When Is a Return Considered Filed?

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In *Seaview Trading, LLC v. Commissioner*,[i] a three-judge panel of the Ninth Circuit Court heard an appeal from the Tax Court, which tasked the court with deciding when a return is considered "filed"—establishing a starting point for the statute of limitations countdown for assessments.

A return is generally considered to have been filed if it meets the following:

1) It must purport to be a return.
2) The information is sufficient for the Internal Revenue Service (IRS) to calculate the tax liability.
3) The return makes an honest and reasonable attempt to comply with tax laws.
4) It is signed under penalty of perjury. This is known as the *Beard* test.[ii]

California-based Seaview Trading, LLC, classified as a partnership for federal tax purposes, believed that it had timely filed its 2001 partnership return (Form 1065) in July 2002. Under §7502, a return is generally considered timely filed (even if the IRS receives it after the original or extended due date) if the return is properly mailed in the United States (with the appropriate address and postage) and postmarked prior to the due date. The *Seaview*[iii] case exemplifies why it is crucial that filings be sent via certified mail and such records kept.

In 2005, Seaview received a letter from an IRS revenue agent indicating that the IRS had no record of the filed return. Upon receiving the letter, the partnership's accountant responded via fax with a signed copy of the return. A month later, Seaview received notification that the IRS was examining the return. The *Beard* test does not specifically address returns that are faxed. It should be noted that there is a case concerning electronic filing and rejected returns in which the Tax Court ruled against the IRS.

In July 2007, the partnership's counsel mailed another signed copy of the partnership return and certified mailing receipt to an IRS attorney. In October 2010, the IRS issued a final partnership administrative adjustment (FPAA)—more than three years after the return was faxed and later mailed to the IRS attorney. The IRS took the position that the FPAA was timely as the return was never filed in accordance with requirements in Treas. Reg. §1.6031(a)-1(e)(1), which states that a return must be filed with the service center prescribed in the relevant IRS revenue procedure, publication, form, or instructions to the form.

The Tax Court sided with the IRS, finding that when the Seaview accountant faxed a copy of the signed return in response to the revenue agent's letter, and later when Seaview counsel mailed a copy of the signed return to an IRS attorney, this did not constitute the filing of a tax return. Seaview and the IRS agreed to settle their disputes, but Seaview's right to appeal was maintained.

In the Ninth Circuit Court ruling, two judges agree with Seaview, while one dissents. Judge Bumatay, clearly sympathetic to Seaview, quickly points out inconsistencies with the IRS, stating:

> *"Imagine you get a letter from an Internal Revenue Service official saying that the IRS never received the tax return you thought you filed four years ago. In response, you fax a copy of your return to the IRS official. Two years go by, you then talk with an IRS lawyer, who again asks you for the same return. After that conversation, you send another copy of the return. Three more years pass. You then get a notice that the IRS has decided to adjust your tax liability. The result: you owe the IRS a lot more money. How can this be?—you ask. The IRS normally has only three years to adjust your taxes after you've filed your return. Not so fast, says the IRS. The two times you sent copies of the return to its officials didn't count. You never mailed a return to an IRS service center; so, the return was never 'filed.' And since you never 'filed' a return, the IRS explains that it can still come after you at any time."*

The majority finds that the regulations do not govern whether a late return was filed:

> *Section 1.6031(a)-1(e) doesn't expressly establish how taxpayers are to file delinquent returns. Nothing in the text says that the time and place requirements apply to untimely returns. Indeed, by definition, if a taxpayer files a return after April 15, the taxpayer can't comply with § 1.6031(a)- 1(e) since the regulation specifies that date as when the return "must be filed." (26 C.F.R. § 1.6031(a)-1€(2)). So, at most, the regulation is silent on filing procedures for late returns. (33)*[iv]

The court finds no regulation that prevented the filing of a tax return with an IRS official who had requested the return. The IRS itself conceded that there is more than one place where a return can be filed. The majority finds that the ordinary meaning of filing should be used since the regulations fail to define the term in this context, holding:[v]

> *Based on the ordinary meaning of "filing," we hold that a delinquent partnership return is "filed" under §6229(a) when an IRS official authorized to obtain and process a delinquent return asks a partnership for such a return, the partnership delivers the return to the IRS official in the manner requested, and the IRS official receives the return.*

The majority admits these documents are not necessarily binding on the IRS but uses them to support the idea that even the IRS views filing as including cases where returns are delivered to IRS agents. It is pointed out that the internal procedures of the IRS and its position in this litigation conflict: On one hand the IRS wants to direct taxpayers to submit returns to authorized officials, but they maintain the power to decide when they are "filed" for statute of limitations purposes.

The majority opinion notes that the IRS encourages returns to be filed with IRS agents and other employees in various internal IRS guidance and chief counsel advice. The majority states that an agent cannot compel a taxpayer to file his or her return with the agent. However, it goes on to say that it may be in the taxpayer's best interest as a revenue officer will not enter into an installment agreement if all returns are not filed.

Judge Bade, in her 52-page dissent, states that the Tax Court decision is correct, noting that Seaview maintained that it had filed the return, but acknowledges it cannot show proof—this simple fact should end the inquiry, and the Tax Court ruling should be affirmed.[vi]

The IRS has the option to request a rehearing of this case by a larger panel of the Ninth Circuit. If they do not do this, or if the Ninth Circuit declines to review the case with a larger panel, then it will be binding in only the Ninth Circuit.

[i] Seaview Trading, LLC v. Comm'r of Internal Revenue, *34 F.4th 666 (9th Cir. 2022)*

[ii] Beard v. Comm'r of Internal Revenue, *82 T.C. 766, 82 T.C. 60 (1984)*

[iii] Seaview Trading, LLC v. Comm'r, *T.C. Memo. 2019-122*

[iv] *26 CFR §1.6031(a)-1 - Return of partnership income*

[v] *Fowler v. Comm'r, 155 T.C. No. 7 (2020)*

[vi] *26 U.S. Code §7502*

Josh Youngblood, EA, began his business career over 25 years ago, starting his first company at age 15. After providing bookkeeping and tax services to clients for several years, Josh decided to further his study and decided to become an enrolled agent (EA). Josh then created The Youngblood Group and, since its inception, Josh has had many wonderful opportunities to help small businesses navigate business challenges during a global pandemic. When Josh is not helping clients and reading the tax code, he enjoys spending time with family, traveling, and all facets of technology.