

Substitute Returns

1
2 **MR. SCHULZ:** All right, thank you. We will begin with a line of inquiry on what we call
3 6020(b) substitute returns.

4 **MR. HANSEN:** This area of inquiry will, with the assistance the following series of
5 questions, we will prove that when an American stands up for his rights by choosing not to file tax
6 returns, the IRS has to violate the law and produce a fraudulent assessment to create a liability. We
7 already covered some of that earlier; we are going to expand upon it now.

8 **MR. SCHULZ:** We just remind the panel members that they are still under oath.

9 **MR. HANSEN:** Okay. Under affidavit, Exhibit 190, John Turner, a former IRS revenue
10 officer, submits training materials that comprise two of the many lessons he studied during his
11 initial training to become a revenue officer. During Revenue Officer Phase One Training,
12 designated as Exhibit 191, the first lesson is entitled Lesson 23, Section IRC 6020(b). The next 16
13 questions will arise from an inspection of this lesson. The question 301 --

14 **MR. TURNER:** Excuse me. If you'll permit me, I need to set this up just a little bit for the
15 questions so that they will make sense to people. Fortunately we just had several minutes of
16 exposure of question and answers to the treatment of dummy returns, substitute for returns,
17 6020(b); so this is right along the same topic. I want to emphasize that these documents that I am
18 providing here, several of them were straight out, they were handouts provided to me as a trainee
19 when I first started. And the first lesson is exactly on 6020(b) of the second lesson and you will be
20 quered as to when we move there. It's on referrals, substitute audit referrals. And so, these first
21 questions will be strictly on 6020(b) of the code.

22 **MR. HANSEN:** Question 301. On page 23-1 under references Circular E, Circular E is

1 listed. Would you agree besides Circular E, there are no other reference materials listed?

2 **MR. TURNER:** Yes. Under references the training material for this class on 6020(b),
3 there's no mention of the statute; there is no Internal Revenue Manual. What the revenue officer
4 trainee is supposed to pay attention to here in this lesson on 6020(b) is a reference material called
5 Circular E. And Circular E will be mentioned here in just a second.

6 **MR. SCHULZ:** Is it true that Circular E more fully known as Circular E Employers Tax
7 Guide is also designated by IRS as Publication 15 and would you agree that Circular E deals
8 essentially with employer withholding requirements, and Form 941, Employers Quarterly Federal
9 Tax Return?

10 **MR. TURNER:** I would agree; and as you inspect just the cover which is what I submitted
11 in evidence rather than the whole document, you can see the table of contents listed there; the title,
12 the publication number and all of the references are to employers quarterly withholding of
13 employees' pay. There is no mention of anything that pertains to income tax or 1040s or any of the
14 like.

15 **MR. SCHULZ:** Is it true that in Lesson 23 on page 1 under contents, three types of tax
16 returns are listed: Employment Tax Returns, the Partnership Return and Excise Tax Returns.
17 Would you agree that Income Tax Returns are not included?

18 **MR. TURNER:** I would agree. That's the only thing that under contents for the objectives
19 of this lesson apparently are the Employment Tax Returns, Partnership and Excise Tax Returns.

20 **MR. SCHULZ:** In question 304, in Lesson 23 on page 1 under introduction; would you
21 agree that the purpose of this Lesson 23 is to instruct the revenue officer trainee about how to deal
22 with situations involving the occasional taxpayer who refuses to voluntarily file returns using an
23 important and administrative tool referred to as 6020(b), as the 6020(b) procedure?

1 **MR. TURNER:** I would agree; that's pretty much the language as it is on that piece of
2 evidence.

3 **MR. SCHULZ:** Would you agree that in Lesson 23, Figure 23-1, on page 2 is a reprint of
4 Internal Revenue Code Section 6020(b) and the regulation at Section 301.6020?

5 **MR. TURNER:** I would agree. They are telling the revenue officer trainee on this page that
6 here's the section of the law that this applies to and here's the regulation that goes with it.

7 **MR. SCHULZ:** And would you agree that in Lesson 23, also Figure 23-2 on page 3,
8 contains a reprint of the delegation order 182 and would you agree that the order lists revenue
9 agents and revenue officers as having delegated authority to execute returns under the authority of
10 6020(b)?

11 **MR. TURNER:** I completely agree and what this means is that employees have to have
12 delegated authority to do the things that they do. And certainly that would include something
13 serious like making and preparing a tax return when a taxpayer didn't prepare one themselves. As
14 you can see here, this delegation order spells out very specifically what employees have the
15 authority under 6020(b) to make a return.

16 **MR. SCHULZ:** On question 307, would you agree that the Internal Revenue Manual
17 restricts the broad delegation of delegation order number 182 to employment, excise and
18 partnership taxes?

19 **MR. TURNER:** I would agree. As you can see on page 23-3, submitted as evidence, which
20 is part of this training material, that's exactly what it says on that page. In fact, the manual itself is
21 showing evidence that the IRS understands that this has been restricted and limited to certain
22 people.

23 **MR. SCHULZ:** Would you also agree that the secretary has recognized that the delegation,

1 authority of delegation order number 182 is restricted to employment, excise and partnership taxes
2 because of constitutional issues?

3 **MR. TURNER:** If you look on this lesson, which was given to me as a revenue officer
4 trainee, you will see in parentheses you have already, or excuse me, the IRM restricts the broad
5 delegation shown in figure 23-2 to revenue officers to employment, excise and partnership tax
6 returns because of constitutional issues.

7 **MR. SCHULZ:** Is that exhibit on the screen? Do you have the exhibit?

8 **MR. TURNER:** I have it right here. It should be.

9 **MR. SCHULZ:** It will be in the database. Is it true that the Internal Revenue Manual lists
10 the following tax returns: Form 940, Employers Annual Federal Unemployment Tax Returns. Form
11 941, Employers Quarterly Federal Tax Return. Form 942, Employers Quarterly Tax Return for
12 Household Employees. Form 943, Employers Annual Tax Return for Agricultural Employees.
13 Form 720, Quarterly Federal Excise Tax Return. Form 2290, Federal Use Tax Return on Highway
14 Motor Vehicles. Form CT-1, Employers Annual Railroad Retirement Tax Return. Form 1065, U.S.
15 Partnership Return of Income, as being appropriate for action under 6020(b)?

16 **MR. TURNER:** I would agree. I can verify that.

17 **MR. SCHULZ:** Would you agree that Form 1040 U.S. Individual Income Tax Return, is
18 not included in Internal Revenue Manual 5.18.2.3 as a return appropriate for action under Section
19 6020(b)?

20 **MR. TURNER:** Those returns that are generally prescribed by IRS as coming under the
21 purview of 6020(b) are listed in several pages in the Internal Revenue Manual and there is no 1040
22 listed.

23 **MR. SCHULZ:** Is it true that when recommending assessments under 6020(b), the revenue

1 officer will prepare all necessary returns?

2 **MR. TURNER:** That's correct.

3 **MR. SCHULZ:** Would you agree that the balance of Lesson 23 for Revenue Officer Phase
4 One Training explains that 6020(b) procedures for computing the tax for employment, excise and
5 partnership returns?

6 **MR. TURNER:** Yes, I would. I want to go back to question 311 and emphasize that the
7 language prepare and returns are there. So in other words, they are actually talking about preparing
8 a return and there seems to be not a clear definition of what is a return in the Internal Revenue
9 Code. So my point here is just that the IRS in this training document is saying that under 6020(b) of
10 the code, the revenue officer will be authorized to prepare, actually prepare certain returns. There
11 might be a point later, but just in case I will go ahead and take this opportunity to say when I
12 prepared forms 941 or the other ones we listed here a minute ago, that would be in the case of an
13 employer who withheld money out of his employees' paychecks, did not turn that money over to
14 the government. He was basically holding that money in trust at that point in time. When he doesn't
15 file his Form 941 Quarterly Employment Tax Return, it's the job of the revenue officer to try to get
16 the return secured so that the tax assessment can be made. When I had occasion to do that, and I did
17 many, many times, I did not prepare anything called a substitute return. I did not prepare anything
18 called a dummy return. I prepared the return according to the language of the statute. I took a 941, I
19 put the entity information on it, that's all the address and name of the taxpayer, taxpayer ID. I filled
20 out the income information that I obtained not by hokus pokus, but by from personal knowledge
21 and I computed the tax. I also signed the return. I didn't sign it with the same jurat that the form
22 provides, but I used what the manual provided in the way of a jurat. I signed it. That return then
23 was considered a prepared return according to statute and sent to the -- if the taxpayer failed to sign

1 it at that point, it would be sent on to the Service Center for assessment.

2 **MR. HANSEN:** Does your ability to do that derive from IRC 1461, which we said was the
3 only place in the entire Subtitle A that made anyone liable for withholding on nonresident aliens?

4 **MR. TURNER:** No.

5 **MR. SCHULZ:** Would you agree that Lesson 23 does not contain any references to
6 preparing income tax returns under 6020(b)?

7 **MR. TURNER:** Yes. If you would look at all of the pages throughout the whole lesson
8 under this lesson, and I didn't submit all of the pages, but I have affirmed under affidavit that none
9 of the references are made to preparation of 1040 income tax returns or the such, income tax
10 returns.

11 **MR. SCHULZ:** This affidavit you're referring to, that's Exhibit 190?

12 **MR. TURNER:** Yes.

13 **MR. SCHULZ:** And do we have that in evidence? We sort of skimmed over it. Is that your
14 affidavit?

15 **MR. TURNER:** Yes.

16 **MR. SCHULZ:** And that's 3 pages?

17 **MR. TURNER:** Yes. I submitted that among other things to establish that these really were
18 materials that I received to be trained as a revenue officer on this lesson.

19 **MR. SCHULZ:** Would you agree that Lesson 23 makes the statement to a revenue officer
20 trainee, "You have already studied audit referrals as a means to enforce compliance on income tax
21 returns."?

22 **MR. TURNER:** Yes. On page 23-3, as we have just seen a moment ago, they have put in
23 parentheses, "You have already studied audit referrals as a means to enforce compliance on income

1 tax returns." So in other words, this lesson as it's listed on 6020(b), and then the person that puts
2 this lesson together established that the revenue officer clearly has delegated authority under
3 6020(b) and that the IRS recognizes generally that the returns that he has authority to prepare are
4 all those business master file returns, nowhere included is Form 1040 whatsoever, no income tax
5 returns. So they are telling us that we have studied another lesson to learn how to deal with people
6 who are nonfilers, people who don't file income tax returns.

7 **MR. SCHULZ:** That was question 314 at Exhibit 191c. Going on to 315. Would you agree
8 that the trainee is told that by the end of the lesson he will be able to identify situations when action
9 under the Internal Revenue Code Section 6020(b) is appropriate?

10 **MR. TURNER:** Yes. We are back to page 1, 23-1 of the lesson 6020(b) and it says
11 objectives: At the end of this lesson you will be able to identify situations when action under
12 6020(b) is appropriate. So, in other words, there must be times when action under 6020(b) is not
13 appropriate.

14 **MR. SCHULZ:** Question 316. Would you agree that if the revenue officer is expected to
15 identify situations when action under Internal Revenue Code 6020(b) is appropriate, logic then
16 would hold that this necessarily implies that the revenue officer would also be expected to identify
17 situations when an action under 6020(b) would not be appropriate? Would you agree that Lesson
18 23 made it clear that it is not appropriate to use 6020(b) for income tax Form 1040 nonfilers?

19 **MR. TURNER:** Yes, I would. If you look carefully --

20 **MR. SCHULZ:** There were two questions there. Which one are you answering?

21 **MR. TURNER:** I would agree that it made it clear that it is not appropriate to use 6020(b)
22 for Income Tax Form 1040 nonfilers.

23 **MR. SCHULZ:** Is it true that there are no training instructions within Lesson 23 that

1 pertain to using 6020(b) to prepare and assess Form 1040 U.S. Individual Income Tax Return?

2 **MR. TURNER:** Right. If you look at the entire lesson, you won't see any mention of
3 preparing 1040 income tax returns, except the reference to Lesson 25; that's where you will learn
4 how to do that.

5 **MR. SCHULZ:** Is it true that Lesson 23 points to Lesson 25 referrals for instruction on
6 dealing with income tax nonfilers?

7 **MR. TURNER:** Yes. Page 23-3, "You have already studied audit referrals as a means to
8 enforce compliance on income tax returns."

9 **MR. SCHULZ:** It is true the language of Internal Revenue Code 6020(b) 1 is very broad,
10 quote, "If any person fails to make any return," end quote. Does the IRS purport that there are ways
11 to resolve cases for nonfilers with different situations, different types of taxes and different types of
12 tax returns?

13 **MR. TURNER:** Yes, they do.

14 **MR. SCHULZ:** Does the Internal Revenue Service make a distinction in the procedures for
15 dealing with nonfilers of income tax returns as opposed to Employment, Partnership and Excise
16 Tax Returns?

17 **MR. TURNER:** Yes, they do. On page 25-1, it says "why this lesson is important." This is
18 the beginning of this lesson and it's called referrals. "In the course of working on your cases, you
19 will encounter situations where taxpayers neglect or refuse to file despite your efforts to secure the
20 tax returns. These nonfiler cases can be resolved by you in one of several ways." Plural.

21 "Preparation of Employment, Excise or Partnership Tax Returns according to the provisions of
22 6020(b). Referral to the Examination Division for income taxes, 1040 and 1120, or referral to the
23 Criminal Investigation Division, CID, for any nonfiler case involving fraud on the part of the

1 taxpayer."

2 **MR. SCHULZ:** Is it true that the Internal Revenue Service uses 6020(b) procedures to
3 enforce compliance of nonfilers of Employment, Excise and Partnership Tax Returns and uses
4 referral to exam procedures to enforce compliance of income tax nonfilers?

5 **MR. TURNER:** This is true, according to this document. They are clearly showing that
6 there are two different processes.

7 **MR. SCHULZ:** Do you agree that the stated focus of Lesson 25 referrals is the referral
8 process?

9 **MR. TURNER:** Yes, I do.

10 **MR. SCHULZ:** Do you agree that an objective of Lesson 25 is for the trainee to be able to
11 select which cases should be referred to the Examination Division?

12 **MR. TURNER:** Yes. Under lesson, objectives on this lesson, it says clearly "at the end of
13 this lesson you will be able to select those cases which should be referred to the examination
14 division," so we were not selecting cases for 6020(b); we are selecting cases to be referred under
15 substitute for return.

16 **MR. SCHULZ:** MR. Bodine, that was Exhibit 192A for question 323. And on 324,
17 Exhibit 191C. Do you recall that Lesson 23 made it clear that the revenue officer is not to use
18 6020(b) for enforcing compliance of income tax nonfilers but instead is to use the referral process?

19 **MR. TURNER:** Again, I will read from page 23-3, which is the lesson in 6020(b). "You
20 have already studied audit referrals as a means to enforce compliance on income tax returns."

21 **MR. SCHULZ:** Question 325. In Lesson 25 the reference materials to be used for the
22 lesson are listed under references and the lone item listed is Internal Revenue Manual 52 10-0. Do
23 you agree that there is no reference to any statute or any Internal Revenue Code section?

1 **MR. TURNER:** That's correct. If you look at that, you will see only a mention of Internal
2 Revenue Manual; no reference to your basis for doing it under the code.

3 **MR. HANSEN:** Would they have included a statute there if they had authority to do it?

4 **MR. TURNER:** Let me ask you; wouldn't you think that they would?

5 **MR. SCHULZ:** Question 326. In Lesson 25, under objectives, would you agree that the
6 trainee is told that after completing this lesson he will be able to select those cases, which should be
7 referred to the Examination Division?

8 **MR. TURNER:** Yes, I would, and I am looking for my --

9 **MR. SCHULZ:** 192C.

10 **MR. TURNER:** You're on 326, correct?

11 **MR. SCHULZ:** Yes.

12 **MR. TURNER:** Yes. As you can see, it clearly says right there what he is expected to
13 know when he gets completed at the end of this lesson and it simply says he will know how to refer
14 to exam.

15 **MR. SCHULZ:** MR. Turner, Lesson 25, pages 4 and 9, or 4 through 9 contain instruction
16 with examples showing the trainee how to complete referral forms. This section of the lesson on
17 the subject of making referrals to exam for income tax nonfilers. Included with the statement,
18 "Remember, refusal to file cases involving forms 940, 941, 942, 943, 720, 1065, 2290 or CT-1 will
19 not be referred to exam. These returns should be prepared under authority of Internal Revenue
20 Code Section 6020(b)." End quote. From this, IRC Section 6020(b) is to be utilized to enforce
21 compliance of specified business master file returns. In this lesson is there mention anywhere of the
22 statute that authorizes the Internal Revenue Service preparation of Form 1040 U.S. Individual
23 Income Tax returns?

1 **MR. TURNER:** This is the lesson where I was trained to deal with income tax nonfilers,
2 not 6020(b) for the business returns, and there is no mention here.

3 **MR. SCHULZ:** So the answer to this question is no?

4 **MR. TURNER:** That's right.

5 **MR. SCHULZ:** Question 329. Internal Revenue Code 6020(b)-1 is written in very broad
6 language and if taken literally, it seems to give authorization to IRS to make any return for any
7 person who fails to make one. However, we have seen how the statute is in fact restricted in its
8 application. Revenue officers and specified other Internal Revenue Service employees do have
9 delegated authority to make returns under 6020(b). But we have seen that the delegated authority
10 limits the types of returns that can be prepared under 6020(b). We have seen that the exclusion
11 includes income tax returns, corporate or individual. Since 6020(b) does not permit preparation of
12 income tax returns and since the SFR program is merely a program with no basis in law, what is the
13 authority for IRS to make an income tax return when a citizen fails to make his own?

14 **MR. TURNER:** I see no basis in law for that.

15 **MR. SCHIFF:** Can I just ask a question of John? When this lesson was given, were you in
16 a class with other revenue officers?

17 **MR. TURNER:** I was in a classroom on private property in October of 1997 -- 1987
18 through November of 1987 with approximately 50 other revenue officer trainees.

19 **MR. SCHIFF:** Did any revenue officer point out the fact that an income tax is not
20 mentioned anywhere in this lesson?

21 **MR. TURNER:** Apparently this escaped the attention of all 50 of us.

22 **MR. SCHULZ:** Thank you MR. Schiff and MR. Turner.

23 **MR. HANSEN:** Question 330. It is well settled in law that government employees need

1 proper delegated authority to operate in their capacities. Do IRS employees have delegated
2 authority to make substitute for returns?

3 **MR. TURNER:** I have seen no delegated authority for making anything called a dummy
4 return or a substitute for return. My answer to that is no. There is plenty of evidence for that. The
5 piece of evidence that's on the screen is a letter from IRS to a taxpayer where the taxpayer had
6 inquired about this and the salient part of this says, "delegation orders which authorize Internal
7 Revenue Service employees to create substitutes for returns do not exist." And I would just, I
8 would just remind you that they trained 50 of us in 6020(b), Lesson 23, and clearly they wanted us
9 to see that we had proper delegated authority under 6020(b) to prepare tax returns 941, 940, and et
10 cetera. No 1040.

11 **MR. SCHULZ:** MR. Turner, do you have page 82 of 83 of the questions in front of you?

12 **MR. TURNER:** Yes.

13 **MR. SCHULZ:** Would you read the statement at the bottom page 82 and top of page 83?

14 **MR. HANSEN:** Starting with phase one revenue under question 330.

15 **MR. TURNER:** My page number may be different.

16 **MR. HANSEN:** You need to go to question 330. Paragraph below question 330.

17 **MR. TURNER:** Thank you. You want me to do what, MR. Schulz?

18 **MR. SCHULZ:** There's a paragraph there that begins with the words "phase one revenue
19 officer."

20 **MR. TURNER:** Yes; you want me to read that?

21 **MR. SCHULZ:** Yes, and after you've read it, I would like to know whether you agree with
22 it.

23 **MR. TURNER:** Okay. Phase One Revenue Officer Training material, Lesson 23, entitled

1 IRC Section 6020(b) clearly demonstrates how and why 6020(b) in spite of its language is not able
2 to allow IRS to make proper, legally valid 1040 income tax returns for nonfilers. Yet another IRM,
3 Internal Revenue Manual, claims that IRS does have authority for income tax returns under
4 6020(b). Internal Revenue Manual 5480 states, quote, SCCB, and that stands for Service Center
5 Collection Branch, prepares forms 1040 under authority of Internal Revenue Code 6020(b). End
6 quote. Since both manuals cannot be correct, how can this be rectified? Answer: It cannot be
7 rectified for business master file returns under 6020(b), IRS employees complete the return with all
8 necessary data." You recall I explained earlier about filling out a 941 quarterly return. The returns
9 include an employee's signature, mine, where the taxpayer would normally sign. 6020(b) returns
10 also disclose the computed tax liability, unlike dummy returns which do not reflect that
11 information. With IMF returns, in other words income tax done via the substitute for return
12 procedures, income information is never disclosed on the return. Tax liability is not disclosed on
13 the return and there is never a signature by an employee on a 1040 return. What this means to me in
14 the constitutional, is that constitutional issues are involved with the income tax, so IRS cannot use
15 the same procedures as they do with the BMF returns.

16 **MR. SCHULZ:** Would you agree with this statement?

17 **MR. TURNER:** I would totally agree with that statement.

18 **MR. SCHIFF:** Bob, can I make a comment on this?

19 **MR. SCHULZ:** Yes, sir.

20 **MR. SCHIFF:** How do you use this? Let me tell you how to use this information.

21 Sometimes an IRS agent will say if you don't file a return, we will file for you. If they ever say that
22 to you, say, "Oh, terrific; then I won't have to bother to file one. When are you going to have my
23 signed 1040 up here so I can come and pay whatever amount you indicate on that return? Can I

1 come up next week and see it with my checkbook?" They'll never file a return showing a tax due;
2 so if they ever threaten to prepare a return for you, you say, "Terrific, when is it going to be ready
3 for me? I will come up here and I will pay twice the amount that you put on that return," and you
4 are going to call their bluff.

5

