



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

FROM:  Edward F. Cronin
Division Counsel/Associate Chief Counsel (Criminal Tax)

SUBJECT: Notice 2004-01, Alternative Methods of Signing for Income Tax
Return Preparers

This is in response to your request for our views on IRS Notice 2004-01, which provides for the acceptance of tax return preparer signatures on original returns, amended returns, or requests for filing extensions by rubber stamp, mechanical device, or computer software program. Such a pronouncement is within the Secretary's authority to prescribe acceptable methods of signing returns in forms, instructions, or other appropriate guidance as set forth in the Code and Regulations. **Allowing the enumerated signature alternatives should not adversely impact our ability to prosecute abusive return preparers.** At most, the preparer's nexus to the false return would have to be proven with circumstantial evidence, similar to a taxpayer who files electronically with a PIN.

BACKGROUND

Section 6061(a) of the Internal Revenue Code (I.R.C.) generally provides 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. The regulations further provide 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. Treas. Reg. § 301.6061-1(b).

Electronic signatures are addressed under I.R.C. § 6061(b)(1), whereby the Secretary is instructed to develop procedures for the acceptance of signatures in digital and electronic form. Until such procedures are in place, the Secretary may provide for alternative methods of signing or subscribing. Section 6061(b)(2) provides that notwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted by the

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Secretary under paragraph (b)(1) shall be treated for all purposes (both civil and criminal) in the same manner as though signed or subscribed. The Secretary is instructed to publish guidance as appropriate to define and implement any alternative signature method. I.R.C. § 6061(b)(3).

DISCUSSION

Traditionally, return preparers are charged with violations I.R.C. § 7206(2) and/or 18 U.S.C. § 371. Neither statute contains a subscription element as found in I.R.C. § 7206(1). As such, allowing such signature alternatives as a rubber stamp, mechanical device, or computer software program to return preparers should not negatively impact their prosecution potential. Additional evidence, in addition to their signature alternative, could be used to establish that the defendant prepared the return in question. For instance, the actual taxpayer whose return was prepared could be called to testify, internal control records of the return preparer could be used to establish the nexus to the false return, and payments for the preparation of the return could be traced to the defendant.

Signature alternatives including electronic signatures and PINs have been used by taxpayers to sign returns. While such signature alternatives present additional hurdles to the prosecution team, these hurdles are not insurmountable. Circumstantial evidence can be used as well as alternative charges to criminally prosecute those individuals whose signature comes into question.

CONCLUSION

The signature alternatives for return preparers set forth in IRS Notice 2004-01 are consistent with the statutory framework of I.R.C. § 6061 and the Regulations thereunder. Since the traditional statute used to charge return preparers (I.R.C. § 7206(2)) does not have a signature requirement, criminal prosecutions should not be negatively impacted by the signature alternatives contained in the Notice.

Should further assistance be required, please feel free to contact me directly on (202) 622-4460 or Martin Needle of my staff on (202) 622-4470.