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subject: Fifth Amendment Returns

This Chief Counsel Advice responds to your request for assistance dated April 28, 2005. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =

Date 1 =
Date 2 =
Date 3=

$X =

ISSUES

1. Whether the forms originally submitted by Taxpayer are valid returns for purposes of the assessment and refund statutes of limitations.

2. If the forms originally submitted by the Taxpayer are not valid returns, what are the legal consequences of processing the Year 6, Year 7, and Year 8 Forms 1040 by the Internal Revenue Service (Service), and assessing the tax reported on those forms as the tax liability of the Taxpayer?

3. Whether the assessments should be reversed or abated by the Service for the Year 6, Year 7, and Year 8 tax years.

4. Can the Service make deficiency determinations for Year 6, Year 7, and Year 8 based on the information reported on the Taxpayer's Forms 1040?

CONCLUSIONS

1. The forms originally submitted by Taxpayer are not valid returns for purposes of the assessment and refund statute of limitations. The forms submitted by the Taxpayer lacked the information relating to the Taxpayer's income from which the tax can be computed, and did not evince an honest and genuine endeavor to satisfy the law. In contrast, the subsequently submitted Form 1040 for Year 7 does meet the *Beard* "substantial compliance" standard.

2. Processing the Forms 1040 and assessing the tax liabilities does not estop the Service from asserting that the Forms 1040 are invalid, because no action by the Service can waive the defects in the Forms 1040, or change or modify the conditions under which the United States consents to the running of the statute of limitations. Because the originally submitted forms are invalid, there is no tax shown on those forms within the meaning of section 6201(a)(1) and the Service should not have assessed the tax liability under section 6201(a)(1) based on the originally submitted Forms 1040.

3. Since the Service made inappropriate assessments for the Year 6, Year 7, and Year 8 tax years, the Service should abate these assessments and redetermine the tax liability for the years in question using deficiency procedures.

4. The Service can make deficiency determinations for Year 6, Year 7, and Year 8 based on the information attached to the Taxpayer's Forms 1040.

FACTS

Taxpayer was the subject of a grand jury investigation regarding one of his corporations. He was charged with attempted income tax evasion, pursuant to 26 U.S.C. § 7201 for Years 1, 2, 3, and 4. Ultimately he pled guilty to conspiracy, pursuant

to 18 U.S.C. § 371, for those years and is presently incarcerated for that offense. The criminal investigation of Taxpayer was closed no later than Date 1. There is no criminal investigation pending for Years 5 through 9. The Taxpayer has made approximately $X in payments towards his liabilities, with much of that allocated to the accounts for Years 5 through 8.

Years 4, 5, 6, 8 and 9

The Forms 1040 submitted by the Taxpayer for Years 4, 5, 6, 8, and 9 all follow a pattern. At its top, each Form 1040 states: "FIFTH AMENDMENT EXERCISED ***." Although the line numbers vary for the years involved because of changes in the format of the Form 1040, each Form 1040 contains asterisks for the amounts on line 8a for taxable interest, line 17 for rental real estate, royalties, partnerships, S corporations and trusts, line 22 for total income, and lines 33 and 34 for adjusted gross income. The documents also generally contain asterisks for the amounts on line 37 for adjusted gross income minus deductions, line 39 for taxable income, line 40 for tax, line 49 for tax minus credits, line 56 for total tax, line 65 for refund amount, and line 68 for amounts owed.

The Schedules B, Interest and Ordinary Dividends, attached to the Forms 1040 report amounts that would be reported to the Service by third party reporting. In addition, the Schedules B state "FIFTH AMENDMENT EXERCISED" and contain asterisks on the lines for total interest and dividends to be included on Line 8 of the Form 1040, and asterisks on Part III regarding Foreign Accounts and Trusts. Similarly, the Schedules E, Supplemental Income and Loss, report the amounts otherwise subject to third party reporting, and contains asterisks in Part II regarding Income and Loss from Partnerships and S Corporations, and in Part V for total income or loss.

Also attached to the Forms 1040 are statements providing, in part, "The taxpayer is the target of a criminal investigation. . . . Pending the termination or conclusion of such investigation the taxpayer, upon advice of counsel, is invoking the privilege(s) afforded him by the Fifth Amendment to the Constitution of the United States in respect of certain of the information that is otherwise required to be returned herein."

Year 7

Taxpayer originally submitted a Form 1040 that followed the pattern described above for Year 7. That Form 1040 states "FIFTH AMENDMENT EXERCISED. * * *" at the top, and contains asterisks for the amounts on line 8a for taxable interest, line 17 for rental real estate, royalties, partnerships, S corporations, trusts, etc., line 21 for other income, line 22 for total income, line 27 for one-half of self employment tax, and lines 33 and 34 for adjusted gross income. The document also contains asterisks for the amounts on line 37 for adjusted gross income minus deductions, line 39 for taxable income, line 40 for tax, line 42 for adding tax and the alternative minimum tax, line 51 for tax minus credits, line 57 for total tax, and lines 66 and 67a for refund amount.

The Schedule B, Interest and Ordinary Dividends, attached to the Form 1040 reports amounts otherwise subject to third party reporting, but also states "FIFTH

AMENDMENT EXERCISED" and contains asterisks for the amounts on the lines for total interest and dividends to be included on Line 8 of the Form 1040, and Part III regarding Foreign Accounts and Trusts. Similarly, the Schedule E, Supplemental Income and Loss, reports amounts otherwise subject to third party reporting and contains asterisks for the amounts on Part II regarding Income and Loss from Partnerships and S Corporations, and in Part V for total income or loss.

Also attached to the purported return is a statement providing, in part, "The taxpayer is the target of a criminal investigation. . . . Pending the termination or conclusion of such investigation the taxpayer, upon advice of counsel, is invoking the privilege(s) afforded him by the Fifth Amendment to the Constitution of the United States in respect of certain of the information that is otherwise required to be returned herein."

On or about Date 2, Taxpayer submitted another Form 1040 for Year 7. The Service's treatment of this document is unclear. In contrast to the Form 1040 described above, this document reports dollar amounts on line 8a for taxable interest, line 17 for rental real estate, royalties, partnerships, S corporations, trusts, etc., line 21 for other income, line 22 for total income, and lines 33 and 34 for adjusted gross income. The document also reports dollar amounts on line 37 for adjusted gross income minus deductions, line 39 for taxable income, line 40 for tax, line 42 for adding tax and the alternative minimum tax, line 51 for tax minus credits, line 57 for total tax, and lines 66 and 67a for refund amount.

This Form 1040 also attached a Schedule D listing the amount of capital gains and the tax on capital gains. Also attached to this Form 1040 is a statement describing income from passthrough entities.

The Service appears to have processed the Forms 1040 that were originally submitted and made assessments of income tax for Years 6, 7 and 8.

LAW AND ANALYSIS

ISSUE 1. Whether the forms originally submitted by Taxpayer are valid returns for purposes of the assessment and refund statute of limitations.

Section 6011(a) of the Internal Revenue Code (Code) requires that "any person made liable for any tax . . . shall make a return or statement according to the forms and regulations prescribed by the Secretary." The returns must include "the information required by the applicable regulations or forms." Treas. Reg. § 1.6011-1(a).

Courts have identified a 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, known as the *Beard* formulation or the “substantial compliance” standard, derives from a venerable line of Supreme Court cases. *Badaracco v. Commissioner*, 464 U.S. 386 (1984); *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172, 180 (1934); *Florsheim Bros. Drygoods Co v. United States*, 280 U.S. 453 (1930).

A document must "purport to be a specific statement of the items of income, deductions, and credits in compliance with the statutory duty to report information and 'to have that effect it must honestly and reasonably be intended as such' " to be a return that starts the period of limitations, *Beard*, 82 T.C. at 778, *quoting Florsheim Bros. Drygoods Co.* 280 U.S. at 462. The taxpayer is obligated to provide the Service with sufficient data from which his income tax liability can be computed. *United States v. Daly*, 481 F.2d 28, 29-30 (8th Cir. 1973); *United States v. Porth*, 426 F.2d 519, 523 (10th Cir. 1970); *Reiff v. Commissioner*, 77 T.C. 1169, 1178-79 (1981).

The most factually apposite case of those cited above is *Reiff*. In *Reiff*, petitioners filed with respondent a 32-page preprinted document entitled "Petition for Redress of Grievances." The first and second pages of the document consisted of a modified 1976 Form 1040 with various constitutional objections printed in the margins. The first page was signed by petitioners under penalties of perjury and showed petitioners' names, address, and social security numbers, Charles Reiff's occupation, Federal income tax withheld in the amount of $1,112.23, 1977 estimated tax payments in the amount of $316.42, and total payments, amount overpaid, and amount to be refunded---all in the amount of $1,428.65. No information was provided with respect to petitioners' filing status or exemptions. The remaining lines on the Form 1040 contained one or two preprinted asterisks which are explained in the margin as objections under the 1st, 4th, 5th, 7th, 8th, 9th, 10th, 13th, 14th, and 16th Amendments. The remaining pages of the document consisted of numerous statements and affidavits, a copy of the Declaration of Independence, and excerpts from the United States Constitution and various publications. Charles Reiff signed the first three of the preprinted pages after the Form 1040. The first signed page is a form letter to the Director of the Internal Revenue Service Center, which stated:

> We * * * [offer] to re-file, or to amend our return, if you will please show us how to do so without forcing us to waive our Constitutional Rights, and to receive your written guarantee against any criminal prosecution---both federal, state and local---as the result of furnishing you the information you seek.

Id. at 1171-72. The second signed page was an "Affidavit of My Understanding of a United States 'Dollar.' " The third signed page was an affidavit about Charles Reiff's understanding as to a conviction of one W. Vaughn Ellsworth and as to Charles Reiff's rights under the Fifth Amendment. *Id.* at 1172.

The Tax Court held that the petitioners’ document did not constitute a return. *Id.* at 1177. First, the court noted that the document did not contain sufficient data from which

respondent could compute and assess petitioners' income tax liability for 1977. The document merely disclosed petitioners' names, address, social security numbers, tax withheld, and estimated tax payments. The court noted that no information was provided regarding petitioners' filing status or exemptions. The court observed that no income, deduction, credit, or tax liability amounts were shown; instead, the providing of such information was objected to under various constitutional provisions. The court held that as a result, a significant portion of the data necessary to compute petitioners' tax liability was omitted. *Id.* at 1178.

In *Zellerbach Paper Co*., 293 U.S. at 180, the Court held that a document may be sufficient to be a return, even if not perfectly accurate or complete, "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."

In this case, Taxpayer's originally submitted documents resemble the document described in *Reiff*. Although some information was provided on the original documents proffered as returns by Taxpayer, those documents failed to include the amount of taxable interest, ordinary dividends, capital gain or loss, income from royalties, partnerships, S corporations, or trusts, amounts for other income, total income, and adjusted gross income. The Taxpayer also failed to complete his Schedules B, Schedules D, and Schedules E. Taxpayer's documents also failed to disclose his itemized deductions, adjusted gross income minus deductions, the amounts of taxable income, tax, alternative minimum tax, tax minus credits, and total tax. Finally, the documents failed to include the amounts overpaid, or amounts owed. These omissions are substantial and material; the Service is unable to perform the most basic of verification of these documents based on the incomplete information provided.

The forms originally submitted by Taxpayer consequently lacked the minimum information prescribed by the regulations. *Id*.; *see also, e.g., Porth v. United States,* 426 F.2d at 522-23 (name and address on a form is insufficient to be a valid return because it fails to "contain any information relating to the taxpayer's income from which the tax can be computed . . . within the meaning of the Internal Revenue Code or the regulations adopted by the Commissioner"); *United States v. Jordan*, 508 F.2d 750, 752 (7th Cir. 1975) (same); *Ross v. Commissioner,* T.C. Memo. 1984-27 (return form without information with which to calculate a tax liability, containing approximately 60 references to "Object Self Incrimination" is not a tax return). Consequently, we believe that because the Forms 1040 fail to report sufficient data to calculate the tax liability, they do not meet the first requirement of the *Beard* test.

In contrast, the subsequently submitted Form 1040 for Year 7 does meet the *Beard* "substantial compliance" standard. That document listed items of income, deductions, and credits in compliance with the statutory duty to report information. There is enough information on that document to provide the Service with sufficient data from which an income tax liability can be computed. Accordingly, the subsequently submitted Form

1040 for Year 7 received on or about Date 3 is a valid return for purposes of the commencement of the statute of limitations.

In addition, we believe the Forms 1040 demonstrate that the Taxpayer is not making an honest and reasonable attempt to comply with the tax law, because he has submitted documents purporting to claim a Fifth Amendment privilege he cannot validly exercise. The Fifth Amendment does not shelter a taxpayer from filing a return. *United States v. Sullivan*, 274 U.S. 259, 263-64 (1927); *Daly*, 481 F.2d at 30; *Reiff,* 77 T.C. at 1179; *White v. Commissioner;* 72 T.C. 1126, 1130 (1979). *Cupp v. Commissioner*, 65 T.C. 68, 79 (1975); *Hosking v. Commissioner*, 62 T.C. 653, 639 (1974); *Hoeltz v. Commssioner*, T.C. Memo. 1981-496. Pending criminal investigations do not excuse a failure to file a return, *United States v. Malquist*, 791 F.2d 1399 (9th Cir. 1986), even if the taxpayer is asserting his Fifth Amendment privilege against self-incrimination*, see Kirschbaum v. Commissioner*, T.C. Memo. 1989-526. The Fifth Amendment privilege against self-incrimination does not protect a taxpayer from answering all income related questions, *United States v. Russell*, 585 F.2d 368, 371 (8th Cir. 1978); *United States v. Leiderneker,* 779 F.2d 1417, 1418 (9th Cir. 1986), because the privilege protects the taxpayer from disclosing only the source of the income. *Shivers v. United States*, 788 F.2d 1046, 1049 (5th Cir. 1986); *United States v. Wade*, 585 F.2d 573, 574 (5th Cir. 1978, *cert. denied*, 440 U.S. 928 (1979).

In this case, Taxpayer failed to properly invoke his Fifth Amendment privilege against self-incrimination because he failed to provide information on the amount of his income, rather than confining his assertion to the source of his income. *Shivers*, 788 F.2d at 1049; *Wade*, 585 F.2d at 574. The privilege against self-incrimination is not validly exercised where taxpayer does not provide the financial data on his tax returns; instead, this amounts to a total failure to file a return. *United States v. Heis*, 709 F.2d 449, 451 (6th Cir. 1983); *Russell*, 585 F.2d at 370.

The least a taxpayer must do to cause the period of limitations to start to run is to file an appropriate return and then assert the Fifth Amendment privilege against self-incrimination by refusing to answer specific questions. *United States v. Egan*, 459 F.2d 997, 998 (2d Cir. 1972). Moreover, the criminal investigation against Taxpayer for the years subsequent to the offense for which he was convicted has been closed, so that Taxpayer no longer has a fear of prosecution. Taxpayer is not entitled to claim a Fifth Amendment privilege, and would not be entitled to shield the amounts of his income even if he were so privileged. Thus, we believe that Taxpayer fails the third part of the Beard test, in that he did not make an honest and reasonable attempt to comply with the tax law. Since the originally filed Forms 1040 for Years 6, 7, and 8 did not meet two of the four requirements of the *Beard* test, they are not valid tax returns and should not have been treated as such.

ISSUE 2. If the returns are not valid returns, what are the legal consequences of processing the Year 6, Year 7, and Year 8 Forms 1040 and assessing the tax reported on them?

Although the Service processed the purported returns for Years 6, 7, and 8, that does not estop the Service from asserting that the Forms 1040 are invalid because no action by the Service can waive the defects in the Forms 1040. *Plunkett v. Commissioner*, 118 F.2d 644, 650 (1st Cir. 1941); *citing Lucas v. Pilliod Lumber Co.*, 281 U.S. 245 (1930). *See also Kavanaugh*, 139 F.2d at 310; *citing Florsheim Bros. Dry Goods Co. v. Commissioner,* 280 U.S. 453 (1930). In *Lucas*, the taxpayer submitted an unsigned return to the Service, upon which the Service made an assessment. The Court upheld the assessment, holding that the unsigned return was insufficient to start the running of the statute of limitations, because "[n]o officer had the power to substitute something else for the thing specified." 281 U.S. at 249.

In *Automobile Club of Michigan v. Commissioner*, 353 U.S. 180, 183 (1957), the Court held that the doctrine of equitable estoppel was not a bar to the correction by the Commissioner of a mistake in law. Rejecting the taxpayer's equitable estoppel arguments, the Court stated:

> … the express condition prescribed by Congress was that the statute was to run against the United States from the date of the actual filing of the return, and no action of the Commissioner can change or modify the conditions under which the United States consents to the running of the statute of limitations against it.

Id. at 187.

In *Small v. Commissioner*, T.C. Memo. 1989-48, the Tax Court held that estoppel was not available where a Service employee incorrectly processed a document as a delinquent return rather than as a substituted return and issued a no-change letter. The taxpayer could not rely upon the no-change letter as evidence that he had filed a return.

Although the Service cannot be estopped to deny that the Forms 1040 for Years 6, 7, and 8 are not valid returns (or be required to accept them with their defects), the Service should not have assessed the tax shown on those purported returns, and should abate these assessments. Section 6201 of the Code provides the authority for assessment. An assessment is the administrative act of recording the taxpayer's liability on the Service's books and records. *See Cohen v. Mayer*, 199 F. Supp. 331, 332 (D.N.J. 1961). Thus, until an assessment of tax has been made, the Service is not entitled to collect a tax administratively.

The two most common types of assessments are summary and deficiency assessments. *See Murray v. Commissioner*, 24 F.3d 901, 903 (7th Cir. 1994). An example of a summary assessment is an assessment of tax shown on a return. I.R.C. § 6201(a)(1). To be valid, an assessment of tax must comply with the requirements of section 6203 and the regulations thereunder. *See, e.g., Gentry v. United States*, 962 F.2d 555, 557 (6th Cir. 1992); *Howell v. United States*, 164 F.3d 523, 525-26 (10th Cir. 1998). The assessment must also be made within the applicable period for assessment under section 6501; generally three years from the date of the return. I.R.C. § 6501.

The original Forms 1040 submitted by Taxpayer were not valid returns. Because those originally submitted documents were invalid, there is no tax shown on the return within the meaning of section 6201(a)(1). The Service, therefore, was not entitled to summarily assess the tax liability under section 6201(a)(1) based on the originally submitted Forms 1040.

Since the Forms 1040 submitted for Years 6, 7 and 8 are invalid, the period of limitations for assessing the tax did not begin to run with their submission. See I.R.C. § 6501(c)(3). The subsequent submission of a valid return for Year 7, however, did commence the running of the period of limitations for that year. Thus, the Service may issue notices of deficiency for Years 6 and 8 at any time and litigate this matter in Tax Court if Taxpayer timely petitions the Tax Court. The Service has until three years from Date 2 to issue a notice of deficiency for Year 7. We note that even if the returns are held to be valid in this case, the Service may still be able to assess a deficiency within the unlimited statute of limitations on assessments under section 6501(c)(1) if it can prove that Taxpayer filed either a "false or fraudulent return with the intent to evade tax." I.R.C. § 6501(c)(1).

ISSUE 3. Whether the assessments should be reversed or abated by the Service for the Year 6, Year 7, and Year 8 tax years.

As discussed above, because the assessments were made on the originally submitted Forms 1040 that are invalid, there is no tax shown on those documents within the meaning of section 6201(a)(1), and the Service was not entitled to summarily assess the tax liability under section 6201(a)(1). The Service is authorized to abate the unpaid portion of the assessment of any tax or any liability which is erroneously assessed. I.R.C. § 6404(a)(3). Accordingly, the Service in this situation has made an erroneous assessment that must be abated.

In light of the foregoing, we recommend that the Service abate the assessments based on the invalid Forms 1040 for Years 6, 7, and 8. The Service should assess tax for Year 7 based on the valid return filed on date 2. The Service should then proceed to determine deficiencies as appropriate for all the years in issue.

ISSUE 4. Can the Service make deficiency determinations for Year 6, Year 7, and Year 8 based on the information reported on the Taxpayer's Forms 1040?

It is well settled that no particular form is required for a notice of deficiency. *Jarvis v. Commissioner*, 78 T.C. 646, 655 (1982). At a minimum, the notice must indicate that the Service has determined a deficiency in tax in a definite amount for a particular taxable year and that the Service intends to assess the tax in due course. *Perlmutter v. Commissioner*, 44 T.C. 382, 400 (1965), *aff'd*, 373 F.2d 45 (10th Cir. 1967). Absent unusual circumstances, the Tax Court will not look behind a notice of deficiency to examine the evidence used by the Service in the determination of the deficiency. *See Scar v. Commissioner*, 814 F.2d 1363, 1368 (9th Cir. 1987) (Service cannot rely solely

upon examination of tax shelter entity to make a determination, but instead must also examine the taxpayer's return).

The issue here is whether the Service can use information reported on or derived from invalid returns to make deficiency determinations for Years 6, 7 and 8. In *Edwards v. Commissioner*, T.C. Memo. 2005-52, the court determined that a trust was a nullity for federal income tax purposes. Accordingly, the court treated the trust's return as invalid and did not sustain an accuracy related penalty pursuant to section 6662 against the trust (under section 6664(b), a section 6662 penalty only applies where a return is filed). The Service treated the trust as a sham and included the income reported on this invalid trust return as includible in the individual taxpayer's gross income. The court sustained the determination based on information derived from the invalid return.

Courts have historically found documents signed or submitted by taxpayers can serve as the basis for a deficiency determination made by the Service. In *Sunik v. Commissioner*, T.C. Memo. 2001-195, the court sustained the Service's determination based on a New York consent form signed by taxpayers reflecting an increase to their state taxable income. In *Smith v. Commissioner*, T.C. Memo. 2000-43, the taxpayer submitted an employment questionnaire to a temp agency. On the questionnaire, the taxpayer listed several previous employers for which the Service had no record (that is, no Forms W-2 or 1099). The court found the information contained on the questionnaire sufficient to support the Service determinations that the taxpayer received self-employment income. Thus, the Service should be able to rely upon information reported on the Taxpayer's originally submitted Forms 1040 for Years 6, 7 and 8, even though those returns are invalid.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[redacted] The Taxpayer's Forms 1040 supply minimal information, and a calculation of tax could be made from the admittedly incomplete information furnished. The Taxpayer's Forms 1040, however, generally fail to include the amount of taxable interest, income from rental real estate, royalties, partnerships, S corporations, and trusts, other income, total income, addition to adjusted gross income amounts, and adjusted gross income. These documents also generally fail to include the amount of adjusted gross income minus deductions, taxable income, income tax, tax minus credits, self-employment tax, total tax, refund amount, and amounts owed. In addition, the Schedules B attached to these documents fail to include total interest and dividends, and information regarding Foreign Accounts and Trusts. Similarly, the Schedules E attached to these documents fail to include information regarding Income and Loss from Partnerships and S Corporations, and total income or loss.

Based on the failure to provide this information, which is crucial to calculate a tax liability, and to verify the liability set forth on a tax return, we believe a court would find that the Year 6 and Year 8 Forms 1040 fail to meet the *Beard* substantial compliance test. Moreover, as stated above, the processing of the returns and posting of the assessed liabilities by the Service have no legal consequences because no action by the Service can waive the defects in the Forms 1040, or change or modify the conditions under which the United States consents to the running of the statute of limitations. *Lucas v. Pilliod Lumber Co.*, 281 U.S. 245 (1930); *Florsheim Bros. Dry Goods Co. v. Commissioner,* 280 U.S. 453 (1930); *Kavanaugh v. First National Bank of Wyandotte*, 139 F.2d 309, 310 (6th Cir. 1943), *Plunkett v. Commissioner*, 118 F.2d 644, 650 (1st Cir. 1941). In addition, since the *Beard* test is cumulative, and since the Taxpayer fails two of the four requirements of *Beard*, the originally filed Forms 1040 should be held to be invalid.

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Please call (202) 622-4910 if you have any further questions.