ?????? ? ?????? ?????? ?????? (????????? ??? 24? ?????? 1994,
C?275/92, Schindler, ?????? 1994, ?. ??1039, ????? 61, ??? ??? 21? ?????????? 1999,
C?124/97, Läärä ???., ?????? 1999, ?. ??6067, ??? 35).

30 ????? ????????, ????, ?????????? ? ??????? ?????????? ???? ?????? 47 ???
????????? ???, ?????? ?????? ?????? ?? ?????????? ?? ?????????? ???? ???? ???? ??????
??? ??????? ??????? ??????? ???? ???? ?????? ???? ?????????? ???? ???? ???????
??? ???, ?????? ?? ?????? ??????? ????, ????, ????? ?????????? ???? ?????? 24 ???
????????? ????????, ?????????? ???? ?????? ???? ?????? ?? ???? ??????.

31 ?????????? ??? ??????? 135, ??????????? 1, ????????? ??, ??? ??????? 2006/112, ??? ??
????? ? ?? ??? ???????, ??? ?????????? ? Leo Libera, ?? ?????????? ?????????? ??????
?????, ?? ?????? ??????? ?????????? ?????? ??? ?????????????? ????? ?????????????? ???,
?? ?????????? ??? ??? ???????? ??? ?????????? ?? 50 % ??? ??????????????
????????? ???/? ??? ?????? ?????? ??? ?????????? ??? ?? ?????? ?????????? ?????????????? ?? 50
% ??? ?????? ?????????? ??? ?????????????? ??? ?????????? ?????? ??? ?????? ??? ??????
?????????, ?? ??? ??????? ??????? ??????? ??????? ?????? ??? ?????? ??? ?????????????? ??? ??
????????? ??????? ??????? ?????? ??? ?????? ??? ?????? ??? ?????, ??? ?????????? ??? ?????? 22 ???
????????? ???????, ??? ??? ?????? ?? ?????????? ??? ?? ?????? ??? ?????? ??? ??????????
????????????? ???????????.

32 ????? ??????, ????????, ??? ?????????? ??? ?????????? 2006/112, ?????? ?? ??????????????
???, ??? ?????? ??? ?????????????? ??? ?????? ?? ?????? ??? ?????? ?????????? ???
?????????????????, ????????????, ??? ?? ?????????????? ??? ??? ?????? ??? ?? ?????? ??? ????
???, ??? ?????????????? ??? ?????? ??? ?????????? ??? ?????????? ?, ??? ?????? ??? ??

??? ??? ??????? ?????????? ?????? ?????? ?????????? ?????????? ?? ??????????, ?? ?????????? ???
? ?????????????? ??? ?? Leo-Libera ??????? ?????? ???, ?? ?????? ?????? ?????? ?????? ?
????????? ??? ?? ????? 135, ?????????? 1, ?????????? ?, ??? ?????? 2006/112.

33 ??? ? ???????, ???????, ??? ??? ?? ??????? ?? ?????????? ?? ?????????? ?? ???????
????????? ??? ?? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? 131 ???
?????? ?????, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ??? ??? (??.,
?? ?? ?????? ???, ?????? ??? 12?? ?????????? 2006, C?246/04, Turn- und Sportunion
Waldburg, ?????? 2006, ?. ??589, ??? 31).

34 ?????, ?????? ?? ?????????? ???, ??????? ?????? ??? ?????? ?? ?????????? ??? Leo-Libera, ? ???
?? ?????????? ?????????????, ??? ??? ?????? ?? ?????? ?????????? ?????????? ??? ??????
????????????? ?????? ??? ?????? ?????? ??? ?????? ?? ?????????? ?????????? ?????????? ???
?? ?????? ??? ???, ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ???
????? ??? ?????? ???.

35 ???????, ?? ? ??? ?????? ?????? ?????????? ??? ??? ?????? ??? ?????????? ??
????????? ??? ?? ??? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?????????? ??? ???
????? ???????, ?????? ?????? ?? ??? ??? ?????? ?????? ??? ?????? ?? ?????????? ??? ??????
????, ?? ?????????? ?? ?????? 135, ?????????? 1, ??????? ?, ??? ?????? 2006/112 ??? ??
???? ?????? ?????? ?????????? ??? ? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??????????????????.

36 ?????, ??? ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?????????? ?,
????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ???, ??? ?????? ???, ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????????? ???.

37 ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ?????????? ???, ??? ???
????? ??? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????? ???/? ??? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ?????????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ?????? ???, ??????,,
????????? ?? ??? ??? ??? ?????? ??? ?????? ?????? ???.

38 ?????, ??? ?????? ??? ?? ?????????? ??? ?? ?????????? ??? Leo-Libera, ?????????? ??????????
????? ??? ?? ??? ?????? ?? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? ???????,
?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ?????????? ??? ??? ???,
????? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ???
????????? ??? ???, ?????? ??? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ?' ??? ??? ??? (??., ??? ??? ?????? ???, ?????????????? ??? ?????? Fischer,
????? 30).

39 ?????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ?? ??????
?? ?? ??? 135, ?????????? 1, ??????? ?, ??? ?????? 2006/112 ??? ?? ?????? ???
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??????
?? ??? ???, ??? ?????? ?????? ?? ??? ??? ?????? ???, ??? ?????? ??? ?? ?????? ???
????????? ??? ??? ??? ??? ?????? ??? ?????? ??? ?????? ???.

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40 ?????? ??? ? ?????? ?????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?' ???
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

???? ?????????? ??????????? ??? ??????????, ??? ??? ?? ??? ???????, ???
??????????.

??? ??? ?????? ??????, ?? ?????????? (????? ????) ????????????:

? ???? 135, ?????????? 1, ??????? ?, ??? ?????? 2006/112 ??? ????????, ??
28? ?????????? 2006, ??????? ? ? ?????????? ?????? ?????????????? ?????,
????? ??? ?????? ??? ? ??????? ??? ?????? ?????? ?? ?????????? ???
????????????? ??? ?? ??? ??? ?????????? ??? ??? ???, ??? ?????? ?????????? ??
????? ???????, ??? ??????? ?? ?????????? ?? ?????????? ??? ??? ?? ??? ??
????? ??????? ?????? ??????.

(?????????)

* ?????? ??????????: ? ????????.