

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

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to: Heather K. McCluskey  
General Attorney (San Diego, Group 1)  
(Small Business/Self-Employed)

from: Charles A. Hall  
Senior Technician Reviewer  
(Procedure & Administration)

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subject: Filing status change on an amended return

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. Whether a spouse may change filing status to head of household on an amended return after a valid joint return has been filed and the time to file has expired.
2. Whether an assessment of additional tax reported on an amended return that only one spouse signed and agreed to file is valid against either spouse, and if not, whether the assessment must be abated.
- 3.

FACTS

Taxpayers husband ("TPH") and wife ("TPW") filed a joint income tax return. Later, after the time for filing had expired, but before the end of the three-year assessment period provided by section 6501(a), TPH filed an amended income tax return reporting additional income tax due. TPH filed the amended return claiming head of household filing status.

### LAW AND ANALYSIS

1. Whether a spouse may change filing status to head of household on an amended return after a valid election to file jointly was made on the original return and the time to file has expired.

The election to file a married filing jointly income tax return is irrevocable after the time to file has expired. Treas. Reg. § 1.6013-1(a)(1); *see also Ladden v. Commissioner*, 38 T.C. 530, 534 (1962). TPH filed the amended return after the time for filing a return for the tax years at issue had passed. Thus, assuming the election to file a joint return was valid, TPH could not change filing status to head of household on the amended return.

2. Whether an assessment of additional tax reported on an amended return that only one spouse signed and agreed to file is valid against either spouse, and if not, whether the assessment must be abated.

Section 6201(a)(1) requires the Service to assess “all taxes determined by the taxpayer ... as to which returns ... are made under this title.” TPH filed an amended return that reported additional income tax due. As long as the assessment of additional tax reported on the amended return was made before the expiration of the three-year assessment period based on the original joint return, the assessment against TPH is valid. Section 6404(a) allows the Service to abate the unpaid portion of an assessment that is excessive, assessed after the limitation period, or is erroneously or illegally assessed. Because the assessment based on the amended return was valid, the Service lacks the authority to abate the assessment against TPH pursuant to section 6404(a).

An assessment is made when an assessment officer signs a summary record of assessment. This record, through supporting records, must identify the taxpayer. I.R.C. § 6203; Treas. Reg. § 301.6203-1. The summary record in a matter with these facts likely is a Form 23C (if it was prepared manually), or a RACS-006.

3.

When there is a deficiency in tax, the Service must issue a notice of deficiency before assessing that tax, unless an exception applies. I.R.C. § 6213. For a statutory notice of deficiency to be valid, it simply must advise the taxpayer that the IRS has determined a deficiency and provide the amount of the deficiency and the tax year at issue. *Longino v. Commissioner*, T.C. Memo. 2013-80. In *Scar v. Commissioner*, the 9th Circuit held a notice to be invalid because the Commissioner had not considered information that related to the taxpayer. 814 F.2d 1363 (9th Cir. 1987). However, the 9th Circuit has limited *Scar* to the facts of that case, specifically to those instances where the notice of deficiency reveals on its face that the Commissioner failed to make a determination. See *Meserve Drilling Partners v. Commissioner*, 152 F.3d 1181, 1183 n.3 (9th Cir. 1998).

Such a notice would be valid; however, the assessment against TPH is already valid under section 6201(a)(1) because TPH filed an amended return that reported the additional income tax due. [REDACTED]

The amended return was filed only by TPH, with head of household filing status. To the extent that the Service determines that TPH owes more tax than what was reported and assessed based on the amended return (including the amount, if any, TPH is liable for based on the proper filing status of married filing joint), the Service may issue a notice

of deficiency to TPH for that amount.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



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