



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

OFFICE OF  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR RONALD P. RIVELLI  
CHIEF, PARTNERSHIPS, TRUSTS AND INTERNATIONAL  
SECTION  
OP:FS:S:P:P  
Attn: Nicholas Palumbo

FROM: James C. Gibbons  
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SUBJECT: Refunds when a correct ITIN is used on a Form 1040 but an  
erroneous Social Security Number is used on a Form W-2

This Chief Counsel Advice responds to your inquiry of April 12, 2002. Specifically, you ask how the Service should process a Form 1040 that claims a refund and shows the taxpayer's correct ITIN, but includes a Form W-2 with an incorrect SSN. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

- 1) Whether a Form 1040 that claims a refund and shows the taxpayer's correct ITIN on the form, but includes a Form W-2 with an incorrect SSN, constitutes a valid return for purposes of the statute of limitations on assessment under section 6501 of the Code?
- 2) If the return constitutes a valid return, whether the return constitutes a valid claim for refund for purposes of section 6402 of the Internal Revenue Code?
- 3) If the return constitutes a valid return and a valid claim for refund, whether the return is in processible form for purposes of section 6611 of the Code?

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## CONCLUSIONS

- 1) A Form 1040 that claims a refund and shows the taxpayer's correct ITIN on the form, but includes a Form W-2 with an incorrect SSN, constitutes a valid return for purposes of the statute of limitations on assessment under section 6501 of the Code.
- 2) The return constitutes a valid claim for refund for purposes of section 6402.
- 3) The return is not in processible form for purposes of section 6611. As a result, the Service may freeze the amount of the refund claim and will not be subject to overpayment interest on the amount of the overpayment until the return is in processible form.

## FACTS

The Service receives completed returns consisting of a Form 1040, "U.S. Individual Income Tax Return," which claims a tax refund and lists the correct individual taxpayer identification number (ITIN) of the taxpayer filing the return, with an attached Form W-2, "Wage and Tax Statement," that lists an erroneous social security number (SSN) not belonging to the taxpayer. This situation sometimes arises when a taxpayer has a valid ITIN but provides an erroneous SSN to a potential employer in order to secure a job within the U.S. Presently, the Service processes these returns using the valid ITIN and issues the refund to the taxpayer.

## LAW AND ANALYSIS

### Issue 1

Section 6011 of the Code provides that 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 that each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting this requirement of the Code.

Although Congress has granted the Commissioner broad authority to determine what information should be submitted with a tax return, the issue of what constitutes a valid tax return is frequently litigated. Courts have stated the criteria for a valid return: "First, there must be sufficient data to calculate tax liability;

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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 (6<sup>th</sup> Cir. 1986). This formulation, known as the “substantial compliance” standard, has been derived from a line of Supreme Court cases. See Zellerbach Paper Co. v. Helvering, 293 U.S. 172, 180 (1934); Florsheim Bros. Drygoods Co. v. United States, 280 U.S. 453 (1930). If an income tax return meets the “substantial compliance” standard, the return is a valid return for purposes of the statute of limitations on assessment.

There is no bright line test to determine whether a Form 1040 with an attached Form W-2 that contains incorrect information is a valid return. Courts typically apply the “substantial compliance” standard to the specific facts of each case. In Blount v. Commissioner, the court found that a Form 1040 that was filed without a Form W-2 met the “substantial compliance” standard and did not invalidate the return or prevent the calculation of tax liability. See Blount v. Commissioner, 86 T.C. 383 (1986), acq. in result, 1986-2 C.B. 1. If a Form W-2 that does not belong to the taxpayer is filed with a Form 1040, the Service should disregard the Form W-2 because it contains all incorrect information with regard to the taxpayer. However, under Blount, the Form 1040 is still a valid return. If a Form 1040 that has an attached Form W-2 with all incorrect information is a valid return, a Form 1040 that has an attached Form W-2 with partially incorrect information is a valid return as well. We conclude, under the Blount decision, that a completed Form 1040 with an attached Form W-2 that lists an incorrect SSN, meets the “substantial compliance” standard and does not invalidate the return for purposes of the statute of limitations on assessment under section 6501 of the Code.

## Issue 2

Section 6402(a) of the Code provides that in the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to certain offsets, refund any balance to such person.

Section 301.6402-2(a) of the Regulations on Procedure and Administration provides that credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer.

Section 301.6402-2(b) of the regulations provides, as a general rule, that all claims for credit or refund must set forth in detail each ground upon which a credit or

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refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.

Section 301.6402-3 of the regulations provides special rules for refund claims of income tax. Section 301.6402-3(a)(5) provides that a properly executed individual original income tax return shall constitute a claim for refund or credit for the amount of the overpayment disclosed by such return. To constitute a sufficient claim for refund, the income tax return must set forth the amount determined as an overpayment and should advise the Service whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the succeeding taxable year.

The purpose of the general rule of section 301.6402-2(b) of the regulations, which requires taxpayers to set forth in detail each ground upon which a refund is claimed, is to adequately notify the Service of the grounds on which the taxpayer's claim is based, allowing the Service to properly investigate the claim. Angelus Milling Co. v. Commissioner, 325 U.S. 239 (1945). Section 301.6402-3(a)(5) provides a simplified procedure to notify the Service of the grounds for the claim where the taxpayer makes his or her refund claim on the original or amended income tax return for the taxable year. In such a case, the taxpayer must simply set forth the amount of the overpayment and request that it be refunded or credited. If the return meets the Beard "substantial compliance" standard, and the requirements of section 301.6402-3(a)(5), it will generally meet the requirements of section 301.6402-2(b). See generally Fearis v. United States, 548 F.Supp. 408 (N.D. Tex. 1982); United States v. Ryan, 64 F.3d 1516 (11<sup>th</sup> Cir. 1995); Sumrall v. United States, 98-2 USTC P50,689 (D. Colo. 1998).

In this situation, the Form 1040 meets the Beard "substantial compliance" standard, sets forth the amount of the overpayment, and advises the Service that the overpayment shall be refunded to the taxpayer. Although the attached Form W-2 lists an incorrect SSN, the Service is adequately notified of the grounds for the taxpayer's claim. Therefore, the Form 1040 constitutes a valid claim for refund. However, if the Service cannot resolve the mismatch between the Form 1040 ITIN and the Form W-2 SSN, it cannot determine that the taxpayer made an overpayment which requires the issuance of a refund under section 6402(a). As such, the Service is not required to issue the refund under section 6402. If the Service does not issue the refund, the taxpayer may file a suit for refund under section 6532(a)(1) of the Code once the Service renders a decision on the claim provided the applicable period of limitations has not expired. If the Service does not render a decision, the taxpayer may file a suit for refund beginning 6 months after the date the claim for refund is filed.

Issue 3

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Section 6611(a) of the Code provides that interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621.

Section 6611(b)(3) of the Code provides that in the case of a return filed after the last date prescribed for filing the return (determined without regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed.

Section 6611(e)(1) of the Code provides that if any overpayment of tax is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under section 6611(a) on such overpayment.

Section 6611(g) of the Code provides that for purposes of sections 6611(b)(3) and 6611(e), a return shall not be treated as filed until it is filed in processible form. A return is in processible form if: (1) it is filed on a permitted form; and (2) it contains the taxpayer's name, address, identifying number, the required signature, and sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

According to the court in The Columbia Gas System, Inc. v. United States, “[m]athematical verifiability requires sufficient information to permit IRS to recalculate and corroborate the mathematics and data reported by the taxpayer. Thus, under section 6611, a taxpayer must submit, in good faith, all the required forms with the required signatures and enough underlying data for IRS to verify the tax liability shown on the return. The information must be sufficient to enable IRS to calculate the tax liability without undue burden.” The Columbia Gas System, Inc. v. United States, 70 F.3d 1244, 1246 (Fed. Cir. 1995).

A Form 1040 with a Form W-2 that lists an incorrect SSN does not meet the mathematical verification test because the Form W-2 does not provide sufficient information to allow the Service to corroborate the mathematics and data reported by the taxpayer. The Service requires the correct taxpayer identification number (TIN) to be listed on the Form W-2 and Form 1040 in order to verify that the amounts paid by the employer on behalf of the taxpayer are amounts which are properly attributable to the taxpayer. Without the correct TIN listed on the Form W-2, the Service cannot ascertain with certainty that the attached Form W-2 belongs to the taxpayer filing the Form 1040. As a result, the return is not a processible return for purposes of section 6611(g), and overpayment interest will not begin to accrue until the return is in processible form. Therefore, the Service can freeze the refund amount claimed on the Form 1040 pending the resolution of the

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mismatching ITIN and SSN or the determination that an overpayment exists without subjecting itself to a liability for overpayment interest.

In order to obtain a processible return, the Service should notify the taxpayer that a Form W-2c "Corrected Wage and Tax Statement," or a Form 4852, "Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.," listing the correct ITIN must be filed. Once the Service receives the Form W-2c or the Form 4852 that lists the correct ITIN, and which matches the ITIN listed on the Form 1040, the return will be in processible form for purposes of section 6611(g). If the Service issues the refund within 45 days from the date the return is in processible form, the Service will not owe overpayment interest on the refund amount. If the Service issues the refund after 45 days from the date the return is in processible form, the Service will owe overpayment interest on the refund amount from the date the return is in processible form. I.R.C. § 6611(e).

Please call if you have any further questions.