

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

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to: Judith M. Wall  
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National Taxpayer Advocate

from: Pamela W. Fuller  
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(Procedure & Administration)

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subject: Tax Return Preparer's Alteration of a Return

ISSUE

Whether a tax return is a valid tax return when it is altered by a tax return preparer who inflates income, deductions, credits, or withholding without the taxpayer's consent after the taxpayer has approved the document but before the preparer submits it to the Service.

CONCLUSION

A tax return signed by a taxpayer that is altered by a tax return preparer without the taxpayer's knowledge and submitted to the IRS by the preparer is not a valid tax return.

FACTS

Some tax return preparers alter clients' tax return after the returns are approved and signed by the taxpayer. Specifically, returns are altered by overstating income, deductions, credits, or withholding without the taxpayer's knowledge and then submitted by the tax return preparer to the Service. If the tax return preparer is filing the return on paper, the alterations occur after the taxpayer has approved and signed the return. If the tax return preparer is submitting the return electronically, the alterations occur after the taxpayer has indicated approval of the return by signing a Form 8879, IRS *e-file* Signature Authorization. The inflated income, deductions, credit, or withholding creates a larger than expected refund and the tax return preparer keeps the portion of the refund resulting from the inflated items. When the refund is issued, the taxpayer remains unaware of the alterations because the amount of the refund received by the

taxpayer equals the amount of refund claimed on the tax return that the taxpayer had approved for filing with the Service.

### LAW AND ANALYSIS

In general, there is a four-part test for determining whether a document is a valid tax return: “First, 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 criteria for determining the validity of a tax return, known as the Beard test or substantial compliance standard, is the dispositive authority on the issue.

Section 6065 provides that, generally, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under penalties of perjury. The purpose of this requirement is to authenticate the signed document, and to verify its truthfulness. A return that does not comply with section 6065 fails the fourth prong of the Beard test. The requirement under Beard that a return be executed under penalties of perjury is absolute. See, e.g., Hettig v. United States, 845 F.2d 794 (8th Cir. 1988); United States v. Moore, 627 F.2d 830 (7th Cir. 1980); Williams v. Commissioner, 114 T.C. 136 (2000); Sloan v. Commissioner, 53 F.3d 799 (7th Cir. 1995); Cupp v. Commissioner, 65 T.C. 68 (1976). Signing the jurat included on a Form 1040 or Form 8879, for electronically filed tax returns, satisfies the requirement that the return is executed under the penalties of perjury.

In cases in which the taxpayer is unaware of a tax return preparer’s fraudulent alteration of items of income, deductions, credits, or withholding after the taxpayer signed the tax return (or the Form 8879), it cannot be said that the taxpayer executed the document under penalties of perjury. In fact, the document submitted to the Service by the tax return preparer is not the document signed and approved by the taxpayer or authorized to be filed electronically with the Service. The document approved by the taxpayer is not sent to the Service. Under these facts, the return altered by a tax return preparer does not meet the requirements set forth in Beard to constitute a valid tax return.

Please call (202) 622-4940 if you have any further questions.