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CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR DISTRICT COUNSEL, BROOKLYN
CC:NER:BRK

FROM: Acting Assistant Chief Counsel (Income Tax and Accounting)
CC:DOM:IT&A

SUBJECT: Sufficient Tax Return For Statute of Limitations

This responds to your request for Service Center Advice in connection with issues posed by the Statute Unit of the Brookhaven Service Center.

ISSUES

1. Whether an otherwise complete individual income tax return filed without a required form or schedule constitutes a valid return for purposes of the statute of limitations on assessment under § 6501 of the Internal Revenue Code (Code).
2. Whether an otherwise complete individual income tax return filed without a required form or schedule constitutes a sufficient claim for refund for purposes of §§ 6402 and 6511 of the Code.
3. Whether an otherwise complete individual income tax return filed without a required form or schedule constitutes a "processable" return for purposes of § 6611(g) of the Code.
4. Whether a decedent's final return, signed by an individual who identifies himself as the decedent's "personal representative," constitutes a valid return for purposes of § 6501 of the Code, a sufficient claim for refund for purposes of §§ 6402 and 6511, and a processible return for purposes of § 6611(g).

CONCLUSIONS

1. An otherwise complete individual income tax return filed without a required form or schedule constitutes a valid return for purposes of the statute of limitations on assessment.
2. In general, an otherwise complete individual income tax return filed without a required form or schedule constitutes a sufficient claim for refund. The return must set forth the amount determined as an overpayment and should specify whether such amount shall be refunded to the taxpayer or applied as a credit against the taxpayer's estimated income tax for the succeeding taxable year.
3. An otherwise complete individual income tax return which lacks a form or schedule that is needed to corroborate the mathematics and data reported by the taxpayer is not a "processable" return within the meaning of § 6611(g) of the Code. A return is processible if it is filed on a permitted form, contains the taxpayer's name, address, identifying number, and required signature, and provides sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.
4. A decedent's final return, signed by an individual who identifies himself as the decedent's "personal representative," should be treated as a valid return for purposes of § 6501 of the Code. However, such return should not be treated as a sufficient claim for refund for purposes of §§ 6402 and 6511 until the personal representative provides Form 1310, or other proof of representative capacity, to the Service. In addition, such return is not a processible return for purposes of computing overpayment interest until the personal representative provides Form 1310, or other proof of representative capacity, to the Service.

FACTS

You have not provided facts relating to a specific case. However, you indicate that the following scenarios are typical of issues encountered by Service Center personnel:

Scenario 1. A taxpayer files Form 1040, U.S. Individual Income Tax Return, with the Service Center. The Service Center mails Form 1040 back to the taxpayer because the taxpayer claimed itemized deductions, but failed to attach Schedule A to the return. Four years later, the taxpayer resubmits the Form 1040, along with the completed Schedule A.

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Scenario 2. A Form 1040 showing an overpayment and claiming a refund is filed on behalf of a deceased taxpayer and is received by the Service Center before the expiration of the statute of limitations for refund claims. The return indicates that the taxpayer is deceased and is signed by a person who identifies himself merely as the taxpayer's "personal representative." No documentation is provided with the return to indicate that the person signing the return is authorized to do so. The Service Center mails the Form 1040 back to the person who signed it with a request that this person complete Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer. Subsequently, information is provided to the Service Center indicating that the person who signed the Form 1040 is the executor of the deceased taxpayer's estate.

DISCUSSION

Issue 1

Section 6011 of the Code provides that when required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and the regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms and regulations. (Emphasis added).

Section 1.6011-1(b) of the Income Tax Regulations provides that each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting this requirement of the Code. (Emphasis added).

Although Congress has granted the Commissioner broad authority to determine what information should be submitted with a tax return, and how that information should be submitted, the issue of what constitutes a valid return is frequently litigated. In an early case addressing the issue, the Supreme Court indicated that "[p]erfect accuracy or completeness is not necessary to rescue a return from nullity, if it purports to be a return, is sworn to as such, and evinces an honest and genuine endeavor to satisfy the law." Zellerbach Paper Co. v. Helvering, 293 U.S. 172, 180 (1934) (citation omitted).

Courts have subsequently stated the criteria for a valid return as such: "First, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury." Beard v. Commissioner, 82 T.C. 766, 777 (1984), aff'd per curiam, 793 F.2d 139 (6th Cir. 1986). This statement of the criteria, generally

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known as the Beard formulation, derives from a venerable line of Supreme Court cases. See Zellerbach Paper Co. v. Helvering, *supra*; Florsheim Bros. Drygoods Co. v. United States, 280 U.S. 453 (1930). The Beard formulation is generally known as the "substantial compliance" standard. If an income tax return meets the "substantial compliance" standard, the return is a valid return for purposes of the statute of limitations on assessment.

The courts have established no "bright line" test to determine whether a Form 1040 which lacks a required form or schedule is nonetheless a valid return. Rather, courts typically apply the substantial compliance standard to the specific facts of each case. In the case of an otherwise valid Form 1040 that lacks a required form or schedule, three of the four substantial compliance factors are clearly met: the document purports to be a return, is signed, and evinces an honest and reasonable attempt to satisfy the requirements of the law.

We conclude that the fourth substantial compliance factor is also met: the document provides sufficient data to allow the Service to calculate a tax liability. While a return may lack supporting schedules for particular items of gross income, deductions, and credits, it will generally provide sufficient data to calculate a tax liability. The fact that the tax liability computed on the original return is later determined to be incorrect does not necessarily cause the return to fail the substantial compliance standard. See Badaracco v. Commissioner, 464 U.S. 386 (1984) (fraudulent return is not a "nullity" for purposes of the statute of limitations on assessment); United States v. Long, 618 F.2d 74 (9th Cir. 1980) (although the tax return showed zeros on every line, a return containing false or misleading figures is still a return).¹

Accordingly, we conclude that under the substantial compliance standard, an otherwise complete return which lacks a required form or schedule is sufficient to start the statute of limitations on assessment. See, e.g., Blount v. Commissioner, 86 T.C. 383 (1986), acq. in result, 1986-2 C.B. 1 (absence of Form W-2 does not invalidate return).

The facts of Scenario 1 indicate that the taxpayer filed a signed and otherwise complete Form 1040 but failed to attach Schedule A. Based on these facts, we conclude that the Form 1040 is a valid return for statute of limitations purposes. The Form 1040 purports to be a return, is signed under penalties of perjury, evinces on its face an honest and reasonable attempt to satisfy the requirements of the law,

¹ We recognize that other courts have taken a different approach from Long. See United States v. Mosel, 738 F.2d 157 (6th Cir. 1984); United States v. Rickman, 638 F.2d 182 (10th Cir. 1980); and United States v. Moore, 627 F.2d 830 (7th Cir. 1980). However, the Court of Appeals for the Ninth Circuit has reaffirmed the approach it took in Long in United States v. Kimball, 925 F.2d 356 (9th Cir. 1991).

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and contains enough data to allow the Service to compute a tax liability. Accordingly, the statute of limitations for assessment would start to run from the date the Form 1040 was filed.

Our conclusion on this issue is not limited to returns missing Schedule A. A return missing any of the commonly used forms (e.g., Schedules A, B, C, D, or E) is a valid return despite the missing schedule, provided it meets the substantial compliance standard.

You indicate that at the time the Form 1040 in Scenario 1 was received, it was not the practice of the Service to utilize the “mathematical or clerical error” procedures contained in § 6213(b)(1) of the Code to adjust returns with missing forms or schedules. Rather, the Service mailed the entire Form 1040 back to the taxpayer.² Because we conclude that the Form 1040 in Scenario 1 is a valid return, despite the missing schedule, we recommend that the return not be mailed back to the taxpayer. Instead, we suggest that the Service retain the return and correspond with the taxpayer for the missing schedule.

Issue 2

Section 6402(a) of the Code provides that in the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to certain offsets, refund any balance to such person.

Section 301.6402-2(a) of the Regulations on Procedure and Administration provides that credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer.

Section 301.6402-2(b) of the regulations provides, as a general rule, that all claims for refund or credit must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.

Section 301.6402-3 of the regulations provides special rules for refund claims of income tax. Section 301.6402-3(a)(5) provides that a properly executed individual original income tax return shall constitute a claim for refund or credit for the amount of the overpayment disclosed by such return. To constitute a sufficient claim for

² You indicate that the current practice, however, is to utilize the math error procedures in cases where the Form 1040 claims itemized deductions but is missing a Schedule A. Under the math error procedures, the itemized deductions are disallowed, and the Service allows the taxpayer the appropriate standard deduction amount.

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refund, the income tax return must set forth the amount determined as an overpayment and should advise the Service whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the succeeding taxable year.

As noted above, the general rule of § 301.6402-2(b) of the regulations requires taxpayers to set forth in detail each ground upon which a refund is claimed. The purpose of this requirement is to adequately notify the Service of the grounds on which the taxpayer's claim is based, allowing the Service to properly investigate the claim. Angelus Milling Co. v. Commissioner, 325 U.S. 293 (1945).

Section 301.6402-3(a)(5) of the regulations provides a simplified procedure for notifying the Service of the grounds for the claim in cases where the taxpayer makes his or her refund claim on the original (or amended) income tax return for the taxable year. In such a case, the taxpayer must simply set forth the amount of the overpayment and request that it be refunded or credited. If the original return meets the Beard substantial compliance standard, and the requirements of § 301.6402-3(a)(5), it will generally meet the requirements of § 301.6402-2(b). See generally Fearis v. U.S., 548 F. Supp. 408 (N.D. Tex. 1982); U.S. v. Ryan, 64 F. 3d 1516 (11th Cir. 1995); Sumrall v. U.S., 98-2 USTC ¶ 50,689 (D. Colo. 1998).

Because the Form 1040 in Scenario 1 meets the Beard substantial compliance standard, sets forth the amount of the overpayment, and advises the Service that the overpayment shall be refunded to the taxpayer, we conclude that the Form 1040 constitutes a sufficient claim for refund. Although Schedule A is missing, the Service is adequately notified of the grounds for the taxpayer's claim, and is notified that the taxpayer has claimed itemized deductions. Our conclusion on this issue is not limited to returns missing Schedule A. A return missing any of the commonly used forms (e.g., Schedules A, B, C, D, or E) is a sufficient claim for refund despite the missing schedule, provided it meets the substantial compliance standard and claims a refund.

However, as indicated in Issue 1, above, we suggest that the Service correspond with the taxpayer to secure the missing Schedule A prior to allowing the taxpayer's claim. If the taxpayer refuses to supply the missing Schedule A, the Service should disallow the claim for refund to the extent it arises from itemized deductions.

Issue 3

Section 6611(a) of the Code provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621.

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Section 6611(b)(3) of the Code provides that in the case of a return filed after the last date prescribed for filing the return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

Section 6611(e)(1) of the Code provides that if any overpayment of tax is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under § 6611(a) on such overpayment.

Section 6611(g) of the Code provides that for purposes of §§ 6611(b)(3) and 6611(e), a return shall not be treated as filed until it is filed in processible form. A return is in processible form if: (1) it is filed on a permitted form; and (2) it contains the taxpayer's name, address, identifying number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

You question whether a tax return that is filed without a required form or schedule is "processable" under § 6611(g) of the Code. Whether such a return is processible depends on whether there is sufficient information on the return to permit the mathematical verification of the tax liability shown on the return.

The Court of Appeals for the Federal Circuit has described the mathematical verification test as follows:

Mathematical verifiability requires sufficient information to permit IRS to recalculate and corroborate the mathematics and data reported by the taxpayer. Thus, under section 6611, a taxpayer must submit, in good faith, all the required forms with the required signatures and enough underlying data for IRS to verify the tax liability shown on the return. The information must be sufficient to enable IRS to calculate the tax liability without undue burden.

The Columbia Gas System, Inc. v. United States, 70 F. 3d 1244, 1246 (Fed. Cir. 1995).

As indicated by the court in The Columbia Gas System, Inc., the test for determining mathematical verifiability is strict. Accordingly, we conclude that a return will not generally be in processible form if the return lacks a required form or schedule needed to corroborate the mathematics and data reported by the taxpayer. For example, a return will not generally be in processible form if it lacks any commonly used form (e.g., Schedules A, B, C, D, or E) necessary to calculate

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items of income, deduction, or credit.³

Based on the facts of Scenario 1, we conclude that the Form 1040, when originally received, was not processible under § 6611(g) of the Code. The return lacks sufficient information to permit the mathematical verification of the tax liability shown on the return. Because Schedule A is missing from the return, the Service is unable to verify that the taxpayer correctly computed the limitations imposed on itemized deductions by §§ 213(a) (medical expenses), 67(a) (miscellaneous itemized deductions), and 68 (total itemized deductions). The return in Scenario 1 will become processible for purposes of § 6611(g) when the Service receives Schedule A from the taxpayer.

Issue 4

Appropriate Signatory for Valid Return

Section 6012(b)(1) of the Code provides that if an individual is deceased, his or her individual income tax return shall be made by the executor, administrator, or other person charged with the property of the decedent.

Section 6061(a) of the Code provides that except as provided by subsection (b) (regarding signature waivers) and §§ 6062 and 6063 (regarding corporation and partnership returns), a return must be signed in accordance with forms or regulations prescribed by the Secretary.

Section 301.6061-1(b) of the Regulations on Procedure and Administration provides that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws.

The law is clear that an unsigned return is not a valid return for any purpose of the Internal Revenue Code. An unsigned return will not start the running of the statute of limitations for assessment, and is not a valid claim for refund. See e.g. Lucas v. Pilliod Lumber Co., 281 U.S. 245, 248-49 (1930) and Kalb v. United States, 505 F. 2d 506 (2nd Cir. 1974).

³ The Service has published proposed regulations under § 6611(g) of the Code. Although these regulations cannot be cited as legal authority, they are consistent with the statute and the legislative history of § 6611(g). Example (1) of Prop. Reg. § 301.6611-1(h)(4) provides that a return filed without a required Schedule D is not in processible form. Example (4) of the proposed regulation provides that a return claiming itemized deductions but filed without a required Schedule A is also not in processible form. That example concludes that the return will be considered to be in processible form when either Schedule A is filed or an amended return is filed reflecting the taxpayer's election not to itemize deductions.

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Section 6061 of the Code and the regulations thereunder give the Commissioner broad authority to prescribe in regulations, forms, and instructions the method of signing any return. There is no regulation specifically prescribing the method of signing a decedent's final return. However, the method of signing a decedent's return is described in detail in Internal Revenue Service Publication 559, *Survivors, Executors, and Administrators*, and in Publication 17, *Your Federal Income Tax*, under the heading "Signing the Return." These instructions provide:

If a personal representative has been appointed, that person must sign the return. If it is a joint return, the surviving spouse must also sign it. If no personal representative has been appointed, the surviving spouse (on a joint return) should sign the return and write in the signature area "Filing as surviving spouse." If no personal representative has been appointed and if there is no surviving spouse, the person in charge of the decedent's property must file and sign the return as "personal representative."

A return signed in accordance with these instructions is valid for statute of limitations purposes; the personal representative need not attach any documentation evidencing his or her authority to sign on behalf of the decedent.⁴

The facts of Scenario 2 indicate that the personal representative signed the Form 1040 as provided by the instructions contained in Publications 559 and 17. Therefore, we conclude that the Service should treat the Form 1040 as a valid return as of the date the return was signed by the personal representative.⁵

Sufficient Claim for Refund

While we conclude that the Form 1040 in Scenario 2 should be treated as a valid return for purposes of starting the statute of limitations on assessment, we

⁴ In this regard, the situation here is distinguishable from Elliott v. Commissioner, 113 T.C. 125 (1999). In Elliott, the court held that an individual income tax return signed by the taxpayer's attorney was not a valid return because Form 2848, Power of Attorney, was not attached. The court's holding was based on the requirement of § 1.6012-1(a)(5) of the Income Tax Regulations that a return signed by an agent of the taxpayer must be accompanied by a power of attorney authorizing the agent to represent the taxpayer in executing the return. In the case of a decedent's final return, neither the regulations nor the instructions contained in Publications 559 and 17 require the personal representative to attach evidence of his or her authority to execute the return on behalf of the decedent.

⁵ Our conclusion is that the Service "should treat the Form 1040 as a valid return." We recognize that an unauthorized individual might have signed the Form 1040 in an effort to receive the decedent's tax refund. In such a case, the return would not, in fact, be a valid return. However, we conclude that the Service Center, at the processing stage, may presume the Form 1040 is a valid return in the absence of credible information to the contrary.

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conclude that the return should not be treated as a sufficient claim for refund. Section 301.6402-2(e) of the Regulations on Procedure and Administration requires that an executor, administrator, or person charged with the property of the decedent submit proof of representative capacity, if not previously submitted, when filing a claim for refund on behalf of a decedent. The Service provides Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer, for this purpose.

The instructions to Form 1040 and IRS Publications 559 and 17 (under the heading “Claiming a Refund”) clearly indicate that the personal representative is required to attach Form 1310 to obtain a decedent’s tax refund. The purpose of Form 1310 is to document the fact of the taxpayer’s death, and provide information which permits the Service to draw the refund check in the name of the correct payee. Executors and administrators must attach a copy of a court certificate documenting their appointment as personal representative of the decedent.⁶ Persons other than executors and administrators must attach the decedent’s death certificate.

In Scenario 2 the personal representative did not attach Form 1310, or other proof of representative capacity, to the Form 1040 as required by § 301.6402-2(e) of the regulations. The Form 1040 should not be considered a sufficient claim for refund or credit prior to the time Form 1310, or other proof of representative capacity, is received by the Service.

Processible Return

We conclude that the return in Scenario 2, as originally filed, was not in processible form for purposes of computing overpayment interest. As discussed in Issue 3, above, the Service has 45 days from the date a return is filed to refund an overpayment without interest. Generally, if the Service refunds the overpayment more than 45 days after the date the return is filed, it must pay interest from the date of the overpayment, or from the date the return was filed, whichever is later. For purposes of applying this “45 day rule,” a return is not considered “filed” until it is filed in processible form.

Under § 6611(g)(2) of the Code, a return is in processible form if it is filed on a permitted form and contains the taxpayer’s name, address, identifying number, signature and sufficient required information to permit the mathematical verification of the tax liability. While an argument could be made that the return in Scenario 2 meets the literal requirements of § 6611(g)(2), we conclude that the unique nature

⁶ An executor or administrator may meet the “proof of representative capacity” requirement of § 301.6402-2(e) of the regulations by attaching to the return the court certificate showing his or her appointment as personal representative of the decedent. If an executor or administrator attaches the court certificate, Form 1310 is not required, and the decedent’s return will be a sufficient refund claim without Form 1310.

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of a decedent's return requires that the Service receive Form 1310 or other proof of representative capacity before the return is considered processible.

For the vast majority of tax returns, the Service issues the claimed refund to the taxpayer whose name, address, and identifying number are shown on the return. That is, the taxpayer and the person entitled to receive the refund are generally the same person. Accordingly, most returns which meet the requirements of § 6611(g)(2) of the Code (describing the taxpayer) contain enough information to allow the Service to issue the refund to the proper party.

In the case of a decedent's final return, however, the person entitled to receive the refund is someone other than the person whose name, address and identifying number are shown on the return. On a decedent's final return, the identifying information required by § 6611(g)(2) of the Code (describing the decedent) is not sufficient to identify the personal representative entitled to receive the refund. For this reason, the Service cannot process the return without Form 1310, or other proof of representative capacity.

Accordingly, we conclude that the return in Scenario 2, as originally filed, is not in processible form within the meaning of § 6611(g) of the Code. The return will become processible when the personal representative submits Form 1310, or other proof of representative capacity, identifying himself or herself as the person entitled to receive the refund.

If you have any questions concerning this memorandum, please call Charles A. Hall at (202) 622-4940.

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