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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR JODY TANCER, ASSISTANT
ACTING DISTRICT COUNSEL (BROOKLYN)
Attn: Patricia Riegger

FROM: Deborah A. Butler
Assistant Chief Counsel (Field Service)

SUBJECT: Return Filing Date -- Zero Returns

This memorandum responds to your request for Significant Advice dated April 4, 2000, in connection with a question raised by the Submission Processing function of the Brookhaven Service Center.

ISSUE

Whether a Form 1040 that reports zeroes on each line and is signed by the taxpayer without any modifications, additions, or deletions to the attestation statement is a return for purposes of sections 6501 and 6511.

CONCLUSION

In general, a Form 1040 that reports zeroes on each line and is signed by the taxpayer without any modifications, additions, or deletions to the attestation statement should be treated as a return for purposes of sections 6501 and 6511.

DISCUSSION

Section 6501(a) of the Internal Revenue Code provides that the amount of any tax imposed by this title generally shall be assessed within 3 years after the return was filed. Any claim for credit or refund of an overpayment of any tax imposed by the Internal Revenue Code generally must be filed within 3 years from the time the return was filed or two years from the time the tax was paid. Section 6511(a). For purposes of sections 6501 and 6511, the term "return" means the return required to be filed by the taxpayer and does not include a return of any person from whom the

taxpayer has received an item of income, gain, loss, deduction, or credit. Section 6501(a).

The Secretary has broad authority to determine what information should be submitted with a tax return, and how that information should be submitted. See Section 6011; Parker v. Commissioner, 365 F.2d 792, 800 (8th Cir. 1966), cert. denied, 385 U.S. 1026 (1967); Andrews v. Commissioner, T.C. Memo. 1999-281. Section 6011 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 must include therein the information required by such forms and regulations. Id.; see, also, Treas. Reg. § 1.6011-1(a). Each taxpayer is expected to carefully prepare his return and set forth fully and clearly the information required to be included therein. Treas. Reg. § 1.6011-1(b). Returns which have not been so prepared will not be accepted as meeting this requirement of the Code. Id.

The purpose behind the broad grant of authority to the Secretary is “not alone to get tax information in some form but to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.” Commissioner v. Lane-Wells Co., 321 U.S. 219, 223 (1944). A document defective or incomplete as a return for some purposes may nevertheless be sufficient for purposes of beginning the period of limitations under sections 6501 and 6511. See Zellerbach Paper Co. v. Helvering, 293 U.S. 172 (1934); Germantown Trust Co v. Commissioner, 309 U.S. 304 (1940).

In Zellerbach, the taxpayer filed its original income and profits tax return for its fiscal year ending April 30, 1921, in July 1921. Although the Revenue Act of 1921 required taxpayers to file a new or supplemental income and profits tax return if the original return had been prepared pursuant to the provisions of the Revenue Act of 1918 and additional tax was due under the Revenue Act of 1921, the taxpayer did not file a new or supplemental return. When the Commissioner issued a deficiency notice to the taxpayer in May 1928, the taxpayer alleged that the notice was barred because the period of limitations for assessment had expired. The Commissioner argued that the period of limitations for assessment had not begun because the return he received from the taxpayer in July 1921 was a nullity. The Supreme Court disagreed and determined that the period of limitations had expired. The Court acknowledged that the taxpayer had not complied with the requirement to file a second return. Nevertheless, the Court held that the original return was sufficient to begin the period of limitations. The Court concluded that, for purposes of the statutes of limitations,

[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. This is so even though at the time of filing the omissions or inaccuracies are such as to make amendment necessary.

293 U.S. at 180 (citation omitted). Thus, if a document substantially complies with the requirements for making a return, it is sufficient as a return for purposes of the statutes of limitations, whether or not such document is flawed. Id.; see also, Germantown Trust Co v. Commissioner, 309 U.S. at 304 (1940)(fiduciary return filed by the taxpayer was a return for purposes of the statute of limitations, notwithstanding that the return was flawed inasmuch as the taxpayer was required to file a corporate return and not a fiduciary return); Blount v. Commissioner, 86 T.C. 383 (1986), acq. in result, 1986-2 C.B. 1 (Form 1040 filed by taxpayers was a return for purposes of the statute of limitations, notwithstanding that the taxpayers failed to include Form W-2 as required by the regulations). Substantial compliance with the requirements for making a return means:

1. There must be sufficient data to calculate tax liability;
2. The document must purport to be a return;
3. There must be an honest and reasonable attempt to satisfy the requirements of the tax law; and
4. 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).

Several courts have looked at whether a Form 1040 that reports zeroes on each line and is signed by the taxpayer without any modifications, additions, or deletions to the attestation statement is a return for purposes of the statutes of limitations. Two lines of authority have emerged on this issue.

The first line is represented by United States v. Smith, 618 F.2d 280 (5th Cir.), cert. denied, 449 U.S. 868 (1980). In that case, the taxpayer placed zeros on most lines, but also sprinkled the return with constitutional objections. The court held the document not to be a valid return because it did not contain information by which a liability could be calculated. Id.; see also, United States v. Rickman, 638 F.2d 182, 183-84 (10th Cir. 1980). While the existence of the constitutional objections may have made the case distinguishable from the case for which you have requested advice,¹ other courts have not read Smith so narrowly. See United States v. Mosel, 738 F.2d 157 (6th Cir. 1984). In Mosel, the taxpayer submitted a Form 1040 on

¹It could be argued that the inclusion of the constitutional arguments by the taxpayer were an indication that the zeroes in the Form 1040 were intended to support the taxpayer's legal argument that proper dollar figures were not required to be reported and that the zeroes, therefore, did not represent actual dollar figures to be reported on the Form 1040.

which he indicated that he had zero income from wages and interest, that he owed no income taxes, and that he was entitled to a refund. In rejecting the taxpayer's argument that the Form 1040 was a return, the court concluded that,

[a]lthough Mosel's argument has some surface appeal in that the symbol zero has mathematical meaning, we conclude that no reasonable person employing such a symbol in these circumstances could understand that he had submitted the information which is required in a tax return. Mosel's ... Form 1040 might reasonably be considered a protest, but under no circumstances can it be rationally construed as a return.

738 F.2d 158-59.

In United States v. Moore, 627 F.2d 830 (7th Cir. 1980), cert. denied, 450 U.S. 916 (1981), the court saw the issue as one of intent:

It is not enough for a form to contain some income information; there must also be an honest and reasonable intent to supply information required by the tax code. In our self-reporting tax system, the government should not be forced to accept as a return a document which plainly is not intended to give the required information.

627 F.2d at 835.

The opposing authority is represented by United States v. Long, 618 F.2d 74 (9th Cir. 1980). The taxpayer filed a Form 1040 on which he provided his name, address, social security number, and other information. The Form 1040 was not doctored or modified in any way, and was signed under penalties of perjury; but it contained zeroes on every line. While conceding that the figures may have been intentionally false, the taxpayers nevertheless argued that the figures did satisfy the requirement of filing a return. The court agreed, stating:

The zeros entered on Long's tax forms constitute "information relating to the taxpayer's income from which the tax can be computed." The I.R.S. could calculate assessments from Long's string of zeros, just as it could if Long had entered other numbers. The resulting assessments might not reflect Long's actual tax liability, but some computation was possible. In this respect, the Circumstances here differ from those in Porth [United States v. Porth, 426 F.2d 519 (10th Cir. 1970)] and similar cases in which defendants failed to complete tax forms or left them blank. Nothing can be calculated from a blank, but a zero, like other figures, has significance. A return containing false or misleading figures is still a return. False figures convey false information, but they convey information.

618 F.2d at 75-76 (footnotes deleted). The Ninth Circuit, in United States v. Kimball, 925 F.2d 356 (9th Cir. 1991), subsequently affirmed its position in Long. This position has also been adopted by the Eighth Circuit in United States v. Grabowski, 727 F.2d 681 (8th Cir. 1984).

After reviewing the cases, we are persuaded that the appropriate position for the Service to follow is the position established in Long. The Ninth Circuit's opinion in Long is well reasoned and provides an appropriate "bright line" for determining whether a filed document constitutes a return. For example, while the Internal Revenue Code contemplates that returns will sometimes be filed with intentional falsity, there is no dispute that such false returns are, in fact, returns. See sections 6663 and 7206(l); Badaracco v. United States, 464 U.S. 386 (1984). Thus, the difference between a lack of honest intent to supply accurate financial information and the dishonest intent to supply false financial information is subtle at best. With Long, however, we have a "bright line" for determining whether a filed document constitutes a return,² which is both conservative and easy to administer. Treating a Form 1040 that reports zeroes on each line **and** is signed by the taxpayer without any modifications, additions, or deletions to the attestation statement as a return for purposes of the statute of limitations reduces the risk that the Service will not make a timely assessment. If the Form 1040 is an honest attempt at establishing the taxpayer's liability (and could in fact be a correct determination of that liability), the return will be processed within the appropriate period. If, however, the Form 1040 is false, the limitations period for deficiency assessments may be extended (unlimited under section 6501(c) or six years under section 6501(e)), but the Service's interest are not adversely effected.

Accordingly, a Form 1040 that reports zeroes on each line and is signed by the taxpayer without any modifications, additions, or deletions to the attestation

²In United States v. Kimball, 925 F.2d 356 (9th Cir. 1991), the Ninth Circuit stated:

Long properly turns on the presence or absence of financial information Here ... nothing can be calculated from Kimball's asterisks. A proper reading of Long demonstrates that Kimball did not file a return.

Long's distinction is admittedly formalistic. It may be that whether a form contains zeros, asterisks, or nothing at all, it makes essentially the same point: the taxpayer refuses to report income. We nevertheless reaffirm Long's analysis. A line must be drawn somewhere, and given the need for clear law on an arcane point, it should be as bright as possible.

statement should generally be treated as a return for purposes of sections 6501 and 6511.

If you have any questions, please contact the Procedural Branch at (202) 622-7940.