



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

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL - AREA 2  
CC:SB:2:BAL

FROM: Assistant Chief Counsel  
(Administrative Provisions and Judicial Practice)  
CC:PA:APJP

SUBJECT: Filing of Hand Carried Returns - I.R.C. section 6091

This Chief Counsel Advice responds to your memorandum dated September 28, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

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

ISSUES

1. Whether an individual's income tax return was properly filed by hand-delivering it to the District Counsel's office for the district in which the individual lived?
2. Whether an individual's income tax return was properly filed if it was hand delivered to a secretary in the District Director's office for the district in which the individual lived?

## CONCLUSIONS

1. For purposes of triggering the period of limitations on assessment, returns are not considered as filed when they were hand delivered to a District Counsel's office.
2. An individual taxpayer may file a return by hand-delivering it to the District Director's office. In this case, however, the petitioner has provided little evidence to support the allegation that he hand delivered his tax returns to the District Director.

## FACTS

From [redacted] through [redacted] petitioner did not file any tax returns. Petitioner claims that, on [redacted], he hand carried two sets of returns for these years to IRS offices for the purpose of filing them. One set of returns was delivered on that date to the District Counsel's office, at that time located at 200 Saint Paul Street, Baltimore, Maryland. These returns were received, on [redacted], by a secretary in the District Counsel's office. The secretary who took the returns from petitioner wrote a receipt, copies of which are in the administrative files and in petitioner's possession.

Petitioner claims to have taken the second set of returns, on the same day, to the District Director's office, at that time located at 31 Hopkins Plaza, 6<sup>th</sup> Floor, Baltimore, Maryland. Petitioner contends that he arrived at the District Director's office and asked to meet with the District Director. Petitioner alleges that he was told that the District Director was at lunch, whereupon he gave the returns to a secretary and left. According to petitioner, the envelope was not labeled as containing tax returns.

Petitioner has provided no evidence to corroborate his claims regarding delivery of the returns to the District Director's office. The Internal Revenue Service (Service), however, has two sets of returns for the years at issue in the Tax Court case. One set was stamped as received by the Special Procedures Branch in Baltimore, Maryland on [redacted]. The returns in the second set bear a number of stamps from the Philadelphia Service Center, the earliest of which is a stamp with two notations. The first part of the stamp indicates "POSTMARK [redacted] [redacted] The second part of the stamp indicates "RECEIVED [redacted] ." There is a subsequent stamp indicating "IRS RECEIVED FROM DISTRICT [redacted] ."

During a Branerton conference, petitioner indicated that he believed that the returns bearing the stamp from the Special Procedures Branch were those that he delivered to the District Counsel's office. This would comport with the procedures followed by the District Counsel for handling of returns. At the same conference petitioner claimed that the other set of returns were the ones delivered to the District Director's office.

According to members of the District Director's staff in \_\_\_\_\_, as well as the former District Director himself, if tax returns had been delivered to the District Director or a member of his staff, they would have been sent to Examination for processing (barring something on their face that would warrant different routing). The process was that the envelope would be stamped as received and a routing slip stapled to the returns or to the envelope. No stamp would have been placed on the face of a return by the District Director or his staff unless the taxpayer requested it.

The Notice of Deficiency in this case was issued on \_\_\_\_\_, more than three years after the \_\_\_\_\_ date petitioner contends he delivered the returns to the District Director and, therefore, outside the general period of limitations on assessment if that date is the date of filing.

## ANALYSIS

### A. Issue 1 - Filing in the District Counsel office

For a taxpayer to secure the benefit of the limitations period on assessment under section 6501(a), there must be a "meticulous compliance by the taxpayer with all named conditions" to secure the benefits of a limitations period. Lucas v. Pilliod Lumber Co., 281 U.S. 245, 249 (1930). To meticulously comply with the conditions for commencing the running of the period of limitations, a taxpayer must file his return where section 6091 or the regulations promulgated thereunder require the return to be filed. Winnett v. Commissioner 96 T.C. 802 (1991). The pertinent regulation sections provide that an individual income tax return filer can hand carry a return to the District Director of the internal revenue district in which the individual lives.<sup>1</sup> See Treas. Reg. § 1.6091-2(d)(1) ("Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the internal revenue district of such director). . .").

If a taxpayer submits a return to an Internal Revenue Service representative other than one identified under the pertinent regulations specifying the proper place of filing, courts have held that the submission does not constitute "filing" for purposes of commencing the limitations period for assessing income taxes. See O'Bryan Bros. v. Commissioner, 127 F.2d 645 (6<sup>th</sup> Cir. 1942), aff'g 42 B.T.A. 18 (1940) (mailing of a return to an Internal Revenue Service agent does not constitute the filing of a return); W.H. Hill Co. v. Commissioner, 64 F.2d 506 (6<sup>th</sup> Cir. 1933), aff'g

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<sup>1</sup> Of course, the Service is no longer organized into districts and no longer has District Directors or District Counsel. At all times pertinent to the facts of this case, however, internal revenue districts, District Directors, and District Counsel were in existence.

23 B.T.A. 605 (1931) (hand delivery of a return to an Internal Revenue Service agent does not constitute the filing of a return). Similarly, because the regulations do not authorize taxpayers to file hand carried returns with District Counsel, the submission of returns to the District Counsel office does not constitute a filing for purposes of triggering the period of limitations on assessment. Furthermore, the court in In re Levert, No. 94-15171, 1994 Bankr. LEXIS 1888 (Bankr. N.D. Ohio Nov. 10, 1994), found that the act of delivering returns to District Counsel which were then forwarded to the District Director did not constitute a filing. Finally, even if the District Counsel's forwarding of the returns to Special Procedures could constitute a filing, Special Procedures did not receive the returns until \_\_\_\_\_, which is within three years prior to the mailing of the statutory notice of deficiency which suspends the running of the limitations period on assessment. I.R.C. § 6503(a).

#### B. Issue 2 - Filing in the District Director's office

We believe that the regulations specifying filing with the District Director do not require the taxpayer to hand the document to the District Director personally. Instead, we believe it sufficient for a return to be given to a secretary in the District Director's immediate office. We note that at least one court has read the regulations to direct that hand carried returns be filed at the office of the District Director, rather than with the District Director personally. See In re Levert, *supra*. Moreover, that reading is consistent with the legislative history of the 1966 amendment to section 6091, which repeatedly refers to filing in the District Director's office (via hand carrying) as an alternative to filing with a Service Center. S. Rep. No. 89-1625, at 805-806 (1966). Accordingly, if petitioner were able to show that he actually hand carried his returns to the District Director's office and left them with a secretary, those facts would qualify as a filing.

In the present case, however, it does not appear that the petitioner can substantiate his allegations. A long line of cases has established that the running of the statute of limitations on assessment requires the taxpayer to prove the date of the filing of a return. See United States v. Gurley, 415 F.2d 144, 147 (5th Cir. 1969); Young v. Commissioner, 208 F.2d 795 (4th Cir. 1953), *aff'g* No. 33,830 (T.C. Memo.1953); BJR Corp. v. Commissioner, 67 T.C. 111, 119 (1976). Where there is a question as to whether the return was filed, the records of the Service are an item of evidence. See, e.g., Parker v. Commissioner, 365 F.2d 792, 800 (8th Cir. 1966); BJR Corp. v. Commissioner, *supra* at 121. The absence of an entry on such record is evidence of the nonoccurrence of an event ordinarily recorded. Fed. R. Evid. 803(10); see United States v. Johnson, 577 F.2d 1304, 1312 (5th Cir. 1978); United States v. Harris, 551 F.2d 621, 622 (5th Cir. 1977); United States v. Lanier, 578 F.2d 1246, 1255 (8th Cir. 1978); United States v. Zeidman, 540 F.2d 314 (7th Cir. 1976).

Here, records that the District Director's office would ordinarily create upon the filing of a return are nonexistent. Petitioner has no receipt for his return. The envelope which contained the returns was not stamped. There was no routing slip stapled to either the returns or the envelop. Additionally, no member of the District Director's staff could verify the petitioner's allegations. All these facts support the conclusion that the petitioner did not actually hand carry his returns to the District Director's office as he alleges.

Please contact us if you have any further questions.

CURTIS G. WILSON

By:

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