

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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subject: Form 941, Form 944, and the Period of Limitations

**ISSUES**

- (1) Where one type of federal tax return is required from the employer, but another type is filed, is the filed return valid?
- (2) Where one type of federal tax return is required from the employer, but another type is filed, on what date does the period of limitations on assessment under I.R.C. § 6501 begin to run?

**SUMMARY CONCLUSIONS**

- (1) Under the scenarios provided, the document filed is a valid return if the document contains sufficient data to calculate the tax liability, purports to be a return, is an honest and reasonable attempt to satisfy the requirements of the tax law, and is executed under the penalties of perjury.
- (2) The filing date of a valid federal tax return starts the running of the period of limitations on assessment.

## FACTS

(1) Employer A is required to file a Form 944, *Employer's ANNUAL Federal Tax Return* (Form 944). Instead, A timely files four Forms 941, *Employer's QUARTERLY Federal Tax Return* (Form 941).

(2) Employer B is required to file a Form 944. Instead, B timely files a Form 941 for the first and second quarters of the taxable year. No return is filed for the third or fourth quarter of the taxable year.

(3) Employer C is required to file Form 941 for all quarters of the taxable year. Instead, C timely files a Form 944.

## LAW

Any employer who pays wages is required to withhold and pay to the Service both the employee share of tax under the Federal Insurance Contributions Act (FICA), as well as federal income tax withholding (ITW), and pay the employer share of FICA taxes. I.R.C. §§ 3102, 3111, and 3402(a). Except under certain circumstances, the employer liable for FICA taxes and income tax withholding must file a quarterly return on Form 941 for every tax period for which wages are paid. Treas. Reg. §§ 31.6011(a)-1(a) (FICA taxes), 31.6011(a)-4(a) (ITW). Form 944 was designed to allow employers whose annual FICA and ITW tax liability is \$1,000 or less to file returns and pay tax annually instead of every quarter.

The limitations period during which the Service must make an assessment generally begins to run with the filing of a valid return for a tax for which a return must be filed. I.R.C. § 6501(a). Employment tax returns, reporting FICA taxes or ITW, filed with respect to a calendar year filed prior to April 15<sup>th</sup> of the succeeding calendar year are deemed filed on April 15<sup>th</sup> of the succeeding year for purposes of section 6501. I.R.C. § 6501(b)(2). Thus, the three-year assessment period does not start to run prior to April 15<sup>th</sup> of the succeeding calendar year even if an employer files a valid employment tax return prior to that date.


To determine whether a return is valid for assessment period of limitations purposes, courts generally look to see whether the purported return meets four requirements: the document (1) provides sufficient data to calculate tax liability; (2) purports to be a return; (3) is an honest and reasonable attempt to satisfy the requirements of the tax law; and (4) is executed under penalty of perjury. See Beard v. Commissioner, 82 T.C. 766, 777 (1984), aff'd per curiam, 793 F.2d 139 (6th Cir. 1986). The Beard formulation is generally known as the "substantial compliance" standard. If a return meets the "substantial compliance" standard, the return is a valid return for purposes of the period of limitations on assessment. Even if a taxpayer files its return on an incorrect form, the return can nevertheless start the running of the three-year period for the Service to

make an assessment as long as the return meets these four requirements. See, e.g., Germantown Trust Co. v. Commissioner, 309 U.S. 304, 310 (1940) (determining that the use of an incorrect form triggered the assessment period of limitations). “Of crucial importance is whether the return, as filed, included sufficient information to allow the [Service] to compute the taxpayer’s liability.” Atlantic Land & Improvement Co. v. United States, 790 F.2d 853, 858 (11th Cir. 1986).

### CONCLUSIONS

(1) Assuming the Forms 941 purport to be returns, are an honest and reasonable attempt to satisfy the filing requirements, are signed under penalty of perjury, and can be used to determine A’s annual FICA and ITW tax liability, the Forms 941 meet the Beard formulation and should be treated as valid returns for purposes of starting the period of limitations on assessment. Because the Forms 941 were filed before April 15 of the succeeding year, the deemed filing date under I.R.C. § 6501(b)(2) is April 15 of the succeeding calendar year.

(2) An argument can be made that the Forms 941 for the first and second quarters of the taxable year constitute valid returns under the Beard formulation since they purport to be returns and are signed under penalty of perjury. However, given that B’s FICA and ITW tax liability for the third and fourth quarters will not necessarily be equal to that reported for the first two quarters, the Forms 941 arguably are not sufficient for purposes of the determining B’s annual FICA and ITW tax liability and may not be honest and reasonable attempts to satisfy the tax law.<sup>1</sup> The amounts reflected on the Forms 941 must be assessed within three years of April 15 of the succeeding calendar year.



(3) Assuming the Form 944 purports to be a return, is an honest and reasonable attempt to satisfy the filing requirements, can be used to determine C’s annual FICA and ITW tax liability, and is signed under penalty of perjury, C’s Form 944 meets the Beard formulation and should be treated as a valid return for purposes of the period of limitations on assessment. Because the Form 944 was timely filed, the deemed filing date is April 15 of the succeeding calendar year.

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<sup>1</sup> There are factual circumstances, however, in which the filing of two Forms 941 could meet the necessary criteria for an annual employment tax return (e.g., if the employer’s business is seasonal).

This memorandum does not address late-filed forms, whether remittances should be treated as overpayments, or penalties or additions to tax. Should these issues arise, please contact the undersigned.

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