

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

Number: **200117036**

Release Date: 4/27/2001

March 9, 2001

CC:PA:APJP:1

TL-N-7114-00

UIL: 6601.08-00

MEMORANDUM FOR AREA COUNSEL, SBSE2

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Attn: David A. Breen

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

SUBJECT: Significant Service Center Advice

This responds to your request for Significant Advice, dated December 8, 2000, in connection with a question posed by the Philadelphia Service Center regarding the validity of FAXed signatures on delinquent returns. For purposes of this response, 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

Sections 6061 and 6065 of the Code give the Secretary broad discretion to prescribe the method of signing any return, statement, or other document. Under this discretion, the Secretary is authorized to prescribe FAXed signatures on returns, statements, or other documents. Despite the general preference for original

signatures, Chief Counsel does not object to the acceptance of FAXed returns under the circumstances described below.

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 mail 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 will treat the FAXed return as the taxpayer's original return, and will not require the taxpayer to send the copy containing the original pen-and-ink signature. The ASFR unit has 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.

Section 301.6061-1(b) of the Regulations on Procedure and Administration provides that the Secretary 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.

Preference for Original Signatures

The signature requirement set forth in sections 6061 and 6065 is for purposes of authenticating and verifying the return or other document submitted. First, the signature authenticates the return by identifying the return as the signer's. Second, the signature operates to confirm the truth, correctness, and completeness of the return. Thus, 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 ultimately a factual question.

It has traditionally been our 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 a signature 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.

Chief Counsel has been reluctant to approve FAXed signatures in situations where authenticating safeguards were not present. However, we do not object to the Service accepting copies of a taxpayer's manual signature as originals in cases when the Service is reasonably certain that the taxpayer has adopted the copy.

ASFR Proposal

Based on the facts presented, we have no legal objection to the Service's proposal to accept FAXed returns in the ASFR program, subject to the recommendations made below. However, the decision to accept FAXed returns is largely a business decision based on the risks and benefits to tax administration. The Office of the Director, Electronic Tax Administration, must approve any proposal to accept FAXed signatures. Traditionally, that office has agreed to accept FAXed signatures only after carefully weighing the risks and benefits, and narrowly defining the circumstances under which it will accept copies of manual signatures.

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.")

For example, the Service has developed procedures for corresponding with taxpayers by FAX machine to perfect unsigned returns mailed to the Service Centers. 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. The safeguards inherent in this procedure improve the reliability of the FAXed signature.

If, after analyzing the risks and benefits to tax administration, the Service decides to accept FAXed signatures in the ASFR program, we recommend that it implement 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 conversation that the FAXed return will constitute the taxpayer's valid signed income tax return for the taxable year. Further, the Service should note in the taxpayer's history file 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 its 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. Finally, the Service should update its manual to provide specific instructions to employees responsible for accepting FAXed returns.

We are furnishing a copy of our advice to Ms. Carol Brauzer of the Office of the Director, Electronic Tax Administration. We recommend that the Service consult with Ms. Brauzer prior to implementing its proposal. If you have any questions regarding our legal conclusion, please contact Elizabeth Kaye at (202) 622-4910.

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