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Office of Chief Counsel
Internal Revenue Service

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memorandum

CC:DOM:IT&A:3

CAProhofsky/TL-N-7314-97

date: March 13, 1998

to: District Counsel, Kentucky-Tennessee, CC:SER:KYT:NAS
Attn: Nancy Hale

from: Assistant Chief Counsel (Income Tax & Accounting),
CC:DOM:IT&A:3

subject: Significant Service Center Advice
Names Signed on Forms 872

This responds to your request for Significant Advice in connection with questions posed by the Memphis Service Center.

Disclosure Statement

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Issue

How should an individual sign on Form 872, Consent to Extend the Time to Assess Tax, relating to that individual's tax return?

Conclusion

An individual may sign any form of his or her name to indicate consent to extend the time to assess tax on Form 872.

Facts

The Service Center frequently requests that individuals execute Form 872, Consent to Extend the Time to Assess Tax. The consent may relate to multiple returns some of which list the name of the individual differently. For example, the taxpayer's name on the face of his 1991 tax return may be listed as John J. Jones while the same taxpayer's name is listed on the face of his 1992 income tax return as J.J. Jones. The discrepancies are even greater when an individual has changed his or her legal name. In addition, the individual's name on the face of the return may

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differ from the signature and/or the name used in the IDRS Master File.

Discussion

As a general rule, tax must be assessed within 3 years of the filing date of the return. § 6501(a) of the Internal Revenue Code. A taxpayer and the Service may, however, consent in writing to extend the time for assessment. § 6501(c)(4). Section 301.6501-1(d) of the Regulations on Procedure and Administration provides that the extension is effective when the agreement has been executed by both parties. The taxpayer and the Service consent by signing the agreement (usually a Form 872).

Neither Form 872 nor the regulations under § 6501(c)(4) address how the form is to be signed.¹ However, § 6061 requires that any return, statement, or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. Section 6061 and § 301.6061-1(b) of the regulations effectively incorporate the common law definition of signature.

Neither the Code nor its legislative history defines the term "signature." The generally accepted legal definition of signature is very broad: "[t]he act of putting one's name on the end of any instrument to attest its validity; the name thus written." See Black's Law Dictionary 1381 (6th ed. 1990). See also Webster's New International Dictionary (2d ed. 1934) (defining signature as "the name of any person, written with his own hand to signify that the writing which precedes accords with his wishes or intentions"). 1 U.S.C. § 1 provides that "in determining the meaning of any Act of Congress, unless the context indicates otherwise, signature includes a mark when the person making the same intended it as such."

Under § 6061 of the Code and the regulations, the purpose of the signature is to authenticate and verify the return or other document submitted. The signature authenticates the document by identifying the document as the signer's.

Form 872 is not a contract, but essentially a voluntary, unilateral waiver of a defense by the taxpayer. Stange v. Commissioner, 282 U.S. 270 (1931). Nonetheless, contract principles are often considered in the interpretation of the form. See, e.g., Constitution Publishing Co. v. Commissioner, 22 B.T.A. 426 (1931). Under general contract principles, "[t]he signature to a memorandum may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer." Restatement (Second) of Contracts § 134 (1981). These authorities are clear that a person has discretion in how he or she provides his or her signature.

Section 6064 provides that the fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him. Absent contrary evidence, the signature of an individual alone is sufficient to establish that the person signed the return, although the presumption is not conclusive. See Hennen v. Commissioner, 35 T.C. 747, 748 (1961).

¹ Although there are guidelines regarding which individuals may sign Form 872 in certain situations, see Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305, this concern does not exist in situations involving individuals acting on their own behalf.

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When the Service relies upon a consent to extend the time to assess tax, the Service bears the burden of proving the existence of such a consent. Haskell v. Commissioner, T.C. Memo. 1986-341. However, extensions valid on their face and introduced into evidence satisfy such burden. A Form 872 signed by an individual is valid on its face, meeting the Service's burden. The individual must then show that the extension is invalid. Concrete Engineering Co. v. Commissioner, 19 B.T.A. 212, 221 (1930), aff'd, 58 F.2d 566 (8th Cir. 1932).

Thus, an individual's signature, in any form, should be sufficient to authenticate the document and to establish that the individual signed Form 872. See §§ 6061 and 6064. The validity of the signature is not dependent upon whether the individual signed using first, middle, and last names or some less complete variation.² Stating the taxpayer identification number, as required by the form, will provide additional assurance.

The one situation in which the Form 872 instructions address the signature requirement is if the consent is for a year in which a joint return was filed. The instructions require the spouses' signatures to match the names as they appear on the front of the Form 872. Even so, we do not suggest interpreting this instruction too literally. For instance, we believe that the Service sometimes prints name and address labels for joint filers with the spouses' initials and last name. While the initials and last name from the Form 1040 would be fine for the name line on Form 872, the taxpayers should be permitted to sign the form in their usual way even if one or more first names are written in full.

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If you have comments or further questions, please contact Catherine Prohofsky at (202) 622-4930.

Assistant Chief Counsel
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by ___/s/_____
Michael D. Finley
Chief, Branch 3

² We assume that an individual who has legally changed names will use the current legal name (or some variation thereof) on the Form 872. Nonetheless, we recommend listing all of the individual's names on the form. For example, if the Form 872 relates to 1990 and 1991, and in 1990 the taxpayer's name was John Smith and in 1991 the taxpayer's name was John Jones, we would list the names on the form as "John Jones a.k.a. John Smith."