

ID: CCA\_2013021415392015

Office:

UILC: 6013.00-00

Number: **201325013**

Release Date: 6/21/2013

---

**From:**

**Sent:** Thursday, February 14, 2013 3:40:00 PM

**To:**

**Cc:**

**Subject:** RE: Question Concerning the Interaction Between Sections 6013(g) and 6677-

You asked whether a nonresident alien who filed, possibly in error, Forms 1040 income tax returns jointly with his wife (who is a U.S. citizen) is now subject to the section 6677 penalty for the failure to file information returns required under section 6048 with respect to certain foreign trusts. If the nonresident alien did not make a proper election under section 6013(g) to be treated as a resident alien for certain tax purposes, then the answer is no, he is not subject to the section 6677 penalty for the failure to file information returns required under section 6048. See the response below from

. Please let me know if you have any questions.

---

**From:**

**Sent:** Thursday, February 14, 2013 8:43 AM

**To:**

**Cc:**

**Subject:** Question Concerning the Interaction Between Sections 6013(g) and 6677-

You asked for our opinion on whether a nonresident alien who filed a joint income tax return becomes subject to the section 6048 reporting requirements and section 6677(a) penalties as a result of section 6013(g). We specifically address the situation in which the nonresident alien and his spouse did not make a proper election under section 6013(g).

Section 6013(g) allows a nonresident alien individual who is married to a citizen or resident of the United States to elect to be treated as a resident of the United States for purposes of chapter 1 and 24 of the Internal Revenue Code. Sec. 6013(g)(1) and (2). The regulations require the nonresident alien and his spouse to make the election by attaching a statement to a joint return for the first taxable year for which

the election is to be in effect. Treas. Reg. §1.6013-6(a)(4)(i). The statement must contain a declaration that the election is being made and that the requirements of Treas. Reg. §1.6013-6(a)(1) are met for the taxable year, it must contain the name, address, and TIN of each spouse, and it must be signed by both persons making the election. Treas. Reg. §1.6013-6(a)(4)(ii). Failure to make such an election renders section 6013(g) inoperative. See Kravetz v. Commissioner, T.C. Memo. 1985-486.

Because the nonresident alien and his spouse did not make a proper election, section 6013(g) is inoperative and does not affect the taxpayer's status as a nonresident alien for purposes of chapters 1 and 24 of the Internal Revenue Code. Although section 6048 is under jurisdiction, it is our understanding that a nonresident alien is not subject to section 6048 reporting requirements. See Treas. Reg. §§ 16.3-1, 404.6048-1.

Please note that our answer may potentially be different if a proper section 6013(g) election was made or if the nonresident alien has since become a United States person. If you would like to discuss further or have any other questions, please feel free to contact me.