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INTERNAL REVENUE SERVICE
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MEMORANDUM FOR: DISTRICT COUNSEL, GEORGIA
CC:SER:GEO:ATL
Attn: Mark S. Mesler

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

SUBJECT: Processing Claims of Forged Returns

This responds to your request for Significant Service Center Advice dated July 21, 1998, in connection with a question posed by the Atlanta Service Center regarding the processing of claims of forged signatures on joint returns.

DISCLOSURE STATEMENT

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in CCDM (35)2(13)3:(4)(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

ISSUE(S)

Whether the Service Center's existing manual procedures for rejection of all claims of forged signatures on joint returns disregards the law as provided for under § 6064.

CONCLUSION

Section 6064 only creates a rebuttable presumption that an individual's name signed on a return is actually that individual's signature. Thus, the existing manual section on processing claims of forged signatures on joint returns is incorrect and should be modified.

FACTS

The Service Center receives many claims by taxpayer spouses who are subject to collection and claim that they did not sign the joint return which is the basis for their liability. Currently, all claims of forged signatures on joint returns are automatically rejected and returned to the taxpayer by the Service Center. Included in the denial of the claim is the statement, “. . . we presume the signature to be authentic and this is a civil matter between the taxpayers.” The disallowance of all claims by the Service Centers is based upon a plain reading of the Internal Revenue Manual (IRM) 21.13, IMF and IRAF DP Adjustments, at Section 19.7.1, Claims Based On Unlawful Filing under Filing Status Changes.

The Service Center’s manual provides the following procedure when a spouse claims that a joint return contains a forgery of his or her signature:

1. Request the original return.
2. Disallow the claim and enclose a copy of the Form 1040 signature line, if available.
3. Include this statement in the disallowance, “Internal Revenue Code 6064 states, “. . . the fact that an individual’s name is signed to a return, statement or other documents shall be prima facie evidence for all purpose (sic) that the return, statement, or other document was actually signed by him. In accordance with
with
IRS (sic) 6064, we presume the signature to be authentic and this is a civil matter between the taxpayers.”

DISCUSSION

In general, § 6013(a) allows a husband and wife to file a joint income tax return, even though one of the spouses has neither gross income nor deductions. Section 1.6013-1(a)(2) of the Income Tax Regulations requires that a joint return be signed by both spouses. If a joint return is made, § 6013(d)(3) states that the tax shall be computed on the aggregate income, and the liability with respect to the tax will be joint and several.

Under § 6064, a signature on a return is presumed authentic: “The fact that an individual’s name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.”

In the case of a joint return, this presumption can be rebutted by taxpayers proving that they did not intend to file jointly and that either the signature was forged or it was signed under duress. See Sharwell v. Commissioner, 419 F.2d 1057 (6th Cir.

1969).

In Bauer v. Foley, 404 F.2d 1215 (2nd Cir. 1968), a taxpayer's wife alleged that her signatures on joint income tax returns were either forged or obtained by duress and that she had no knowledge of a single joint deficiency notice until after the period for petition for redetermination had expired. The court ruled that she had the right to be heard and show that her signatures were forged or obtained by duress.

As previously stated, the court in Sharwell provided two requirements that must be proven by the taxpayer in order to invalidate the joint return. The first requires the taxpayer to prove that the signature on the return was forged. The second requires the taxpayer to prove that there was no intent to file a joint return.

In order to prove that a signature was forged a taxpayer must present documents bearing his or her admitted signature for proper examination and comparison. See Gaviola v. Commissioner, T.C. Memo. 1986-349. Suggested documents that could be used by the taxpayer might consist of prior income tax returns, a driver's license, or other official documents that contain the taxpayer's signature.

To determine if a taxpayer had an intent to file a joint return, several factors should be examined. In Prskalo v. United States, 90-1 U.S.T.C. ¶ 50071 (N.D. Ill. 1989), the court considered the spouse's awareness of the joint return, his or her participation in the preparation of the joint return, and whether joint returns were filed in previous years. Another factor to consider is the time interval between when the return was filed and when the claim of forgery was made. The court in Estate of Campbell v. Commissioner, 56 T.C. 1, 14 (1971), made the following statement regarding a late attempt to discredit a joint return: "It appears to us to be merely an afterthought." A final factor to determine whether the taxpayer intended to file a joint return is if a separate return was filed by the taxpayer. Where a husband filed a joint return not signed by the wife, without any objection on her part, and the wife failed to file a separate return, it was presumed that the joint return was filed with the acquiescence and tacit consent of the wife. See Heim v. Commissioner, 251 F.2d 44 (8th Cir. 1958).

Once it has been determined that the taxpayer's signature was forged and that there was no intent to file a joint return, the taxpayer should provide allocation information for all return income, credits, and payments as required under IRM 21.13.19.8., Allocating Jointly Filed Cases. Finally, the procedures under manual section 21.13.19.6.1, Processing Allowable Claims, should be followed for processing the adjustments in preparing separate returns on any allowable claims.

If all information is not provided by the taxpayer as required, then section 15 of IRM 21.12 "General Claim Processing" should be followed for rejecting the claim and notifying the taxpayer of any additional information needed to process the claim.

It is recommended that the Service Center employees ignore that portion of the

manual section which automatically disallows and rejects any claim of forgery on a joint return. We have attached a suggested revision to the manual section which allows for the processing of a valid claim of a forged signature on a joint return.

In a previous Significant Service Center Advice for the Ogden Service Center, TL-N-4979-97, the same conclusion was reached by the Office of Chief Counsel. Specifically, it stated that the manual should be modified to allow for the processing of claims of forged signatures on joint returns. On September 9, 1998, the prior Significant Advice was acknowledged and publicly released. However, when we spoke with Rose Schulkers, the analyst assigned to this portion of the manual, on September 16, 1998, we were informed that she has not initiated any changes to the manual. We will correspond in a separate memorandum to the Executive Officer for Service Center Operations (EOSCO) to urge their modification of these procedures.

If you have any questions or concerns regarding this memorandum, please contact Brad Taylor at (202)622-4940.

JODY J. BREWSTER

By:

JUDITH M. WALL
Chief, Branch 4

Attachment: Suggested revision to IRM 21.13.19.7.1

cc: