



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

CHIEF COUNSEL

June 1, 2001

Number: **200201001**
Release Date: 1/11/2002
CC:PA:APJP:1
WTA-N-112858-01
UIL: 6013.03-00

MEMORANDUM FOR ASSOCIATE AREA COUNSEL, SBSE6
CC:SB:6:HOU:1:GL
Attn: Marilyn S. Ames

FROM: Curt G. Wilson, Assistant Chief Counsel
Administrative Provisions & Judicial Practice Division
(Procedure & Administration)

SUBJECT: Significant Service Center Advice

This Chief Counsel Advice responds to your memorandum dated March 1, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

If a taxpayer files an amended return seeking to change his or her marital status from married to single or head of household, what type of supporting documentation should the Service Center require?

CONCLUSION

Such situations should be reviewed on a case-by-case basis to determine whether the taxpayer has provided adequate documentation; no particular category of documentation should be regarded as essential.

FACTS

Your memorandum raises the following situation: individuals file a joint federal tax return as "married", but in fact are not married under applicable state law. This could occur, for example, if the person who presides over the "marriage" ceremony is not authorized under state law to conduct weddings. One or both of the individuals then files an amended return listing his or her marital status as "single" or "head of household".

DISCUSSION

Law

As you note, section 6013 of the Code generally entitles a husband and wife to file a joint return of income tax. See also *Amaro v. Commissioner*, 29 T.C.M 914, 916 (1970) (“... only a couple legally married can avail themselves of the benefits of section 6013”). Marital status for purposes of entitlement to file a joint return is determined on the last day of the taxable year (assuming the individuals are both living on that date and have the same taxable year). Section 6013(d), Treas. Reg. § 1.6013-4(a). State law governs this question of whether individuals are in fact married as of the final day of a particular taxable year. *Chap v. Commissioner*, 23 T.C.M. 132 (1964); *Untermann v. Commissioner*, 38 T.C. 93 (1962).

The Service addressed the following situation in a 1976 revenue ruling: A & B were married in 1975 and filed a joint tax return for 1975 on April 15, 1976. A state court annulled the marriage on April 16, 1976, stating that no valid marriage ever existed. The Service concluded that in light of the court’s decision, A & B were single individuals as of December 31, 1975. Accordingly, the Service concluded, they must file amended federal income tax returns for 1975 to reflect their unmarried status. Rev. Rul. 76-255, 1976-2 C.B. 40.

Similarly, the Tax Court has held that following an annulment, taxpayers may be entitled to amend prior year returns to replace “married” status with “single” status. See, e.g., *Wilson v. Commissioner*, 35 T.C.M. 1276 (1976) (held, where a marriage was declared a nullity by a state court in 1973, the taxpayer was entitled to report her 1966 and 1967 tax liability on an individual return basis).

Documentation Issues

The situation you pose -- a legally flawed marriage ceremony -- raises different documentation issues for taxpayers than an annulment. In the case of an annulment, the wedding ceremony typically could have produced a binding marriage were it not for some other, external matter (fraudulent conduct by one of the individuals, for example). Because the ceremony itself was not flawed, taxpayers often must initiate a court action if they wish to invalidate the marriage. The resulting court decree will provide the taxpayer with documentation for purposes of requesting that the Service change the taxpayer’s filing status from married to non-married. In your situation, by contrast, the taxpayers may not have initiated annulment proceedings. Instead, they are attempting to show the Service that their wedding ceremonies were invalid, or that they failed to observe another absolute requirement such as obtaining a marriage license.

Therefore, they may lack the type of conclusive documentation produced by an annulment proceeding.

Nevertheless, the Internal Revenue Manual contemplates the situation you have posed, in I.R.M. 21.6.1.4.8. That section states in effect that if a single taxpayer files a joint return and subsequently seeks to file on an individual basis, the Service should honor that request if the taxpayer satisfies two conditions. First, the taxpayer must provide “verification, such as court documents, showing the marriage was not valid for the tax period involved”. Secondly, the taxpayer must provide certain allocations of income, credits and other items. Similarly, as you noted in your memorandum, the Manual states in I.R.M. 21.6.3.4.2.7.11 that taxpayers seeking to change filing status from “married” to “head of household” on the basis of an invalid marriage must submit “marital status documentation, such as a Dissolution of Marriage”. See *also* I.R.M. 21.6.1.4.6 (citing 21.6.1.4.8 as providing an exception to the general rule that a joint return cannot be replaced with a separate, single or head of household return).

In both sections cited above addressing invalid marriages, the Manual states that taxpayers must provide documentation “such as” court records to show they are not married for the relevant year. See I.R.M. 21.6.1.4.8 and 21.6.3.4.2.7.11. Thus, the Service can accept documentation other than court records. In the type of situation you have posed, each case should be reviewed individually to determine if the taxpayer has produced adequate documentation of non-married status. This documentation could consist of a declaratory judgment from a court that no valid marriage has occurred, since it appears that courts in at least some states can issue such judgments. See, *e.g.*, Mass. Ann. Laws ch. 207, § 14 (Law. Co-op. 1994); Va. Code Ann. §§ 20-89.1, 20-90 (Michie 2000) .

Alternatively, for example, the taxpayer could submit an article from a reliable newspaper establishing that a “marriage ceremony” in which the taxpayer participated was invalid under applicable state law. This might occur, for example, if the individual who conducted the ceremony had no authority to do so. In reviewing each situation, Service personnel should be mindful of the fact that the Service “has not only the right but the duty of determining whether a man and woman who file a joint return are, in fact, legally married and entitled to file such a return”. See *Untermann v Commissioner*, 38 T.C. 93 (1962).

Common Law Marriages

As you note in your memorandum, of course, even individuals who participate in invalid wedding ceremonies may be considered married at some point under state law. If a state recognizes common law marriage, individuals who meet the requirements for such marriages are deemed married regardless of whether they participated in a valid ceremony.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

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

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