

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:DOM:IT&A:1
DBAuclair FREV-244154-96

INCOME TAX AND ACCOUNTING

date: OCT - 8 1996
to: E. Loretta Whitmon T:S:E:P
from: Debra Carlisle CC:DOM:IT&A:1

subject: Signature for the Electronic Consent to Disclosure

This is in response to your letter of July 8, 1996, and subsequent phone conversations, in which you propose that the signature for the electronic consent to disclosure to be used as part of the Form 1040 Series on-line filing program for the 1997 filing season ("On-Line Filing Program") be the taxpayer's name entered directly below the consent to disclosure statement. As a security measure, you also intend to have taxpayers enter their date of birth in a particular field of the electronic transmission. If the date of birth does not match the date of birth in the Master File, taxpayers will not be able to file their return using the On-Line Filing Program.

BACKGROUND

The On-Line Filing Program allows taxpayers to electronically file a Form 1040 series return from their personal computers through the use of tax software. The return is a composite return consisting of electronically transmitted data and a nonelectronic portion consisting of Form 8453-OL, U.S. Individual Income Tax Declaration for On-line Service Electronic Filing, and other paper documents that cannot be electronically transmitted. A taxpayer transmits the electronic portion of the return to a transmitter and/or an on-line service provider that in turn transmits the data directly to the Service. The Service performs an initial matching of information in the electronic transmission against information contained in the Master File. The Service then transmits an acknowledgement file to the transmitter and/or on-line service provider for ultimate receipt by the taxpayer.

Representatives of the Office of Disclosure and the Office of Assistant Chief Counsel (Disclosure Litigation) have determined that the acknowledgement file contains taxpayer return information as defined by section 6103 of the Internal Revenue Code. Section 6103(a) provides that return information will be confidential and disclosed only under the provisions of section 6103. Section 6103(c) authorizes disclosure of return information if the taxpayer provides written consent to such a

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disclosure. Regulations under section 6103 require, among other things, that the written consent to disclosure must be signed by the taxpayer.

Representatives of the Office of Disclosure and the Office of Assistant Chief Counsel (Disclosure Litigation) believe that an electronic transmission of a signature will satisfy the "written" requirement of section 6103(c) and the regulations thereunder. Your question is whether this signature can be the taxpayer's name.

ANALYSIS

Section 6061 of the Code provides that, except as otherwise provided by section 6062 and 6063, relating to corporation and partnership returns respectively, any return, statement, or other document required under the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

Section 301.6061-1T of the Temporary Regulations on Administration and Procedure 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. This regulation provides the Service with broad discretion in prescribing the method of signing a document such as the electronic consent to disclosure. Under the authority of this regulation, the Service could prescribe the use of a taxpayer's name as a signature for an electronic consent to disclosure. Although the Service may prescribe using a taxpayer's name as a signature, the name does not become a taxpayer's signature until the taxpayer adopts it as such. Therefore, using a taxpayer's name as the signature for the limited purpose of the electronic consent to disclosure would meet the requirements of section 6061 if the taxpayer adopts the name as his or her signature.



This memorandum addresses only what would be an acceptable signature for the purposes of section 6061 of the Code. Specifically, this memorandum does not address whether the

taxpayer's name would be sufficient to authenticate and verify a consent to disclosure for the purposes of section 6103(c) and the regulations thereunder. This memorandum also does not address any fraud or operational program concerns regarding the use of a taxpayer's name as a signature for the electronic consent to disclosure.

If you have any further questions regarding this matter, please contact David Auclair at (202) 622-4910.

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