

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

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Third Party Communication: None
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date: June 03, 2013

to: Maureen Johnson
Program Management Analyst
(Electronic Products and Service Support)

from: Blaise Dusenberry
Senior Technician Reviewer, Branch 1
(Procedure and Administration)

subject: Form 4419 Requirements

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

BACKGROUND

Form 4419, Application for Filing Information Returns Electronically (FIRE), is used by entities applying for a Transmitter Control Code (TCC) that will allow them to file information returns electronically. The Form 4419 may be mailed or faxed to the Internal Revenue Service. The Form has a field for an e-mail address, but filling that field on the form is optional, that is, the form currently is not returned to the filer if that field is blank. The Form has a field for a date next to the signature field, and the Form instructions provide, "The form must be signed and dated by an official of the company or organization requesting authorization to report electronically." The Form's signature field has a parenthetical statement that reads, "Signature (A computer generated signature is not acceptable.)"

ANALYSIS

ISSUE 1. Can the instructions on the Form 4419, Application for Filing Information Returns Electronically (FIRE) be revised to make the e-mail address a required field?

Yes. The Internal Revenue Service has the authority to set guidelines for the exercise of the privilege of participating in their electronic filing programs, see *Brenner Income Tax Centers , Inc. v. Director of Practice*, 87 F.Supp.2d 252, 257 (S.D.N.Y. 2000); *Forehand v. I.R.S.*, 877 F. Supp. 592 , 595-96 (M.D. Ala. 1995). Electronic filing is a

privilege granted by the Service and no one has an absolute right to participate in this government program. *Forehand*, 877 F. Supp. at 594. Rev. Proc. 2012-30, 2012-33 I.R.B. 165, Section 6.01 provides that employers or their transmitters are required to submit Form 4419 to request authorization to file information returns with the Service. As part of its guidelines, the Service has the authority to require certain information be submitted to the Service before approval to transmit electronically is granted. The request for an e-mail address is reasonably related to the Service mission to administer the tax return filing process by assuring taxpayers that transmitters can be quickly contacted if any issue arises over their returns, and by combating tax fraud.

ISSUE 2. Can the instructions on the Form 4419 be revised to make the date a required field?

Yes. As discussed above, the Service has the authority to set guidelines for the exercise of the privilege of participating in their electronic filing programs and require certain information be submitted to the Service before approval to transmit electronically is granted. The requirement of a signing date is reasonably related to the Service mission to administer the tax return filing process by assisting in authenticating the signer of the return, and to address issues that may arise when multiple Forms 4419 are received by the Service.

An application to participate in an electronic filing return is not a tax return, accordingly, the substantial compliance doctrine addressing the validity of imperfect or incomplete returns does not apply, *c.f.*, *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986). Accordingly, if the date field is not filled in, the Service may send the Form 4419 back to the originator to complete.

ISSUE 3. Can the signature on the Form 4419 be computer generated?

No. The parenthetical statement is correct and need not be removed from the Form. There is no current published guidance authorizing the Service to accept an electronic or computer generated signature on a Form 4419. Approval of alternative electronic signature processes have been approved on an ad hoc form by form basis. The Commissioner designated the Electronic Tax Administration (ETA) Director to coordinate, review and approve all business decisions on alternative signature methods. The Service has been using this administrative process to approve various signature alternatives. This responsibility has been delegated to the Return Preparer Office. The resulting guidance has been issued either in an IRS Publication,¹ or through formal issuance in published guidance.² But as discussed above, no guidance has been

¹ Guidelines for electronic signatures for Form 1040 tax returns using PINs are set forth in Publication 1345, Handbook For Authorized IRS e-file of Individual Income Tax Returns.

² See, *e.g.*, Notice 2007-79, 2007-42 I.R.B. 809, authorizing electronic return originators to use alternative methods to sign (1) Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return, Form 8878, (2) IRS e-file Signature Authorization for Form 4868 or Form 2350, and (3) Form 8879, IRS e-file Signature Authorization; Notice 2004-54, 2004 C.B. 209, authorizing return preparers to sign original

issued regarding the Form 4419. We suggest you contact Kevin Hatton, Director, e-file Provider Program Management, SE:RPO:EPPM, [REDACTED] or Joan Tann, Senior Program Analyst, e-file Provider Program Management Branch, Return Preparer Office, SE:RPO:EP, [REDACTED] to pursue this matter further.

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Please call (202) 622-4910 if you have any further questions.

returns, amended returns, and or requests for filing extensions with computer software; and Rev. Proc. 2005-39, 2005-2 C.B. 82, authorizing signing by computer software of (1) any form within the Form 94X series (including, but not limited to, Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return; Form 941, Employer's Quarterly Federal Tax Return; Form 943, Employer's Annual Federal Tax Return for Agricultural Employees; and Form 945, Annual Return of Withheld Federal Income Tax); (2) Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; (3) Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips; (4) Form CT-1, Employer's Annual Railroad Retirement Tax Return; or (5) any variant of these forms (e.g., Form 941c, Supporting Statement to Correct Information; Form 941-SS, Employer's Quarterly Federal Tax Return).