



OFFICE OF
CHIEF COUNSEL

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

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WTA-N-109577-00

MEMORANDUM FOR JOANN N. BLANK
NATIONAL DIRECTOR, INDIVIDUAL ELECTRONIC FILING
DIVISION OP:ETA:I

David B. Anselmi
FROM: George J. Blaine
Chief, Branch 1 (Administrative Provisions & Judicial Practice)
CC:PA:APJP:1

SUBJECT: Photocopied Signatures on Amended Returns

This responds to your request for our views on a suggestion by an Internal Revenue Service employee that the Service accept photocopied signatures on amended income tax returns. We discussed this matter on several occasions with Ms. Carol Brauzer of your office.

ISSUE

Whether a photocopied signature on an amended return sufficiently authenticates and verifies the return under sections 6061 and 6065 of the Internal Revenue Code (Code).

CONCLUSION

The Commissioner has broad latitude to prescribe the method of signing any return, document, or other statement. In certain cases the Service has prescribed procedures for accepting other than an original pen and ink signature of the signer. However, in each of these cases, the Service was careful to require authenticating safeguards to ensure that the alternative signature was reliable. Based on your description, we do not think the proposed procedures contain adequate authenticating safeguards to ensure the reliability of the photocopied signature. Accordingly, we recommend that the Service not accept photocopied signatures on amended income tax returns.

FACTS

Taxpayers file amended income tax returns for a variety of reasons. You note that in many cases, taxpayers file amended returns in response to a notice from the Service identifying an error on the taxpayer's original return. These taxpayers correct the errors

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WTA-N-109577-00

on their original return by filing Form 1040X or Form 1120X. You indicate that many taxpayers, after completing their amended return, properly sign it using pen and ink, and make a photocopy of the return for their files. However, instead of mailing the amended return with the original signature, some of these taxpayers inadvertently mail the photocopy to the Service. You ask whether the Service should accept photocopied amended returns and signatures as an alternative to original amended returns and signatures.

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.

It has long been our position that sections 6061 and 6065 of the Code contemplate original signatures.¹ The Internal Revenue Manual reflects this long-standing position. Sections 21.8.2.7.179 and 21.10.2.4.8.1.8 instruct Service personnel never to accept photocopied signatures as valid original signatures for a tax return. Despite this traditional preference for original signatures, we recognize that the Code and regulations give the Secretary broad discretion to prescribe in forms and instructions the method of signing any return, statement, or other document. Thus, the Service has authority to prescribe a photocopied signature as an acceptable alternative to an original signature on an amended tax return if it chooses to do so.² Traditionally, the

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").

² As currently written, the instructions to Forms 1040X and 1120X do not specifically authorize photocopied signatures.

WTA-N-109577-00

Service has chosen to accept copies of original signatures only in cases where authenticating safeguards reasonably assured the Service that the taxpayer adopted the copy of the original signature.

Facsimile Signatures and FAX Signatures

In at least two situations, the Service has concluded that authenticating safeguards reasonably ensure the reliability of a copy of the taxpayer's manual signature.

In cases where a substantial number of returns are executed by corporate officers, fiduciaries, or agents, the Service will accept a facsimile signature (e.g., a signature "stamp") of the signer provided that certain safeguards are present.³ One safeguard requires that the group of returns be accompanied by a letter manually signed by the person authorized to sign the returns declaring that the facsimile signature appearing on the returns is the signature adopted by him to sign the returns, and that such signature was affixed to the returns by him or at his direction. While the Service permits facsimile signatures in these cases, it requires that the facsimile signature be affixed to the return after any photocopies of the return are made.

In certain circumstances, the Service will also accept a FAX copy of a taxpayer's signature. In cases where taxpayers forget to sign their income tax returns, the Service's past practice has been to correspond by mail with the taxpayer for the missing signature. Generally, the Service would mail the taxpayer a "jurat notice" asking the taxpayer to sign under penalties of perjury that his or her return was true, correct and complete, and requesting that the taxpayer mail the notice back to the Service.

Recently, the Service developed procedures to accept signed jurat notices by FAX machine. Under those procedures, the Service contacts the taxpayer by telephone upon receipt of the unsigned return. During the telephone conversation the Service verifies the taxpayer's identity and advises the taxpayer that the FAX signature will be treated as the taxpayer's original signature, and that the jurat notice will become part of the taxpayer's income tax return. If the taxpayer agrees to perfect the return by FAX, the Service transmits the jurat notice to the FAX telephone number provided by the taxpayer. The taxpayer then signs the jurat notice and transmits it back to the Service by FAX.

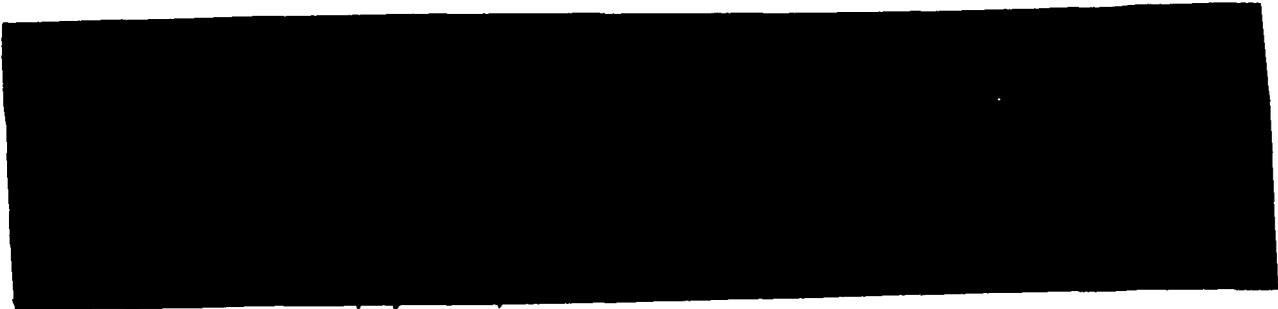
In a memorandum dated March 23, 1999, we concluded that the FAX procedure would satisfy the authentication and verification requirements of sections 6061 and 6065 of the Code if the taxpayer adopted the FAXed reproduction of his or her signature. In our

³Rev. Proc. 68-500, 1968-2 C.B. 575 (fiduciaries or agents may sign multiple Forms 1041 and 1040NR using facsimile signatures); Rev. Proc. 82-29, 1982-1 C.B. 200 (corporate officers or duly authorized agents may sign multiple Forms 940, 941, and 943 using facsimile signatures).

WTA-N-109577-00

opinion, the taxpayer's decision to sign the return through the use of a FAX transmission, combined with the taxpayer's act of transmitting or authorizing the transmission of the FAX, constitutes the requisite intent on behalf of the taxpayer to adopt the FAX signature. Furthermore, we concluded that the safeguards that the Service had developed reasonably ensured the reliability of the FAXed signature.

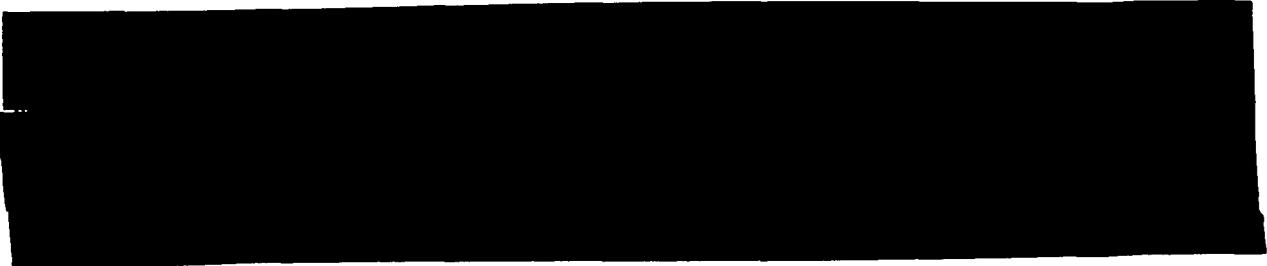
The Photocopied Signature Proposal



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If you have further questions, please contact Andrew Keyso at (202) 622-4910.