



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR TERENCE LUTES
DIRECTOR, ELECTRONIC TAX ADMINISTRATION
WAGE & INVESTMENT DIVISION
Attn: Carol Brauzer

FROM: Deborah A. Butler
Associate Chief Counsel
Procedure & Administration

SUBJECT: Facsimile Signatures

At your request, this Significant Service Center Advice clarifies whether the Service Center Campuses may accept, as filed, delinquent returns with FAXed signatures. In accordance with section 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

For purposes of this memorandum, FAXing is a process in which a FAX machine electronically scans an original document, reduces the document to a series of digital signals, and transmits those signals over telephone lines to a receiving machine that reassembles the signals and then reproduces the original document. FAXing gives the receiver a "FAXed copy" of the original document. The signature on a FAXed copy is likewise a copy of the "original" signature.

ISSUE

Whether, under the circumstances described below, a FAXed copy of a taxpayer's signature is an acceptable signature for purposes of sections 6061 and 6065 of the Internal Revenue Code.

CONCLUSION

As explained below, a FAXed signature may be sufficient, with the proper safeguards, to authenticate and verify a tax return under sections 6061 and 6065 of the Code. The Director of Electronic Tax Administration, however, must approve any procedure to accept FAX signatures or any other alternative signature method, independent of any Chief Counsel opinion on legal sufficiency. Counsel's legal opinion does not constitute, and should not be confused with, the Service's independent administrative decision to implement processing procedures. Thus, no

Service office may modify current procedures to accept FAXed signatures without prior express approval from the Director of Electronic Tax Administration.

FACTS

In the case of taxpayers who are delinquent in filing their income tax returns, the Automated Substitute for Return (ASFR) unit of the Philadelphia Service Center (PSC) prepares a substitute for return (SFR) and sends these taxpayers a 30-day letter explaining the proposed assessment of tax. The letter advises the taxpayer that, unless the taxpayer voluntarily files a return, the Service will assess tax based on the income information it has available. The 30-day letter invites the taxpayer to file, by mailing, a return to PSC for filing and processing. Taxpayers occasionally contact the ASFR unit by telephone to ask whether they may FAX their delinquent returns to PSC. (The 30-day letter does not provide any FAX number to which the taxpayer can FAX a return).

The ASFR unit proposes to give its FAX number to these taxpayers and allow them to FAX their delinquent returns to PSC. The ASFR unit would treat the FAXed return as the taxpayer's original return and not require the taxpayer to send the copy containing the original pen-and-ink signature. The ASFR unit requested advice as to whether a FAXed copy of a taxpayer's manual signature sufficiently authenticates and verifies the return so that ASFR may accept these returns for filing and processing.

DISCUSSION

Law

Section 6061(a) of the Code provides, as a general rule, that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

Section 6065 specifies that, except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Sections 6061 and 6065 require signatures to authenticate and verify the return or other document submitted. The signature authenticates the return by identifying the return as the signer's. The signature operates to verify the return by confirming the truth, correctness, and completeness of the return.

Section 301.6061-1(b) of the Regulations on Procedure and Administration provides that the Secretary (Commissioner, through delegation) may prescribe in forms, instructions, or other appropriate guidance the method of signing any

return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

In adopting a particular signature method, the Service must be satisfied that the signature reliably authenticates and verifies the return or other documents submitted. Reliability is the crucial factor.

It has traditionally been the Service's position that sections 6061 and 6065 of the Code contemplate original signatures.¹ The Code does not define signature but rather subsumes the common law definition. At common law, the critical element of authentication is the signer's act of adopting the document being "signed." Thus, the requirement for an "original" signature can be satisfied by a FAXed copy of a taxpayer's manual signature if the taxpayer adopts the FAXed copy as his or her signature for purposes of the return. The critical administrative task for the Service is to determine whether the taxpayer intended to adopt the copy. FAXed signatures may be accepted in situations where reliable authenticating safeguards are present.

ASFR Proposal

We see no legal impediment to implementing the proposal to accept FAXed returns in the ASFR program, provided that the signatures are reliably authenticated.

The Service has developed authentication procedures for corresponding with taxpayers by FAX machine to perfect unsigned returns mailed to the Service Center Campuses. These procedures require the Service Centers to contact the taxpayer by telephone, verify the taxpayer's identity, and offer to transmit a "jurat notice" to the taxpayer by FAX machine. If the taxpayer agrees to sign the return by FAX, the Service exchanges FAX telephone numbers with the taxpayer and advises the taxpayer that his or her FAXed signature will be treated as his or her original signature and will become part of the taxpayer's return. These authentication procedures ensure that the taxpayer adopted the FAXed signature.

Should the Service decide to implement the FAXed signature proposal for the ASFR program, the Service should impose safeguards similar to those described above. Specifically, we recommend that the Service verify the identity of taxpayers calling to request permission to FAX their returns. We also recommend that the Service advise the taxpayer during the telephone

¹ See GCM 38, 440 (July 11, 1980) ("We believe that section 6061 requires an original signature unless there is a specific exception provided."); Rev. Proc. 78-29, 1978-2 C.B. 526 ("[a]ll taxpayer signatures on forms to be filed with the Internal Revenue Service must be original signatures, affixed subsequent to the reproduction process.")

conversation that the FAXed return will constitute the taxpayer's valid signed income tax return for the taxable year. Further, the Service should document the date the taxpayer called the Service and that the taxpayer agreed to FAX his or her return to the Service. We recommend that the Service not put its FAX number on ASFR notices, but supply its FAX number only after verifying the identity of the taxpayer and advising the taxpayer that the FAXed return will constitute his or her original income tax return.

Independent Administrative Decision

It is important to distinguish our legal analysis of the ASFR proposal (or any other signature method proposal) from the administrative decision to implement the proposal. Regardless of the legal sufficiency of a signature method, the Service must make an independent business decision on whether to implement any given processing method (including a signature authentication method). That is, the Service may decide for any number of business reasons that it will not implement the ASFR proposal.

The Commissioner has designated the Director of Electronic Tax Administration to coordinate, review and approve all business decisions on alternative signature methods. Therefore, no Service office may modify current procedures to accept FAXed signatures without prior express approval from the Director of Electronic Tax Administration. Finally, to ensure uniformity of taxpayer treatment, the Service should update the Internal Revenue Manual to provide specific instructions to employees responsible for processing returns and for evaluating signatures.

If you have any questions regarding this matter, please contact Branch 1, Office of Procedure and Administration, Administrative Provisions and Judicial Practice Division at (202) 622-4910.