



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

June 11, 2001

Number: **200127045**
Release Date: 7/6/2001

CC:PA:APJP:1:RADesilets,
WTA-N-129263-01
UIL 6065.06-00

MEMORANDUM FOR OGDEN SERVICE CENTER

FROM: James C. Gibbons
Branch Chief
(Administrative Provisions & Judicial Practice) CC:PA:APJP:1

SUBJECT: Significant Service Center Advice: Altered Jurats

In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

This responds to your request for Significant Service Center advice in connection with the questions posed by the Ogden Submission Processing Center. We have restated the issues as follows:

ISSUES

1. Whether a Form 1040, on which the taxpayer enters the number 0 for every line of the return except the amount of tax withheld, the amount of the overpayment and the amount to be refunded, and includes attachments which protest the Constitutionality of the requirement that he pay federal income tax, constitutes a valid income tax return.
2. Whether, when the taxpayer does not obliterate any words of the jurat, but stamps above the jurat the language, "Without prejudice U.C.C. 1-207," such language has altered the jurat, thereby affecting the validity of the return.

CONCLUSIONS

1. In the case of an official Form 1040 on which the taxpayer enters the number 0 for every line of the return except the amount of tax withheld, the amount of the overpayment and the amount to be refunded, and has included attachments to the Form 1040 which protest the Constitutionality of the requirement that he pay federal income tax, the Internal Revenue Service ("Service") may treat the Form 1040 as a nullity provided there is sufficient evidence on or attached to the Form 1040 indicating a lack of honest and reasonable attempt on the part of the taxpayer to comply with the tax laws.

WTA-N-129263-01

2. In the case of an official Form 1040 on which the taxpayer has obliterated the jurat, the Service may treat the document as a nullity. However, where the taxpayer simply adds language to the jurat, the Service must consider whether the addition negates or casts doubt upon the jurat. If the addition negates or casts doubt upon the jurat, the Service may treat the Form 1040 as a nullity. If the addition does not negate or cast doubt upon the jurat, the Service should treat the Form 1040 as a valid return.

FACTS

At issue are official Forms 1040 filed by approximately 250 persons. On each of the returns, taxpayers have completed the Forms 1040 by entering the number 0 for every line of the return except for the amount of tax withheld, the amount of the overpayment and the amount to be refunded. Additionally, taxpayers have attached materials to the Forms 1040 which present Constitutional objections to the requirement that they pay federal income tax. Finally, the taxpayers have added additional language to the jurat in the form of a stamp, which appears above the jurat and states, "Without prejudice U.C.C. 1-207." Taxpayers have neither obliterated the jurat nor altered any of its existing language.

You note that these Forms 1040 and attachments impede the ability of the Service to process returns in an efficient and consistent manner. You request our advice on a variety of issues regarding the status of these documents as "income tax returns." You are particularly interested in determining whether the Submission Processing Center should treat these documents as returns.

LAW & ANALYSIS

ISSUE 1

Valid Returns: In General

Section 6011 of the Internal Revenue Code ("Code") provides that when required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and the regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms and regulations.

Section 1.6011-1(b) of the Income Tax Regulations provides, in part:

(b) *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no

WTA-N-129263-01

return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed on or before the due date with the internal revenue office where such returns are required to be filed. . . . In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and, if filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that without unnecessary delay such a tentative return is supplemented by a return made on the proper form.

Section 1.6012-1 of the regulations identifies individuals required to make returns of income. Section 1.6012-1(a)(6) prescribes Form 1040 as the form for making the income tax return required of an individual.

The Service's broad authority to prescribe the manner of filing has been recognized by the Supreme Court. In Commissioner v. Lane-Wells Co., 321 U.S. 219, 223 (1944), the Court indicated:

Congress has given discretion to the Commissioner to prescribe by regulation forms of returns and has made it the duty of the taxpayer to comply. It thus implements the system of self-assessment which is so largely the basis of our American scheme of income taxation. The purpose is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.

The Court of Appeals for the Eighth Circuit has noted:

Taxpayers are required to file timely returns on forms established by the Commissioner. . . . The Commissioner is certainly not required to accept any facsimile the taxpayer sees fit to submit. If the Commissioner were obligated to do so, the business of tax collecting would result in insurmountable confusion.

Parker v. Commissioner, 365 F.2d 792 (8th Cir. 1966).

Despite the Service's broad authority to prescribe the manner of filing, the issue of what constitutes a valid return is frequently litigated. In an early case addressing the issue, the Supreme Court indicated that a "defective" or "incomplete" return may be sufficient to start the running of the period of limitation if it is a specific statement of the items of income, deductions, and credits in compliance with the statutory duty to report information. However, to have such effect, the return must honestly and reasonably be

WTA-N-129263-01

intended as such. Florsheim Bros. Drygoods Co. v. United States, 280 U.S. 453 (1930).

Subsequently, the Court summarized the criteria as: "[p]erfect accuracy or completeness is not necessary to rescue a return from nullity, if it purports to be a return, is sworn to as such, and evinces an honest and genuine endeavor to satisfy the law." Zellerbach Paper Co. v. Helvering, 293 U.S. 172, 180 (1934).

The most recent Supreme Court reaffirmation of the test articulated in Florsheim and Zellerbach is found in Badaracco v. Commissioner, 464 U.S. 386 (1984). There, the taxpayer filed a fraudulent original income tax return and followed it with a nonfraudulent amended return. The taxpayer argued that the original return, to the extent it was fraudulent, was a nullity for purposes of the statute of limitations. The Court disagreed, noting that the fraudulent original returns "purported to be returns, were sworn to as such, and appeared on their faces to constitute endeavors to satisfy the law."

The lower courts have subsequently synthesized the criteria enunciated by the Supreme Court into the following four-part test for determining whether a defective or incomplete document is a valid 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 the criteria for determining a valid return is known as the "substantial compliance" standard. If a defective or incomplete document meets the "substantial compliance" standard, the document is a valid return for purposes of the statute of limitations on assessment and for purposes of determining the failure to file penalty of section 6651(a) of the Code. A document that does not meet the substantial compliance standard is a nullity for purposes of the Code.

Entry of the Number 0 on the Forms 1040 and the Attachment of Protest Material

In United States v. Moore, 627 F.2d 830 (7th Cir. 1980), the United States Court of Appeals for the Seventh Circuit held:

In the tax protestor cases, it is obvious that there is "no honest and genuine" attempt to meet the requirements of the Code. In our self-reporting tax system the government should not be forced to accept as a return a document which is plainly not intended to give the required information. [id. at 835.]

WTA-N-129263-01

Moore is one of a line of cases involving so-called “tax protestor” returns. The tax protestor cases typically involve Forms 1040 on which the taxpayer failed to report anything more than de minimis amounts of income and attached extensive Constitutional objections and other tax protest materials.

In the “tax protestor” cases, the courts generally conclude that the documents contain insufficient information about the taxpayer’s income to permit the Service to compute the tax, and that the extent of the tax protestor arguments indicates a lack of an honest and reasonable attempt to comply with the law. U.S. v. Porth 426 F.2d 519 (10th Cir. 1970) (no valid return where taxpayer’s Form 1040 was devoid of income information and contained cites to the Constitution purportedly supporting taxpayer’s refusal to complete the form); Thompson v. Commissioner, 78 T.C. 558 (1982) (no valid return where the Form 1040 contained only de minimis income information and was circumscribed with constitutional objections); Sochia v. Commissioner, T.C. Memo. 1998-294, (no valid return where the taxpayers provided some income information, but wrote “object -- 5th Amend.” on every line of the form).

We are of the general opinion that a Form 1040 is a nullity in those instances in which the taxpayer has entered the number 0 for all entries on the return except the amount of tax withheld, the amount of the overpayment and the amount to be refunded, and has attached materials which protest the Constitutionality of the requirement that he pay federal income tax. Virtually all of the authority for treating a signed Form 1040 as a nullity relies upon the fact that the taxpayer refused to provide any information pertaining to his income, or provided de minimis income information and accompanied the purported return with tax protestor type arguments. However, we think it prudent that the Service make the decision whether to treat such a form as valid return or a nullity on a case-by-case basis, after considering all of the information contained on the form and attached thereto in order to determine whether the form manifests an honest and reasonable attempt to satisfy the requirements of the law.

ISSUE 2

Altered Jurats

The preprinted jurat on Form 1040 reads: “Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.”

You question whether the Service may treat as nullities Forms 1040 on which the taxpayer does not obliterate any words of the jurat, but stamps above the jurat the language, “Without prejudice U.C.C. 1-207.”

WTA-N-129263-01

We cannot conclude that the Service may treat a document as a nullity solely because the taxpayer's addition to the jurat altered the official tax form. Rather, we conclude that the proper analysis is whether the additions to the jurat cause the return to fail the requirement that returns be signed under penalties of perjury (i.e., the fourth prong of the Beard substantial compliance standard). See e.g., Williams v. Commissioner, 114 T.C. 136 (2000).

Where the taxpayer strikes or obliterates the jurat, the law is clear that the Form 1040, even if otherwise complete, accurate, and signed, does not constitute a valid return, because it is not signed under penalties of perjury. Cupp v. Commissioner, 65 T.C. 68 (1975); United States v. Moore, 627 F.2d 830 (7th Cir. 1980); Hettig v. United States, 845 F.2d 794 (8th Cir. 1988).

Where the taxpayer does not strike or obliterate the jurat, but adds language to the jurat, courts tend to examine the nature of the additions. Where the addition is found to negate, or at least cast doubt on, the validity of the jurat, courts have concluded that the Form 1040 is not signed under penalties of perjury and is therefore not a valid return. See e.g., Sloan v. Commissioner, 53 F.3d 799 (7th Cir. 1995) (the taxpayers wrote in the jurat box above their signatures "Denial & Disclaimer attached as part of this form" and the court found that the attachment cast doubt on the veracity of the return); Williams v. Commissioner, *supra*. (taxpayer's attached "disclaimer," although outside of the jurat box, negated the meaning of the jurat); Letscher v. United States, 2000 U.S. Dist. LEXIS 13061, 2000-2 U.S. Tax Cas. (CCH) P50,723 (taxpayer's addition of "Without prejudice, See attachment dated 4/13/96" above his signature in the jurat box invalidated the return because the referenced attachment called into question the truthfulness and accuracy of his return).

Alternatively, where the addition does not negate or cast doubt on the validity of the jurat, courts have tended to treat the Form 1040 as a valid return. See e.g., McCormick v. Peterson, 1993 U.S. Dist. LEXIS 17561, 94-1 U.S. Tax Cas. (CCH) P50,026 (1993), acq. 1993-1 C.B. 5 (the words "under protest" added by the taxpayer beneath his signature did not alter the meaning of the jurat).

We think that the additional language does not negate or cast doubt on the validity of the jurat. Therefore, the additional language, standing alone, does not render the return a nullity. However, we feel that the additional language does bolster a determination that the return is a nullity when viewed in conjunction with taxpayers' completion of the return using the number 0, as well as the attachment of material which protests the Constitutionality of the requirement that they pay federal income tax.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

WTA-N-129263-01

If you have any questions, please contact Rob Desilets, Jr. at (202) 622-4910.