

**Office of Chief Counsel  
Internal Revenue Service  
memorandum  
CC:PA:1:JRECORDS  
POSTS-140862-13**

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to: Program Analyst  
e-File Services, Development Services Branch 2  
(Wage & Investment)

from: Blaise Dusenberry  
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subject: Form 8453-EMP Facsimile Signatures

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

BACKGROUND

You have received a number of inquiries from taxpayers regarding whether they may use a facsimile signature to sign Form 8453-EMP, *Employment Tax Declaration for an IRS e-file Return*, and you seek clarification. A facsimile signature means one made by rubber stamp, mechanical device (to include use of a signature pen) or computer software program. Rev. Proc. 2005-39, 2005-2 C.B. 82; Notice 2007-79, 2007-42 I.R.B. 809.

QUESTION

Are taxpayers permitted to use a facsimile signature on Form 8453-EMP, *Employment Tax Declaration for an IRS e-file Return*?

LAW

Section 6061(a) of the Internal Revenue Code provides that any return, statement, or other document made under any provisions of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary of the Treasury.

Section 6061(b) authorizes the Secretary to develop procedures for the acceptance of

signatures in digital or other electronic form. Section 6061(b)(1)(B) provides that the Secretary may provide for alternative methods of signing returns, declarations, statements, or other documents. Section 6061(b)(2) provides that, notwithstanding any other provision of law, any return, declaration, statement, or other document signed under an approved alternative method will be treated for all purposes as an original signature.

Section 31.6061-1 of the Regulations on Employment Taxes and Collection of Income Tax at Source provides that employment tax returns must be signed by:

- (a) the individual, if the person required to make the return is an individual;
- (b) the president, vice president, or other principal officer, if the person required to make the return is a corporation;
- (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the return is a partnership or other unincorporated organization; or
- (d) the fiduciary, if the person required to make the return is a trust or estate.

Returns may also be signed for the taxpayer by a duly authorized agent in accordance with section 31.6011(a)-7 of the regulations.

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.

Revenue Ruling 82-29, 1982-1 C.B. 200, held that corporate officers or duly authorized agents may use a facsimile signature in making returns on Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, Form 941, *Employer's Quarterly Federal Tax Return*, or Form 943, *Employer's Annual Tax Return for Agricultural Employees*, subject to the following conditions:

1. Each group of returns forwarded to the Internal Revenue Service shall be accompanied by a letter signed by the person authorized to sign such returns declaring, under penalties of perjury, that the facsimile signature appearing on the returns is the signature adopted by him to sign the returns filed and that such signature was affixed to the returns by him or at his direction. The letter shall also list each return by name and identifying number.
2. A signed copy of the letter must be retained by the person filing the returns and must be available for inspection by the Service.

Revenue Procedure 2005-39, 2005-2 C.B. 82, added additional forms to the list of forms for which facsimile signatures are accepted by the Service. Among other forms, Revenue Procedure 2005-39 permits corporate officers and duly authorized agents to sign all forms in the 94x series by facsimile signature, but does not specifically refer to Form 8453-EMP.

Notice 2007-79, 2007-42 I.R.B. 809, allows Electronic Return Originators (EROs) to sign Form 8453, *U.S. Individual Income Tax Declaration for an IRS e-file Return*; Form 8878, *IRS e-file Signature Authorization for Form 4868 or Form 2350*; and Form 8879, *IRS e-file Signature Authorization*, “by rubber stamp, mechanical device (such as signature pen), or computer software program”. The Notice also provides:

This notice applies only to EROs that sign Form 8453, Form 8878, or Form 8879, and does not alter the signature requirements for any other type of document currently required to be manually signed, such as elections, applications for changes in accounting method, powers of attorney, or consent forms. In addition, this notice does not alter the requirement that Form 8453, Form 8878, or Form 8879 be signed by the taxpayer making these forms by handwritten signature or other authorized means.

#### ANALYSIS

Alternative signature methods are allowed only if there is existing published guidance allowing such methods for the designated forms. There is no current published guidance allowing use of a facsimile signature for Form 8453-EMP. While Revenue Procedure 2005-39 permits corporate officers or duly authorized agents to use a facsimile signature to sign employment tax returns (Form 94x series), it does alter the signature requirement on Form 8453-EMP. Additionally, Notice 2007-79, which allows EROs to use facsimile signatures to sign Form 8453, Form 8878, and Form 8879, applies only to EROs, and not to taxpayers, and provides that it “applies only to EROs that sign Form 8453, Form 8878, or Form 8879. Notice 2007-79 does not alter the signature requirements for any other type of document currently required to be manually signed.” Therefore, taxpayers are not permitted to sign Form 8453-EMP by facsimile signature.

These conclusions are based on current published guidance. On August 9, 2013, the Department of Treasury issued its 2013-2014 Priority Guidance Plan that contained guidance projects the Service intends to work on actively during the plan year. Among the projects listed is guidance prescribing the electronic signature requirements for tax returns and other documents submitted to the IRS. The Priority Guidance Plan does not place any deadline on completion of projects. It is possible, however, that guidance may be issued within the next few years that modifies the conclusions reached in this memorandum.

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) 622-4910 if you have any further questions.