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Office of Chief Counsel
Internal Revenue Service

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memorandum

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DBAuclair

date: OCT 3 1997

to: Associate District Counsel, Salt Lake City
CC:WR:RMD:SLC

from: Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

subject: Significant Service Center Advice Request:
Processing Returns with Forged Signatures

This responds to your memorandum of June 30, 1997. You asked for our views on the request from the Ogden Service Center concerning the processing of joint returns where one spouse claims not to have signed the return or authorized the signing of the return.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in Paragraphs III.D.4 and IV.A.5 of Chief Counsel Notice N(35)000-143. This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

ISSUE

Whether section 6064¹ creates an irrebuttable or conclusive presumption that an individual whose name is "signed" to a return actually signed the return.

¹ Unless otherwise indicated, all section references are to the Internal Revenue Code and the regulations thereunder in effect as of the date of this memorandum.

CONCLUSION

Section 6064 creates only a rebuttable presumption that an individual whose name is "signed" to a return actually signed the return. Because it seems to assign a higher administrative weight to the section 6064 presumption, Internal Revenue Manual (IRM) 3(15)(129)8.4 should be modified.

FACTS

The Ogden Service Center questions the IRM procedures for processing taxpayers' claims that their signatures were forged (i.e., the signature is not theirs and they did not authorize the signing of the return on their behalf) on purported joint returns. These taxpayers request the service center to disregard the purported joint return and relieve the taxpayers of liability on the return. As discussed below, section 3(15)(129)8.4 of the IRM instructs service center personnel to deny these claims and to accept the allegedly forged signatures as genuine. Since this IRM provision applies to all service centers, the processing problems that Ogden cites are probably systemic problems.

DISCUSSION

In general, section 6013(a) allows a husband and wife to file a joint income tax return, even though one of the spouses has neither gross income nor deductions. A joint return must be signed by both spouses or by an agent of one or both spouses. Sections 1.6013-1(a)(2) and 1.6012-1(a)(5) of the Income Tax Regulations. If a joint return is made, the tax shall be computed on the aggregate income, and the liability with respect to the tax will be joint and several. Section 6013(d)(3). Whether or not a joint return has been filed is a question of fact, the answer to which rests upon a determination of the intent of the taxpayers.² Heim v. Commissioner, 251 F.2d 44, 46 (8th Cir. 1958).

In pertinent part, section 6064 states that the fact that an individual's name is signed to a return will be prima facie evidence for all purposes that the return was actually signed by the individual. Use of the phrase "for all purposes" indicates that this rule applies to administrative determinations as well as judicial proceedings.

² Courts have also recognized that there can be a joint return even if one spouse does not sign the return. See Hennen v. Commissioner, 35 T.C. 747 (1961). Under this so-called "tacit consent" rule, spousal authorization is inferred when the spouses intend to file a joint return. Id. at 748.

Prima facie evidence is evidence sufficient to establish a fact and if not rebutted or contradicted will remain sufficient. BLACK's LAW DICTIONARY 1190 (6th ed. 1990) (emphasis added). In interpreting section 6064, the Tax Court has held that this provision merely creates a rebuttable presumption. Hennen v. Commissioner, 35 T.C. 747, 748 (1961). Therefore, whether it is applied in an administrative or judicial setting, section 6064 creates only a rebuttable presumption that an individual whose name is "signed" to a return actually signed the return. Until the Service receives information to the contrary, the Service may presume the taxpayer signed the return. However, if presented with sufficient evidence to the contrary, the Service can no longer rely upon the presumption that the taxpayer signed a return.

Section 3(15)(129)8.4 of the IRM (entitled "Joint to Separate, Single, or Head of Household") instructs service centers how to apply section 6064 to claims that a signature on a joint return is forged. Subsection 4 states:

If one signature [on a purportedly joint return] is claimed to be a forgery:

- (a) Request the original return.
- (b) Disallow the claim and include a copy of the Form 1040 signature line, if available.
- (c) Include this statement in the disallowance: "The IRS takes no position on the issue of forgery. Internal Revenue Code 6064 states, ". . . the fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him." In accordance with IRC 6064, we presume the signature to be authentic and that this is a civil matter between the taxpayers.

The IRM provision directs the service centers to reject taxpayers' claims that their signatures on purported joint returns were forged. Rejection is mandatory even if a service center is presented with compelling evidence of forgery. In effect, the IRM provision treats the section 6064 presumption as irrebuttable or conclusive. The IRM interpretation is erroneous.

The IRM treatment creates several problems. If a purported joint return is not genuine, the taxpayers' correct tax liability is not reflected on the return. Therefore, by ignoring evidence of forgery, the Service would be ignoring information that a taxpayer did not pay the correct amount of tax for the year involved. Further, by disallowing a taxpayer's claim of forgery, the Service is inviting legal action by the taxpayer to challenge the genuineness of the joint return. In such an action, once the presumption under section 6064 is rebutted, the

