

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200504033**

Release Date: 1/28/2005

CC:PA:APJP:B01:MEHara
SCAF-148176-04

Third Party Communication: None
Date of Communication: Not Applicable

UILC: 6501.08-00, 6061.02-00

date: December 14, 2004

to: Area Counsel
(Small Business/Self-Employed: Area 1)

from: Tiffany P. Smith
Assistant to the Branch Chief
Branch 1
(Procedure & Administration)

subject: Acceptance of Form 900 CSED Waivers via fax

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

ISSUES

Whether Forms 900, Tax Collection Waiver, received by facsimile transmission (fax)¹ are legally sufficient and may Brookhaven Automated Collection System (ACS) begin accepting Forms 900 by fax.

CONCLUSIONS

Forms 900 received by fax may be legally sufficient because fax signatures may be sufficient, with the proper safeguards, to authenticate and verify tax returns and other documents under I.R.C. §§ 6061 and 6065. Because waivers may wind up in litigation, are time sensitive, and often involve taxpayers who have not been compliant and have

¹ In telecommunications, facsimile, also called fax or telefax, is an electronic method of transmission and reproduction of documents by wire or radio wave. Modern fax machines are designed to scan printed textual and graphic material and then transmit the information through the telephone network to similar machines, where documents are reproduced in close to their original form.

outstanding tax liabilities, we do not recommend that the Service establish procedures that routinely permit the faxing of waivers of restrictions on collection to the Service. Whether to accept these Tax Collection Waivers by fax, however, is an independent business decision that must be made by the Service weighing the risk of disavowal of the consent by taxpayers and the risks inherent in litigation against the utility, convenience, and benefits of this processing method for these documents.

FACTS

The Brookhaven ACS is a telephone site and is no longer geared to the receipt of mail. With the mail room currently off-site, the receipt of mail items is often considerably delayed. The Form 900 waivers are requested only to accommodate installment agreements whose terms will not result in full payment of liability within the natural collection statute expiration date. Delays in receiving these forms result in delays in establishing these agreements and, consequently, can cause a taxpayer's first payment to be postponed.

In the interest of avoiding delays and to facilitate the movement of cases through Collection Contract Support (CCS), management is considering requesting taxpayers to fax the signed waivers whenever possible.

In May 2003, the Commissioner of Internal Revenue adopted a policy statement entitled "Use of Fax and Signature Stamps for Taxpayer Submissions." One of the policy statements adopted was "[c]onsents to extend the statute of limitations for assessing tax (Form 872, SS-10, and other consent forms) **will not** be accepted via fax in normal operations." (emphasis in the original).

LAW

Collection Period of Limitations

I.R.C. § 6502(a)(1) provides that once a timely tax assessment has been made, the assessed tax must be collected within ten years after the date of the assessment.

Under I.R.C. § 6502(a), where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

- (1) within 10 years after the assessment of the tax, or
- (2) if—(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into. ...

The Form 900, Tax Collection Waiver, is used for this purpose. The Form 900 provides:

The taxpayer(s) and the Area Director of Internal Revenue agree that the above amount outstanding (plus interest, penalties, and other additions provided by law) may be collected from the taxpayers by levy or a proceeding in court begun on or before the date to which the statutory period has been extended..

This form must be signed by the taxpayer or his representative and by the appropriate IRS official.

Signatures

I.R.C. § 6061(a) provides, as a general rule, 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.

I.R.C. § 6065 specifies that, 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.

I.R.C. §§ 6061 and 6065 require signatures to authenticate and verify the return or other document submitted. The signature authenticates the return by identifying the return as the signer's. The signature operates to verify the return by confirming the truth, correctness, and completeness of the return.

Treas. Reg. § 301.6061-1(b) provides that the Secretary (Commissioner, through delegation) 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.

ANALYSIS

It had traditionally been the Service's position that I.R.C. §§ 6061 and 6065 contemplate an original signature. See Rev. Proc. 78-29, 1978-2 C.B. 526, § 7.02 ("All taxpayer signatures on forms to be filed with the Internal Revenue Service must be original signatures, affixed subsequent to the reproduction process."). The Code, however, does not define the term "signature" but rather subsumes the common law definition. At common law, the critical element of authentication is the signer's act of adopting the document being "signed." Thus, the requirement for an "original" signature can be satisfied by a faxed copy of a taxpayer's manual signature if the taxpayer adopts the faxed copy as his or her signature for purposes of the document or return. In adopting a particular signature method, the Service must be satisfied that the signature reliably authenticates and verifies the document or return. Reliability is the crucial factor.

In general, the Office of Chief Counsel is of the opinion that faxed signatures may be sufficient, with the proper safeguards, to authenticate and verify tax returns and other documents under I.R.C. §§ 6061 and 6065. The critical administrative task for the Service is to determine whether the taxpayer intended to adopt the copy. Faxed signatures may be accepted in situations where reliable authenticating safeguards are present. Accordingly, it is our opinion that Forms 900 received by fax may be legally sufficient because fax signatures may be sufficient, with the proper safeguards, to authenticate and verify tax returns and other documents under I.R.C. §§ 6061 and 6065.

Although taxpayers waive their right to contest the adjustments and assessment in the Tax Court by signing a waiver, waivers are often contested in court. *See generally*, Robert A. Morse, Annotation, *Waiver of Restrictions on Assessment and Collection of Deficiency in Federal Tax*, 115 A.L.R. FED. 257 (1993); *see, e.g., United States v. Forma*, 72 A.F.T.R.2d 93-6481 (S.D.N.Y. 1993) (forgery of wife's signature); *Aguirre v. Commissioner*, 117 T.C. 324 (2001) (signed Form 4549 waived right to contest in Tax Court); *Perez v. Commissioner*, T.C. Memo. 2002-274 fn.2 (Service unable to produce Form 4549 but taxpayer execution was proved by circumstantial evidence); *Horn v. Commissioner*, T.C. Memo. 2002-207 (taxpayer claimed to be mentally incompetent when he signed Form 4549-CG). Taxpayers have also alleged that the waiver had been altered by the Service after execution. *See, e.g., Pork v. Glotzbach*, 61-1 U.S.T.C. ¶ 9422 (E.D. Va. 1961) (Form 870 altered by Service but subsequently initialed by taxpayer held invalid).

Because waivers frequently wind up in litigation, are time sensitive, and often involve taxpayers who have not been compliant and have outstanding tax liabilities, we do not recommend that the Service establish procedures that routinely permit the faxing of tax collection waivers to the Service. Whether to accept these waivers by fax, however, is an independent business decision that must be made by the Service weighing the risk of disavowal of the consent by taxpayers and the risks inherent in litigation against the utility, convenience, and benefits of this processing method for these documents.

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.