

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

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to: Jim Kurdzeil
Program and Management Analyst
Electronic Tax Administration

from: Carol Nachman 
Senior Technician Reviewer, Branch 2
(Procedure & Administration)

subject: Form 8453 Signature Requirement

This responds to your e-mail dated May 14, 2007, regarding filing issues associated with the elimination of the Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return and the processing of Form 1040, U.S. Individual Income Tax Return.

ISSUES

1. Whether the paper schedules and forms that cannot be filed electronically under current Form 1040 processing procedures and are currently filed with the Form 8453 can be retained either by an Electronic Return Originators (ERO) or the taxpayer and produced on demand by the Internal Revenue Service (IRS).
2. Whether the IRS can eliminate the signature on the Form 8453 when used as a transmittal document for those schedules and forms that cannot be filed electronically under current Form 1040 processing procedures.

CONCLUSIONS

1. The paper forms with paper attachments that cannot be filed electronically under current Form 1040 processing procedures and are currently filed with the Form 8453 cannot be retained either by an ERO or the taxpayer and must be submitted to the IRS.
2. A digital signature or Personal Identification Number (PIN) included in an electronically transmitted Form 1040 can be used to satisfy the signature requirement under I.R.C. § 6061 for paper forms and attached documents that are sent to the IRS separately from the electronically filed Form 1040.

FACTUAL BACKGROUND

To implement the signature requirement for Forms 1040, taxpayers may sign their returns electronically using a self select PIN, or may authorize an Electronic Return Originator (ERO) to enter their PIN in the electronic return record by completing Form 8879, IRS *e-file* Signature Authorization. Taxpayers may also provide their signature on paper, using a Form 8453, U.S. Individual Income Tax Declaration for an IRS *e-file* Return. Under current processing procedures, the Form 8453 is used to:

1. Authenticate the electronic portion of the Form 1040, U.S. Individual Income Tax Return; Form 1040A, U.S. Individual Income Tax Return; Form 1040EZ, Income Tax Return for Single Filers and Joint Filers With No Dependents; or Form 1040EZ-T, Claim for Refund of Federal Telephone Excise Tax;
2. Send any required paper forms and schedules¹ to the IRS, or
3. Authorize an Electronic Return Originator (ERO) to transmit via a third party transmitter, and;
4. Provide consent to directly deposit any refund and/or authorize an electronic funds withdrawal for payment of federal taxes owed and/or a payment of estimated tax.

¹ These paper forms and schedules include:

- Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes (or acceptable documentation/required Donor Documentation);
- Form 3115, Application for Change in Accounting Method;
- Form 3468, Investment Credit (if Historic Structure Certificate is required);
- Form 4136, Credit for Federal Tax Paid on Fuels (if certificate and/or reseller statement is required);
- Form 5713, International Boycott Report;
- Form 8283, Noncash Charitable Contributions, Section A (if statements) required) or Section B, Donated Property;
- Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents (or similar statement);
- Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities;
- Form 8864, Biodiesel and Renewable Diesel Fuels Credit (if certificate and/or reseller statement is required);
- Form 8885, Health Coverage Tax Credit;
- Schedule D-1, Continuation Sheet for Schedule D (Form 1040) (or acceptable substitute) if the taxpayer elects not to include their transactions on the electronic STCGL/LTCGL Records.

The instructions to Form 8453 provide that the ERO should mail the Form to the IRS within three working days after receiving acknowledgment that the IRS has accepted the electronically filed return or request for refund.

The Electronic Tax Administration has been directed to eliminate the Form 8453 for practitioners by January 2008. You have asked whether the documents listed in footnote 1 and currently transmitted to the IRS with the Form 8453 can be retained by the ERO or the taxpayer and produced on demand by the IRS.

DISCUSSION

ISSUE 1. The paper forms that cannot be filed electronically under current Form 1040 processing procedures and are currently filed with the Form 8453 cannot be retained either by an ERO or the taxpayer and must be submitted to the IRS.

You have asked whether the paper schedules and forms that cannot be filed electronically and are currently filed with the Form 8453 listed in footnote 1 can be retained either by the ERO or the taxpayer and produced on demand by the IRS. Most of these forms and the accompanying documents are part of the tax return and thus must be filed with the IRS. A review below of the forms reveals that either the Internal Revenue Code or the regulations require most of them to be submitted to the IRS with the return. It is imperative that other documents be filed with the IRS for matching and compliance reasons.

For example, Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes, is used to report charitable contributions of motor vehicles, boats, and airplanes after December 31, 2004. Code section 170(f)(12)(A) provides that no charitable deduction is allowed for the contribution of a qualified vehicle "unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization ... and includes the acknowledgment with the taxpayer's return of tax which includes the deduction."

Similarly, Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, is used by custodial parents to release their claim to their child's exemption. This form is given to the noncustodial parent, who will claim the child's exemption. That parent attaches the Form 8332 to his or her income tax return. Code Section 152(e)(2)(B) provides that noncustodial parent may claim the exemption if "the noncustodial parent attaches such written declaration to the noncustodial parent's return...."

Form 3115, Application for Change in Accounting Method, must be filed with the IRS pursuant to I.R.C. § 446(e), which provides that except as otherwise expressly provided in the Code, a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income in keeping with his new

method, secure the consent of the Secretary. The Form 3115 may be filed for multiple applicants, and in the case of controlled foreign corporations, all controlling U.S. shareholders must sign Form 3115, which is attached to the return.

Form 3468, Investment Credit, is used to claim the Investment Credit. Treas. Reg. § 1.48-12(d)(7)(ii) provides that if a final certification of completed work isn't issued by the Secretary of the Interior when the return is filed, a copy of the first page of the Historic Preservation Certification Application, showing that it was received by the Interior Department, together with proof that the building is a certified historic structure, must be attached to the Form 3468, which is filed with the return.

Form 4136, Credit For Federal Tax Paid on Fuels, is used to claim a credit for certain nontaxable uses or sales of fuel. It is also used to claim the alternative fuel credit, a blender claiming a credit for a diesel-water fuel emulsion, or a producer claiming a credit for an alcohol fuel mixture, biodiesel or renewable diesel mixture, or an alternative fuel mixture. I.R.C. § 6427(i) provides a period during which these claims must be filed. We have also been advised that the IRS, administratively, requires that the Form 4136 be sent to the Service because the IRS is required to properly account for trust fund taxes and transcribes the information on the Form.

Form 5713, International Boycott Report, is used to report operations in or related to boycotting countries, and the receipt of boycott requests and boycott agreements made. Reporting to the IRS is required by I.R.C. § 999(a), section 999(f) specifically provides for application of the penalty under section 6671(b) for willful failure to report. For processing purposes, the Form 5713 (and Schedules A, B, and C, if applicable) must be filed in duplicate, one attached to the return and one to the Ogden Service Center.

Form 8283, Noncash Charitable Contributions, is used to report information about noncash charitable contributions. I.R.C. § 170(f)(11)(D) provides that a charitable deduction for contributions of property for which a deduction of more than \$500,000 is claimed may be allowed if the taxpayer "attaches to the return for the taxable year a qualified appraisal of such property." See also I.R.C. § 170(f)(11)(C), requiring a qualified appraisal for contributions of more than \$5000.

Form 8858, Information Return of U.S. Persons with Respect to Foreign Disregarded Entities, is used by certain U.S. persons that own a foreign disregarded entity (FDE) to satisfy the reporting requirements of I.R.C. §§ 6011, 6012, 6031, and 6038. Section 6038 requires information reporting with respect to certain foreign corporations and partnerships, and specifically imposes a penalty for failure to furnish certain required information under I.R.C. § 6038(b) and (c). In order to analyze the FDE's position in the organization structure, the

filer must attach an organizational chart that includes information with respect to the chain of ownership between the tax owner and the FDE and all entities in which the FDE has a 10% or more direct or indirect interest.

Form 8864, Biodiesel and Renewable Diesel Fuels Credit, is used to claim the Biodiesel and Renewable Diesel Fuels Credit. Under I.R.C. § 6426(c)(4), "No credit shall be allowed . . . unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product."

Form 8885, Health Coverage Tax Credit, is used to claim and determine eligibility for the Health Coverage Tax Credit. For all health plans, a taxpayer must attach to Form 8885 a copy of the taxpayer's health insurance bills or COBRA payment coupons. The bills must include the name, the name of the health plan, the monthly premium amount, the dates of coverage, and the health plan identification number. The taxpayer must also attach to the Form 8885 proof of payment, such as canceled checks, bank statements, or credit card statements. These documents must be attached to the Form 8885 and the taxpayer's return because the IRS performs post processing reviews of the Forms to identify and assess ineligible taxpayers. See Treasury Inspector General for Tax Administration, *The Health Coverage Tax Credit was Accurately Processed During the 2004 Filing Season*, 2005-40-017 (December 2004).

Schedule D-1, Continuation Sheet for Schedule D, is used to report short term and long term capital gains and losses. Current instructions for Schedule D require taxpayers to enter the details of each transaction on a separate line of Schedule D. If there are more than five transactions to be reported, taxpayers can report the additional transactions on Schedule D-1. Reporting of each transaction is important for compliance purposes so that Form 1099-B information can be matched to the Schedule D. See Treas. Reg. § 1.6045-1(c)(2), which requires broker reporting with respect to each sale by a customer. We believe that in this case, Schedule D filers who are otherwise eligible to use a PIN signature method should use the electronic Short or Long Term Capital Gain or Loss Records (STCGL/LTCGL) in place of Schedule D-1 attachments.

Based on our review above, we conclude that the paper forms with paper attachments that are currently filed with the Form 8453 and must be filed with the IRS for statutory, regulatory, and administrative reasons cannot be retained either by an ERO or the taxpayer and produced on demand by the IRS.

ISSUE 2. A digital signature or PIN included in an electronically transmitted Form 1040 can be used to satisfy the signature requirement under I.R.C. § 6061 for paper forms that are sent to the IRS separately from the electronically filed Form 1040.

Because we concluded that the forms identified in footnote 1 must be filed with the IRS, the question arises whether the IRS can eliminate the signature on the Form 8453 when used as a transmittal document for those forms and attached documents that cannot be filed electronically under current Form 1040 processing procedures.

The IRS has wide authority to mandate the manner and form of returns filed. Under I.R.C. § 6011(a),

“[w]hen required by regulations prescribed by the Secretary, any person liable for any tax . . . shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such form and regulations.

Regulations implementing this legislative mandate provide at Treas. Reg. § 1.6011-1(a):

(a) General rule.-Every person subject to any tax, or required to collect any tax, under subtitle A of the Code, shall make such returns or statements as are required by the regulations in this chapter. The return or statement shall include therein the information required by the applicable regulations or forms.

The Internal Revenue Code imposes a signature requirement for income tax returns. I.R.C. § 6061 provides:

(a) General rule.--Except as otherwise provided by subsection (b) and sections 6062 and 6063, 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.

(b) Electronic signatures.--

(1) In general.--The Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Until such time as such procedures are in place, the Secretary may--

(A) waive the requirement of a signature for; or

(B) provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement, or other document required or permitted to be made or written under internal revenue laws and regulations.

(2) Treatment of alternative methods.--Notwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted under paragraph (1)(B) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed.

(3) Published guidance.--The Secretary shall publish guidance as appropriate to define and implement any waiver of the signature requirements or any method adopted under paragraph (1).

In addition, I.R.C. § 6065 provides:

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.

The courts also have held that a return must have a signature to be valid. In *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986), the Tax Court announced a widely cited and well established four prong test used to determine a return's validity, known as the substantial compliance standard. Under this test:

First, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury.

Id. at 777.

Although the Code and case law require that a return have a signature, we do not believe that leads to the conclusion that a signature is required on a transmittal document that forwards those paper forms sent to the IRS separately from the electronically filed Form 1040. We believe that the taxpayer's signature for a return can be associated with the documents submitted to the Service to satisfy the requirements of the Code and case law. Indeed, the ability to associate the signature with what is filed with the return is what legally justifies the IRS' use of the Form 8453, which associates the signature on that form with the electronically filed Form 1040 that does not include a PIN.

Accordingly, we conclude that the use of the PIN included with the electronic return may satisfy the signature requirement for those paper forms and accompanying documents that are sent to the IRS separately with Form 8453. This approach also would save processing costs, as well as costs associated with issuing reminder letters to filers, and advances the goals of the Electronic Filing Program.²

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Please contact Michael Hara at (202) 622-7419 if you have any questions regarding this memorandum.

² See Treasury Inspector General for Tax Administration, *Requiring Personal Identification Numbers for Electronically Filed Returns Could Improve Tax Administration and Reduce Costs*, 2006-30-001 (September 2006); Treasury Inspector General for Tax Administration, *The Internal Revenue Service Continues to Pay Tax Refunds on E-Filed Tax Returns Prior to Ensuring a Signature Document is Processed*, 2002-42-202 (September 2002). TIGTA estimates the Service could save \$1.8 million in processing costs if it eliminated the Form 8453.