



June 4, 2020

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: IRS Guidance for Electronic Signature Program

Dear Commissioner Rettig:

The American Institute of CPAs (AICPA) recognizes the efforts put forth by the Internal Revenue Service (IRS or “Agency”) over the past several months as the Agency grapples with the Coronavirus Disease 2019 pandemic (commonly known as “COVID-19”), and the significant legislation enacted by Congress. We appreciate the care taken to safely re-open the IRS offices and understand why the IRS has encouraged taxpayers to use electronic options to interact with the IRS and to electronically file (e-file) income tax returns. However, in the interest of the health and safety of taxpayers, tax professionals, and IRS employees, we urgently request that the IRS update its electronic signature (e-signature) guidance¹ and authentication requirements. While e-signature relief is desperately needed during this filing season given COVID-19, a permanent solution is necessary. A permanent solution will allow taxpayers and their representatives to better embrace the digital and global environment and move away from manual, paper-based processing.

Specifically, we are requesting the IRS modify its e-signature program and identity authentication requirements in the following areas:

- I. Taxpayer Electronic Signatures
- II. Identity Authentication of Taxpayers by Electronic Return Originators (EROs)
- III. Expand Notice 2007-79
- IV. Expand Notice 2004-54

¹ As described in IRM 10.10.1.3.2, electronic signature means: A typed name that is typed within or at the end of an electronic record, such as typed into a signature block; a scanned or digitized image of a handwritten signature that is attached to an electronic record; a shared secret, such as a code, password, or PIN; a unique biometric-based identifier, such as a fingerprint, voice print, or a retinal scan; a handwritten signature input onto an electronic signature pad; a handwritten signature, mark, or command input on a display screen by means of a stylus device; or other electronic sounds, symbols, or processes identified in IRS guidance.

1455 Pennsylvania Ave. NW, Washington, DC 20004-1081

T: +1 202.737.6600 F: +1 202.638.4512

aicpaglobal.com | cimaglobal.com | aicpa.org | cgma.org

BACKGROUND

Internal Revenue Code (IRC or “Code”) section 6061,² applicable to taxpayers and practitioners, generally provides that any tax return, statement or other document “shall be signed in accordance with forms or regulations prescribed by the Secretary.”

To accommodate the mandatory requirement of signatures, 22 years ago, Section 2003(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) amended section 6061 to direct the Secretary of the Treasury to “develop procedures for acceptance of signatures in electronic form.”³ It further states that in the interim, “the Secretary may waive the requirement of a signature on an electronically filed tax return or provide for alternative methods of signing.”

[Pub. L. No 116-25](#) (referred to as the Taxpayer First Act of 2019 (TFA)) amended section 6061(b)(3) to require that the IRS publish uniform standards for accepting e-signatures on requests for disclosure of a taxpayer’s return to a practitioner or any power of attorney granted by a taxpayer to a practitioner.⁴

In response to the TFA requirement, the IRS issued guidance on the implementation and usage of the IRS e-signature program in the Internal Revenue Manual (IRM) 10.10.1, [IRS Electronic Signature Program](#), effective December 3, 2019. This IRM provision establishes a baseline of requirements for e-signature programs. However, as acknowledged in the introduction of the IRM, each form owner needs to publish its own form-specific guidance:

[1] This new IRM provides guidance on the implementation and usage of the IRS e-Signature Program. *The narrative provides form owners procedures to implement e-Signature to their respective forms*, provides guidance for ensuring compliance with e-Signature policies, and outlines an appeals process. (Emphasis added)

[IRS Publication 1345](#), *Handbook for Authorized IRS e-File Providers of Individual Income Tax Returns (rev. 4-2020)*, addresses the rules and requirements of e-filing by authorized IRS e-file providers filing individual income tax returns and related forms and schedules.

[IRS Publication 4163](#), *Modernized e-File (MeF) Information for Authorized IRS e-File Providers for Business Returns*, provides authorized IRS e-file providers with specific requirements and procedures for e-filing through the MeF system.

Additionally, as specified in Publications 1345 and 4163, taxpayers must authorize the electronic filing (e-filing) of their returns. For taxpayers to authorize the e-filing of their returns, the tax preparer signing the tax return must deliver a copy of the completed return to the taxpayer with an

² All references to “section” or “§” are to the Internal Revenue Code of 1986, as amended, and all references to “Treas. Reg. §” and “regulations” are to U.S. Treasury regulations promulgated thereunder.

³ IRS developed procedures for the acceptance of signatures by individuals in digital or other electronic form in certain circumstances. See section 6061(b)(1).

⁴ An e-signature permitted under IRS guidance is treated in the same manner as a signature on a paper form for both civil and criminal purposes. See section 6061(b)(2).

e-file authorization form. The e-file authorization form must be signed by or on behalf of the taxpayers to confirm they have reviewed the return and to signify their approval for the ERO to e-file the tax return. The ERO must also sign the e-file authorization form to confirm that the return is being submitted in accordance with requirements applicable to authorized e-file providers. Often, tax return preparers with Preparer Tax Identification Numbers are employed by or are owners of the firm(s) serving as EROs. The signed e-file authorization form is not filed with the IRS and is solely retained by the ERO for its records.

In 2014, the AICPA submitted a [comment letter](#) to the IRS expressing our concerns that the e-signature standards did not adequately address the need for confidentiality of taxpayer information and they did not appropriately accommodate the needs of different taxpayer groups with respect to remote transactions, as defined by Publication 1345.⁵

With the upheaval created by COVID-19, tax return preparers, their clients, and the IRS, are working remotely to comply with public health directives. To help maximize the ability for the IRS to execute on critical duties in a remote working environment, the IRS temporarily allowed⁶ IRS employees to accept e-signatures on documents related to examination and collection of tax liability.⁷

I. Taxpayer Electronic Signatures

Overview

IRS Publication 1345 allows for the option for taxpayers to use an e-signature⁸ for Form 8878, *IRS e-file Signature Authorization for Form 4868 or Form 2350*, and Form 8879, *IRS e-File Signature Authorization*, if the software provides the e-signature capability.

IRS Publication 4163 Section 3.6.1 allows for an e-signature only on Form 8879 if the taxpayer uses an ERO.

⁵ IRS Publication 1345 defines a remote transaction for electronic signatures as “one in which the taxpayer is electronically signing the form and the ERO is not physically present with the taxpayer.”

⁶ IRS memorandum, Lough, Sunita, “[\(1\) Approval to Accept Images of Signatures and Digital Signatures \(2\) Approval to Receive Documents by Email and to Transmit Documents to Taxpayers using SecureZip](#),” March 27, 2020.

⁷ In a letter dated March 31, 2020, RSM US LLP requested relief regarding certain manual signature requirements. Additionally, in a letter dated April 3, 2020, the Section of Taxation of the American Bar Association recommended that until normal business operations resume after the COVID-19 emergency, the IRS expand approved signature methods under IRM Exhibit 10.10.1-1 for the filing of tax returns and any other forms or the submission of documents to the IRS that otherwise require a manual signature.

⁸ Consistent with the language in IRM 10.10.13.2, an e-signature allows for a typed name, a scanned or digitized image of a handwritten signature that is attached to an electronic record, a handwritten signature input onto an electronic signature pad, or a handwritten signature, mark, or command input on a display screen by means of a stylus device.

Recommendation

The IRS should modify Publications 1345 and 4163 to allow all taxpayers the option to use an e-signature for the Form 8878 series⁹ and the Form 8879 series¹⁰ (collectively, “E-file Authorization Forms”) if the software provides the e-signature capability.

Nearly 90% of individual tax returns, well over 80% of partnership, corporation and fiduciary returns, and nearly 70% of not-for-profit entity returns are filed electronically.¹¹ Furthermore, due to the COVID-19 pandemic, many taxpayers are currently subject to stay-at-home orders or to maintain a minimum of six feet of social distance from others. The modification of Publications 1345 and 4163, allowing for the use of e-signatures on the E-file Authorization Forms, will permanently facilitate individual and non-individual taxpayers to comply with their filing obligations electronically and to meet current public health directives.

II. Identity Authentication of Taxpayers by EROs

Overview

The recently released IRM provides a consideration for relying on a prior business relationship with a signer as the basis for identity verification. IRM 10.10.1.6.1 (12-03-2019), *Methods of Identity Proofing the Signer*, states:

The initial identification will be required only *once* through one or more permitted methods. A method is permitted only if specifically provided for in IRS guidance. Examples of permitted initial identification methods may include the following:

- *Previous business transactions with the signer.* (Emphasis added)

In contrast, the identity verification requirements for Forms 8878 and 8879, as outlined in Publication 1345, are more stringent. In a remote transaction, the software and the ERO must verify the taxpayer’s identity through a third-party knowledge-based authentication (“KBA”) provider. The KBA provider requires the taxpayer to successfully match KBA questions, such as credit report information, prior to signing the forms.

⁹ Form 8878 series includes Form 8878; Form 8878 (SP), *IRS e-file Signature Authorization for Form 4868 (SP) or Form 2350 (SP) (Spanish Version)* and Form 8878-A, *IRS e-file Electronic Funds Withdrawal Authorization for Form 7004*.

¹⁰ Form 8879 series includes Form 8879; Form 8879 (SP), *IRS e-file Signature Authorization (Spanish version)*; Form 8879-C, *IRS e-file Signature Authorization for Form 1120*; Form 8879-EMP, *IRS e-file Signature Authorization for Forms 940, 940 (PR), 941, 941 (PR), 941-SS, 943, 943 (PR), 944, and 945*; Form 8879-EO, *IRS e-file Signature Authorization for an Exempt Organization*; Form 8879-EX, *IRS e-file Signature Authorization for Forms 720, 2290, and 8849*; Form 8879-F, *IRS e-file Signature Authorization for Form 1041*; Form 8879-I, *IRS e-file Signature Authorization for Form 1120-F*; Form 8879-PE, *IRS e-file Signature Authorization for Form 1065*; and Form 8879-S, *IRS e-file Signature Authorization for Form 1120-S*.

¹¹ IRS, IRS Data Book, [Returns Filed, Taxes Collected & Refunds Issued](#), Fiscal Year 2018.

Furthermore, the current FAQs for Form 8878 and Form 8879, [Frequently Asked Questions for IRS e-file Signature Authorization](#),¹² provide clarification on whether identity verification is a one-time event. The FAQs state:

No. Identity verification must be completed every time a taxpayer electronically signs Form 8878 or 8879, with two exceptions. If a taxpayer e-signs the form in the physical presence of the ERO, and the taxpayer has a multi-year business relationship with the ERO, then no further identity verification is needed. A multi-year business relationship is one in which the ERO has originated tax returns for the taxpayer for a prior tax year and has identified the taxpayer using the identity verification process.

Recommendation

In the event that taxpayers electronically sign E-file Authorization Forms remotely, the IRS should permit the ERO, who is also the signer of the return, to rely on previous business transactions as a way of proving the taxpayer identity rather than meeting the KBA identity verification requirements each time the taxpayer e-signs E-file Authorization Forms.

At a minimum, for the foreseeable future due to the challenges arising from COVID-19, we recommend that the IRS clarify that the IRM method of verifying through prior business transaction history supersedes form-specific guidance.

In general, our members (as EROs) often have long-standing relationships, that include multiple previous business transactions with their clients and are comfortable relying on the IRM's approach of authenticating the taxpayer. However, the IRM's introduction notes that each form owner needs to publish its own form-specific guidance. As such, our members are required to comply with the KBA approach to verify taxpayers' identities.

Many of our members/EROs do not have existing relationships with third-party KBA providers, which are costly and take time to establish. Additionally, many taxpayers are not able to answer all the questions asked by the KBA providers, which may cause delays in filing and/or prevent e-filing altogether. Finally, some taxpayers may not meet the third-party KBA requirements if they do not have public database histories in the United States (e.g., recently emancipated individuals or foreign individuals with Form 1040-NR series filing and payment obligations).

Furthermore, based on the IRS FAQs, to forego completing identity verification every time a taxpayer electronically signs the E-file Authorization Forms, the taxpayer must e-sign the form in the physical presence of the ERO. Requiring in-person verification at this point is contrary to public health directives and possibly state and local laws. It is increasingly important to facilitate a fully remote digital experience for taxpayers and tax preparers to meet the IRS's and other jurisdictions' regulatory due dates.

¹² IRS, [Frequently Asked Questions for IRS e-file Signature Authorization](#), updated May 21, 2019.

III. Expand Notice 2007-79

Overview

[Notice 2007-79](#) provides that the IRS will allow EROs to sign only Form 8453, *U.S. Individual Income Tax Declaration for an IRS e-file Return*, Form 8878, and Form 8879 by rubber stamp, mechanical device (such as signature pen), or computer software program.

Recommendation

We recommend that the IRS expand Notice 2007-79 to not only allow EROs to sign Form 8453, Form 8878, and Form 8879 but also the Form 8453 series¹³ and Form 8879 series by rubber stamp, mechanical device (such as signature pen), or computer software program.

While millions of taxpayers e-file voluntarily, certain corporations, partnerships, employment tax and tax-exempt organizations are required to e-file. However, Notice 2007-79 does not authorize alternative signature methods for EROs for the Form 8879 series and the Form 8453 series. Without expanded guidance, only manual signatures are permitted for e-file authorization forms of business entity tax returns.

Under normal circumstances, it is inconvenient and sometimes challenging to acquire a manual signature. For business and not-for-profit returns, individuals signing on behalf of the ERO must (i) print and sign the e-file authorization form and (ii) send the signed e-file authorization form for delivery to the taxpayer. The taxpayer must then (i) print, sign and date the e-file authorization form and (ii) send the signed e-file authorization form to the ERO. In the current health crisis, without expanding Notice 2007-79, in some cases, acquiring a manual signature is not possible.

IV. Expand Notice 2004-54

Overview

[Notice 2004-54](#) provides that the IRS will permit only *income* tax return preparers to sign original returns, amended returns, or requests for filing extensions by rubber stamp, mechanical device, or computer software program.

¹³ Form 8453 series includes Form 8453; Form 8453 (SP), *U.S. Individual Income Tax Declaration for an IRS e-file Return (Spanish version)*; Form 8453-C, *U.S. Corporation Income Tax Declaration for an IRS e-file Return*; Form 8453-EMP, *Employment Tax Declaration for an IRS e-file Return*; Form 8453-EO, *Exempt Organization Declaration and Signature for Electronic Filing*; Form 8453-EX, *Excise Tax Declaration for an IRS e-file Return*; Form 8453-FE, *U.S. Estate or Trust Declaration for an IRS e-file Return*; Form 8453-I, *Foreign Corporation Income Tax Declaration for an IRS e-file Return*; Form 8453-PE, *U.S. Partnership Declaration for an IRS e-file Return*; Form 8453-R, *Electronic Filing Declaration for Form 8963*; Form 8453-S, *U.S. S Corporation Income Tax Declaration for an IRS e-file Return*; and Form 8453-X, *Political Organization Declaration for Electronic Filing of Notice of Section 527 Status*.

The Honorable Charles P. Rettig

June 4, 2020

Page 7 of 7

Recommendation

We recommend that the IRS expand Notice 2004-54 to permit preparers of *non-income* tax returns (including paper filed returns) to sign original returns, amended returns, or requests for filing extensions by rubber stamp, mechanical device, or computer software program.

Extending this Notice to non-income tax returns will permit preparers of estate, gift, payroll and excise tax returns to electronically sign a paper-filed return and will eliminate the need for these preparers to print and manually sign the paper return.

* * * * *

The AICPA recognizes the great efforts of the Agency during this extraordinary time. However, the COVID-19 pandemic has highlighted the need to update the e-signature guidance and authentication requirements on a permanent basis going forward.

The AICPA is the world's largest member association representing the CPA profession, with more than 429,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Melanie Lauridsen, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9235 or Melanie.Lauridsen@aicpa-cima.com; or me at (612) 397-3071 or Chris.Hesse@CLAconnect.com.

Sincerely,



Chair, AICPA Tax Executive Committee

cc: The Honorable Michael J. Desmond, Chief Counsel, Internal Revenue Service
Ms. Sunita B. Lough, Deputy Commissioner for Services and Enforcement, Internal Revenue Service
Mr. Jeffrey Tribiano, Deputy Commissioner for Operations Support, Internal Revenue Service
Mr. Thomas A. Cullinan, Counselor to the Commissioner, Internal Revenue Service
Ms. Amalia C. Colbert, Chief of Staff, Internal Revenue Service
Mr. Kenneth C. Corbin, Commissioner, Wage and Investments, Internal Revenue Service
Ms. Nanette M. Downing, Director, Identity Assurance, Internal Revenue Service