

Office of Chief Counsel
Internal Revenue Service

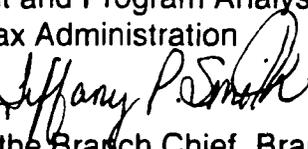
memorandum

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MEHara

date: August 25, 2004

to: Harvey Finnen
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from: Tiffany Smith 
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Signature Alternative for Electronic Filing of Corporate Extension Applications

This memorandum responds to your e-mail dated August 6, 2004. In accordance with I.R.C. § 6110(k)(3), this advice is not to be used or cited as precedent.

ISSUE

Can the proposed Form 8878-B that uses a Personal Identification Number (PIN) signature be used to allow a filer to electronically sign corporate extension requests?

CONCLUSION

A PIN signature on a Form 8878-B that is submitted electronically to the Internal Revenue Service (Service) may be sufficient, with the proper safeguards, to authenticate and verify a tax return under I.R.C. §§ 6061(a) and 6065. The Director of Electronic Tax Administration, however, must approve any procedure to accept PIN signatures or any other alternative signature method, independent of any Chief Counsel opinion on legal sufficiency.

FACTS

Development Services has designed Form 8878-B, IRS e-file Signature Authorization – Application for Extension of Time to File Business Returns, to allow a corporate officer and/or an Electronic Return Originator (ERO) to sign a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return. Form 8878-B is intended to be the signature document when the Practitioner PIN option is chosen.

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The following identifying information on Form 8878-B confirms the extension request to which the signature attaches: (1) the organization's name, (2) the organization's Employer Identification Number (EIN), and (3) the tax year pre-printed on the form. The ERO will have the responsibility to check that the appropriate information is correct on the Form 7004 and the Form 8878-B. Validating the signature on Form 8878-B will consist of ensuring that the tax year, filer organization's name, filer organization's EIN and type of return checked are correct, and that the form is signed.



LAW

I.R.C. § 6061(a) 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.

I.R.C. § 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.

I.R.C. §§ 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.

Treas. Reg. § 301.6061-1(b) 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.

ANALYSIS

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.

Traditionally, the Service's position had been that I.R.C. §§ 6061 and 6065 contemplate an original signature. See Rev. Proc. 78-29, 1978-2 C.B. 526, § 7.02 ("All taxpayer signatures on forms to be filed with the Internal Revenue Service must be original signatures, affixed subsequent to the reproduction process."). The Code, however, does not define the term "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 PIN if the filer adopts the scanned copy as its signature for purposes of the return.

We believe that the requirement for an "original" signature can be satisfied by a PIN if the filer adopts the PIN as its signature for purposes of the corporate extension request. The critical administrative task for the Service is to determine whether the filer intended to adopt the copy. In general, the Office of Chief Counsel is of the opinion that PINs may be sufficient, with the proper safeguards, to authenticate and verify tax returns and other documents under I.R.C. §§ 6061 and 6065. We note that the current Form 8879-S instructs the ERO to retain the completed Form 8879-S for three years from the return due date or the IRS receive date, whichever is later. We believe the instructions to Form 8878-B should include this same requirement. We believe the additional safeguard of the ERO keeping the Form 8878-B improves the reliability of the PIN signature and mitigates the risk of the filer later attempting to disavow the PIN signature.

INDEPENDENT BUSINESS DECISION

It is important to distinguish our legal analysis of the Form 8879-B 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 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 PINs 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 these extension requests.

If you have any questions, please contact this office at (202) 622-4910.