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[Third Party Communication:

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Release Date: 11/21/2025

From: [REDACTED]

Sent: Monday, September 16, 2024 3:59:58 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Question - Sections 6011 (general requirements of a return, incomplete returns, & amended returns)

Hi [REDACTED],

Thanks again for taking the time to touch base this morning. Our response and analysis of the issue is below -- if you have any other questions don't hesitate to reach out.

Best,
[REDACTED]

Issue and Summary Conclusion

Does the Taxpayers' original [REDACTED] Form 1040, consisting of pages 1 and 2, submitted by their tax preparer [REDACTED] with the stamp "Copy" and stamped received by the Service on [REDACTED], constitute an original and valid return?

Under the well-known four-prong test laid out in *Beard v. Commissioner*, the [REDACTED] Form 1040 does arguably constitute a valid return. Most significantly, although the form is clearly marked as a "Copy," recent Tax Court jurisprudence supports the position that it "purports to be a return," although this is likely to be a point of contention among the parties. Additionally, for the Form 1040 to constitute a valid return, the pages 1 and 2 included must be sufficient to calculate the Taxpayers' tax liability, without the later provided Schedule E.

Factual Background

The Service purportedly sent married taxpayers [REDACTED] ("Taxpayers") a Form CP80 indicating that their Tax Year [REDACTED] return had not been received; it does not appear that a copy of this CP80 has been retained. In response, on or around [REDACTED] Taxpayers' tax preparer, [REDACTED], submitted a letter to the Service claiming that their Form 1040 had already been filed on [REDACTED] after several extensions. The letter included a purported photocopy of pages 1 and 2 of the Taxpayers' Form 1040, indicating "Married Filed Jointly"; it was signed by both of the Taxpayers and dated [REDACTED]. The [REDACTED] Form 1040 was submitted with the stamp "Copy" affixed. This [REDACTED] Form 1040 was stamped as received by the [REDACTED]

Service on . This Form 1040 listed approximately in total income, almost all of which (approximately) was listed as repatriation income under I.R.C. § 965. On , the Service received a payment in the amount of . The total remittance agreed with the tax due on the Form 1040. On the same date, a “duplicate return” had been posted on the Taxpayers’ account.

Subsequently, given that only pages 1 and 2 of the 1040 had been submitted by , the Service requested additional materials, including Schedule E and other supporting forms/schedules. On , the Service received another Form 1040 for the Taxpayers for Tax Year . This Form 1040 also included the filing status of “Married Filed Jointly,” and it was signed by both spouses and dated . It was stamped received by the Service () on . This Form 1040 included identical amounts of income, tax, payments and amounts due as the earlier Form 1040. The Taxpayers’ account transcript reflects that an “amended return” was received on .

In the interim, however engaged a new tax representative, , who began submitting filings independently from . Notably, in , submitted a Form 1040X for Tax Year , dated , in the name of . It was stamped as received by the Service on . This Form 1040X sought to change the filing status from Married Filing Jointly to Married Filing Separately, and removed the section 965 deemed repatriated foreign income of originally reported, claiming that the 965 income was attributable to the and her income would be computed separately. A similar return was submitted on ’s behalf.

At first, sought to amend the original filing, but then took the position that there was no original filing since the Taxpayers’ tax account failed to post any return. They further claim that the original Form 1040 did not constitute a “duly filed” return, on the basis of a letter from the Service requesting wet-ink signatures on the return . contends that the original Forms 1040 were those filed with the Service in by (with filing status of MFS and no section 965 income). It is not clear if is aware that the Service is in receipt of the Form 1040 (MFJ), signed by both Taxpayers. It is not clear if the original preparer, , was aware of ’s involvement when she submitted the filings substantiating the original MFJ return.

Analysis

Whether the Form 1040 constitutes a valid “return” is governed by the 4-prong test laid out in *Beard v. Comm’r*, 82 T.C. 766 (1984), aff’d, 793 F.2d 139 (6th Cir. 1986), whereby a document must meet the following criteria: “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.” *Id.* at 777.

The third prong is easily met. ’s letter was sent in response to the Service’s CP80 notice, and includes the Form 1040 in a seeming attempt to satisfy/confirm her client’s filing requirements. As for the fourth prong, the Form 1040 was signed by both Taxpayers (which they do not account for in their contrary position, seemingly unaware of the signatures). As to the first prong, although Taxpayers only submitted pages 1 and 2 of their Form 1040, and later submitted the requested Schedule E, it is likely that the original submission was sufficient. See *McCaskill v. Commissioner*, 77 T.C. 689, 696-97 (1981) (“It

is often stated that a document constitutes a valid tax return if it contains sufficient data from which respondent can compute and assess a tax liability” (internal quotations omitted). Accordingly, Taxpayers can meet this element if the information submitted by pages 1 and 2 of their 1040 is enough for the Service to compute their tax liability.

Second Prong – “Purports to be a Return”

Application of the second prong is more complex in this case, given that the submitted Form 1040 was a photocopy of the (purportedly) previously filed 1040, and clearly marked “Copy” at the time it was submitted to the Service. In _____’s letter, she claimed that the Taxpayers’ Form 1040 had already been filed, and attached the photocopy as support of that statement.

The Tax Court addressed a similar situation in *Kestin v. Commissioner*, 153 T.C. 14 (2019). In *Kestin*, the taxpayer challenged various frivolous return penalties under IRC 6702(a) that the Service had assessed on the basis of the taxpayer’s submission of photocopies of her Form 1040X (the original of which the Service knew it had already been received). As in this case, the photocopies were clearly marked as copies. In considering the taxpayer’s challenge, the court considered whether the photocopies “purported to be returns” under the second prong of the *Beard* test. (The court further noted that assessment of the penalty under 6702(a) did not require satisfaction of all the *Beard* criteria, but only that the document “purport to be a return,” a distinction from these circumstances.) Noting that the taxpayer “did not request action on the photocopy itself” but rather “asked the IRS to process and honor the original Form 1040X.” the court held that the Taxpayer’s “plainly marked photocopies sent to the IRS with her letters did not purport to be tax returns.” *Id.* at *25-28.

Notably, however, in a footnote the *Kestin* court opined:

This is not to say that a copy of a purported return may never be subject to a penalty under section 6702(a). For example, the IRS may have received information about an individual's income or withholding and yet have no record of having received a return from the individual. If the IRS notifies the individual that no return has been received, and *if the individual responds with a copy of a purported return that he claims to have previously filed and on which copy he relies to report his income*, then we do not rule out the possibility that the copy might constitute a purported return of tax for purposes of imposing a frivolous return penalty.

Id. at *28 n. 6 (emphasis added).

Here, the document is also a plainly marked photocopy of the Taxpayers’ Tax Year _____ Return (MFJ), submitted by tax preparer _____. In her _____ letter accompanying the photocopy, _____ disagrees with the prior CP80 notice that the _____ return had not been received, stating that the MFJ return had been filed on _____, and stating that a copy of the signed return was included with the letter. She further states:

Given these circumstances, under *Kestin*’s reasoning, the _____ MFJ return received _____ could be considered to “purport to be a return” under the *Beard* test’s second prong. Unlike in

Kestin, here the Service had no record of a previously filed original return, and notified the Taxpayers as such, in response to which submitted the photocopy (arguably “requesting action” on the submitted copy). These circumstances are closer to the scenario described in *Kestin*’s footnote quoted above.

Indeed, the Tax Court later reached a similar conclusion in substantially similar circumstances, where petitioner submitted a copy of her Form 1040 after learning the Service had no record of it. *See Smith v. Commissioner*, T.C. Memo. 2021-29, 2021 WL 915611 (Mar. 10, 2021). The court held that the copy “purported to be an income tax return” under *Beard*:

The June 26 letter (1) states petitioner’s assumption that the 2008 Form 1040 had been lost or misplaced, (2) represents the 2008 Form 1040 copy No. 1 to be a copy of the 2008 Form 1040, and (3) asks for “a full and complete refund within 30 days” of the overpayment evidenced by that copy. Undoubtedly, petitioner understood that respondent would make no refund of any overpaid 2008 tax without a 2008 tax return, and we assume that she sent him the 2008 Form 1040 copy No. 1 to obtain such a refund. Because the copy was presented to respondent in order to induce him to make a refund of tax, it purported to be a return of tax.

Id. at *10 (distinguishing *Kestin*, and noting that “the 2008 Form 1040 copy No. 1 was not merely a reference copy of a prior return, marked as such and on which petitioner expected no action”).

Accordingly, in this case, recent Tax Court decisions support a position of deeming the photocopy Form 1040 as “purporting to be a return.”

