



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL
CC:SB:3:NAS:1

FROM: James C. Gibbons
Branch Chief
CC:PA:APJP:1

SUBJECT: Whether the documents described below constitute returns?

This Chief Counsel Advice responds to your memorandum dated August 13, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer A =
Taxpayer B =
City =
Year 1 =
Year 2 =
\$ =
Date 1 =
Date 2 =

ISSUE

Whether a document submitted to an Appeals officer containing only zeros constitutes a return?

CONCLUSION

A return containing only zeros and including tax protestor language is not a return pursuant to the substantial compliance test.

FACTS

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Taxpayers A and B filed a Chapter 13 bankruptcy on Date 1, in City. The Internal Revenue Service (Service) filed a proof of claim asserting an unsecured priority claim in the amount of \$. The priority claim was comprised of estimated amounts for Year 1 and Year 2 because returns had not been filed.

Subsequently, during an examination of Year 1 and Year 2, A and B submitted Forms 1040 for Year 1 and Year 2. The only information contained on the forms were zeros, with the exception of the withholding/estimated tax which taxpayers claimed were refundable. The taxpayers attached protest material as part of each income tax return.

After A and B submitted the zero returns, they filed an objection to the Service's proof of claim. In response to the objection, the Service filed an answer stating that A and B had filed purported returns for Year 1 and Year 2, and that said documents were under examination. The taxpayers converted their case to a no asset Chapter 7 bankruptcy on Date 2, which rendered the taxpayers' objection to the claim moot.

The Appeals officer assigned to the case contacted our office regarding the validity of the documents submitted.

LAW AND ANALYSIS

Valid Returns: General

Section 6011 of the Internal Revenue Code (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 or regulations.

Section 1.6011-1(b) of the Income Tax Regulations (regulations) states:

Use of prescribed forms. Copies of the prescribed return forms will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed on or before the due date with the internal revenue office where such returns are required to be filed. . . . In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and, if filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that

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without unnecessary delay such a tentative return is supplemented by a return made on the proper form.

Section 1.6012-1 of the regulations identifies individuals required to make returns of income. Section 1.6012-1(a)(6) prescribes Form 1040 as the form for making the income tax return required of an individual.

The Service's broad authority to prescribe the manner of filing has been recognized by the Supreme Court. In Commissioner v. Lane-Wells Co., 321 U.S. 219, 223 (1944), the Court indicated:

Congress has given discretion to the Commissioner to prescribe by regulation forms of returns and has made it the duty of the taxpayer to comply. It thus implements the system of self-assessment which is so largely the basis of our American scheme of income taxation. The purpose is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.

The Court of Appeals for the Eighth Circuit has noted:

Taxpayers are required to file timely returns on forms established by the Commissioner. . . . The Commissioner is certainly not required to accept any facsimile the taxpayer sees fit to submit. If the Commissioner were obligated to do so, the business of tax collecting would result in insurmountable confusion.

Parker v. Commissioner, 365 F.2d 792 (8th Cir. 1966).

Despite the Service's broad authority to prescribe the manner of filing, the issue of what constitutes a valid return is frequently litigated. In an early case addressing the issue, the Supreme Court indicated that a "defective" or "incomplete" return may be sufficient to start the running of the period of limitation if it is a specific statement of the items of income, deductions, and credits in compliance with the statutory duty to report information. However, to have such effect, the return must honestly and reasonably be intended as such. Florsheim Bros. Drygoods Co. v. United States, 280 U.S. 453 (1930).

Subsequently, the Court summarized the criteria as: "[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).

The most recent Supreme Court reaffirmation of the test articulated in Florsheim and Zellerbach is found in Badaracco v. Commissioner, 464 U.S. 386 (1984).

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There, the taxpayer filed a fraudulent original income tax return and followed it with a nonfraudulent amended return. The taxpayer argued that the original return, to the extent it was fraudulent, was a nullity for purposes of the statute of limitations. The Court disagreed, noting that the fraudulent original returns “purported to be returns, were sworn to as such, and appeared on their faces to constitute endeavors to satisfy the law.”

The lower courts have subsequently synthesized the criteria prescribed by the Supreme Court into the following four-part test for determining whether a defective or incomplete document is a valid return: “[f]irst, 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 generally accepted formulation of the criteria for determining a valid return is known as the “substantial compliance” standard. If a defective or incomplete document meets the “substantial compliance” standard, the document is a valid return for purposes of the statute of limitations on assessment and for purposes of determining the failure to file penalty of section 6651(a) of the Code. A document that does not meet the substantial compliance standard is a nullity for purposes of the Code.

Returns Containing Zeros and Protest Material

Courts have applied the substantial compliance test to returns containing zeros. In United States v. Long, 618 F.2d 74, 76 (9th Cir. 1980), the court held that “a return containing false information or misleading figures is still a return. False figures convey false information, but they convey information.” The court reasoned that zeros on the taxpayer’s tax form constituted information relating to the taxpayer’s income from which a tax could be computed. Id. at 75. The Service could calculate a tax liability from such numbers, even though the assessment would be inaccurate. Id. See United States v. Kimball, 925 F.2d 356, 357 (9th Cir. 1991) (quoting the court’s decision in Long); See also United States v. Moore, 627 F.2d 830, 835 (7th Cir. 1980).

However, in United States v. Grabinski, 727 F.2d 681, 687 (8th Cir. 1984), the Eighth Circuit held that a document did not meet the substantial compliance standard and was, therefore, not a return where the only tax liability was zero and the taxpayer provided no other financial information. The court stated that the Service “should not have to accept on faith the taxpayer’s assertions regarding taxable income or tax liability without knowledge of circumstances regarding, among other things, gross income received or deductions claimed.” Id. at 686. The court determined that the taxpayer’s assertions that he had zero income did not inform the Service of his gross income or from where his income was derived, and

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that the Service could not verify the taxpayer's computations. Id. at 687. As a result, the court held the document was not a return and that taxpayers should provide all information requested by the Service which is not subject to a valid constitutional or legal privilege.

In addition, courts have concluded that documents containing little or no tax information and protest material are not valid returns. In Moore, the court held:

In tax protestor cases, it is obvious that there is "no honest and genuine" attempt to meet the requirements of the Code. In our self-reporting tax system the government should not be forced to accept as a return a document which is plainly not intended to give the required information.

Id. at 835. Other courts have adopted similar reasoning. See United States v. Porth, 426 F.2d 519 (10th Cir. 1970) (no valid return where taxpayer's Form 1040 was devoid of income information and contained cites to the Constitution purportedly supporting taxpayer's refusal to complete the form); Thompson v. Commissioner, 78 T.C. 558 (1982) (no valid return where the Form 1040 contained only de minimis income information and was circumscribed with constitutional objections); and Sochia v. Commissioner, T.C. Memo. 1998-294 (no valid return where the taxpayers provided some income information, but wrote "object -- 5th Amend." on every line of the form).

In this case, Taxpayers A and B filed a joint return in which all of the spaces, except the amount withheld and the amount of refund, contained zeros. In addition, the taxpayers attached a statement protesting the applicability of the federal income tax. According to the case law, courts have determined that a tax return containing insufficient tax information with protest material does not meet the substantial compliance standard which requires "an honest and reasonable attempt to satisfy the requirements of the tax law." Therefore, a return with insufficient or de minimis income information and protest material is not a valid return. As a result, the documents filed by the taxpayers are not valid returns under the substantial compliance standard.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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Please call (202) 622-4910 if you have any further questions.