

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

CC:PA:06: MSegal
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to: Mahlon E. Blagg
Disclosure Technical Advisor
(Office of Disclosure)

from: Donald M. Squires
Senior Technician Reviewer
(Procedure & Administration)

subject: Request for Chief Counsel Opinion about Disclosures to E-Fax Service Providers

This memorandum responds to your request for assistance dated March 4, 2010. This advice may not be used or cited as precedent.

ISSUE

Whether the IRS may use a non-written consent from the taxpayer to allow an e-fax service provider to receive tax information transmitted by the IRS to the taxpayer through the provider's e-fax process.

CONCLUSION

Use of non-written consents for disclosures to e-fax providers is not the type of situation intended by the amendment of the regulations governing taxpayer consents. Additionally, return information transmitted in this manner is subject to inherent possibilities for misuse or inadvertent unauthorized disclosure. For these reasons, the IRS should not use non-written consents for this purpose.

FACTS

Technological advances have resulted in an increase in the use of e-faxes by taxpayers. E-faxes allow persons who do not have fax machines to receive faxed documents via an electronic transmission of data. To receive an e-fax, an e-fax service provider gives the recipient a fax number. When someone faxes to that number, the e-fax service provider converts the fax to a digital file and emails the digital file to the recipient as an attachment. An increasing number of taxpayers have requested that the

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IRS transmit tax information to them via an e-fax service provider. Taxpayers prefer this method of transmission of tax information because the taxpayer receives the tax information directly on his/her computer and because the e-fax method of transmission allows taxpayers to receive faxes even if the taxpayer does not own a fax machine. This question arises because of the administrative burden associated with the IRS's requirement that a taxpayer submit a written consent before the IRS will fax the taxpayer's return or return information via an e-fax service provider. A non-written consent by telephone would be a less cumbersome way for a taxpayer to authorize the IRS to utilize an e-fax service provider.

LAW AND ANALYSIS

Under section 6103(c), the IRS may disclose return or return information to a person designated by the taxpayer in a request for or consent to disclosure unless the disclosure would seriously impair federal tax administration. Generally, a taxpayer makes a request for or consent to disclosure by signing a separate written document. Treas. Reg. § 301.6103(c)-1(b).

In 2003, the IRS amended the treasury regulations under section 6103(c) to authorize a non-written consents for disclosure in cases where a taxpayer requests a disclosure for the purpose of resolving a federal tax matter. Treas. Reg. § 6103(c)-1(c)(2). The purpose of this amendment was to facilitate situations where, for example, a taxpayer brings a friend, relative or other person to an interview and for whom the IRS does not have a POA on file or to authorize the IRS to speak to a return preparer or CPA about the taxpayer's return. Treas. Reg. § 6103(c)-1(c)(2)(ii), IRM 11.3.3.2.1. The amendment was not intended for disclosures solely for the taxpayer's convenience, such as to a mortgage company to facilitate the taxpayer's application for a mortgage. IRM 11.3.1.10(9).

Returns and return information sent by fax present additional security issues even if the Service faxes the return or return information directly to the taxpayer, arising from the fact that faxed documents can sit unattended in a fax machine allowing for the possibility of unintended disclosure to persons not authorized to receive the information. See generally IRM 11.3.1.10.

While there are several pilot programs underway, the IRS currently does not transmit return information by email. Consequently, many taxpayers would prefer the IRS to transmit return or return information to them via an e-fax so that the taxpayer can receive return information on his/her computer instead of in a paper format or because the taxpayer does not have a fax machine.

Although the use of an e-fax service provider would facilitate taxpayers' receipt of return information in the absence of direct email from the IRS, this arrangement does not fit neatly within the intended use of non-written consents envisioned by the regulations. While one could argue that the taxpayer is seeking to use the e-fax process to resolve a

tax matter, the recipient of the disclosure from the Service (the e-fax service provider) really does not contribute to that resolution other than to pass along the return information in a manner (email) that the Service's practices currently prohibit. As such, it is markedly unlike the situations where the taxpayer brings someone to an in-person or telephone conference with the IRS or where the taxpayer wants the IRS to discuss his/her return with a preparer or CPA. Additionally, because an e-fax service provider is likely to be a business concern and not a single individual, the disclosure of return information would be fraught with possibilities of misuse of the information transmitted, either inadvertently or otherwise. Consequently, for the protection of the Service in the event a taxpayer's information is mishandled or disclosed in an unauthorized manner by an e-fax service provider, we believe it prudent for the Service to obtain a written consent from the taxpayer so that there is no question about whether the taxpayer agreed in advance for the Service to transmit return information in this manner.

A prior opinion from this office analyzed the applicability of non-written consents in the context of a telephone conversation between a hearing-impaired taxpayer and the IRS, during which the IRS portion of the conversation would be simultaneously translated into electronic text to the taxpayer by a Relay Service Operator. While a Relay Service Operator could be said to be analogous to an e-fax service provider, the fact a taxpayer using a Relay Service Operator participates in a real-time telephone conversation and gives the non-written consent as part of that conversation, distinguishes it from the e-fax question at issue here.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-7950 if you have any further questions.