

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2004-032

September 09, 2004

Litigating Position Regarding the
Definition of Returns and Application
of Additions to Tax under Section

Subject: 6654

Cancel Date: Effective Until
Further Notice

Purpose

This Notice alerts Chief Counsel attorneys to the Service's position as to the definition of a return for purposes of the I.R.C. § 6654 addition to tax, in light of the Tax Court decision in *Mendes v. Commissioner*, 121 T.C. 308 (2003).

Background

The four part test set forth in *Beard v. Commissioner*, 82 T.C. 766, 777-78, *aff'd*, 793 F.2d 139 (6th Cir. 1986), is widely accepted as the analysis for determining what constitutes a return for purposes of the Internal Revenue Code. For a document to be considered a valid return under *Beard*, the document must: (1) purport to be a return; (2) be executed under penalty of perjury; (3) contain sufficient data to allow calculation of tax; and (4) represent an honest and reasonable attempt to satisfy the requirements of the tax law. See, e.g., *In re Hatton*, 220 F.3d 1057, 1060-61 (9th Cir. 2000) (*citing Beard*).

Section 6654 provides for an addition to tax in the event of an underpayment of a required installment of individual estimated tax. Each required installment of estimated tax is equal to 25 percent of the required annual payment, which in turn is equal to the lesser of: (1) 90 percent of the tax shown on the individual's return for that year (or, if no return is filed, 90 percent of his or her tax for such year); or (2) if the individual filed a return for the immediately preceding taxable year, 100 percent of the tax shown on that return (or 110% in the case of certain upper income taxpayers). I.R.C. §§ 6654(d)(1)(A), (B)(i), and (ii).

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