



May 9, 2023

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Daniel I. Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Acceptance of Electronic Signatures and Electronic Filing for All Returns and other Documents Submitted to the IRS

Dear Assistant Secretary Batchelder and Commissioner Werfel:

The American Institute of CPAs (AICPA) is submitting comments to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) recommending that Treasury and the IRS change the policy regarding electronic filing and electronic signatures to improve tax administration, return preparation, and enforcement. The AICPA recognizes that on March 31, 2023, the IRS noted its intent to extend the temporary policy exception allowing taxpayers to electronically sign and email documents,¹ and allowing e-signatures for certain forms,² beyond October 2023 while they develop long-term solutions for these capabilities. While specifics are still forthcoming as of the date of this letter, this development is welcome as the current policies and implementation of those policies create significant and unnecessary obstacles for taxpayers and their advisors that could easily be eliminated by shifts in the way Treasury and the IRS approach these issues. We recommend ways to eliminate these currently burdensome obstacles in this letter.

The infusion of \$80 billion of multi-year funding for the IRS presents a unique opportunity to address longstanding impediments to smooth and efficient experiences taxpayers have with the IRS. Given this timing, we hope that you will take this opportunity to heed the calls of taxpayers, practitioners, and advocates for an improved federal tax system to streamline and rationalize the IRS’s policy and approach to electronic signatures and electronic filing.³

We request a commitment from Treasury and the IRS for the following:

- Unless the IRS can commit to provide details on long-term guidance before July 4, 2023, the IRS should immediately expand its current guidance to include additional forms and returns and extend the digital signature relief beyond the current expiration date of October 31, 2023, through December 31, 2023. Note that receiving updated guidance in the middle of the tax compliance busy season which occurs in the summer / early fall would be disruptive to and create additional challenges for our profession.

¹ [Sign and Send Documents Electronically | Internal Revenue Service \(irs.gov\)](#)

² [Details on using e-signatures for certain forms | Internal Revenue Service \(irs.gov\)](#)

³ We note that Initiative 1.2 of the IRS’s [Strategic Operating Plan](#), released on April 6, 2023, calls for all documents to be available for electronic filing.

- By the end of December 2023, and effective in January 2024, a plan will be in place for the IRS to accept electronic signatures (including a description and allowance of using any commercially available acceptable methods for providing the electronic signature) on all documents submitted to the IRS, including all paper submissions provided to any function within the IRS and submissions transmitted via electronic means such as, but not limited to, by fax, email, and instant message. This plan should be made publicly available.
- By the end of 2023, begin to annually publish an information technology governance document showing the current priority and timeline for enabling each type of tax return to be electronically filed.
- Implement by September 30, 2023, a policy that any IRS office or employee that accepts fax submissions will also accept submissions via email with read receipt capability, ensuring that the IRS offices and employees are able to accept such emails using commercially available secure email methods, such as with password protected zip files.

In addition to the requests above, this letter includes specific recommendations regarding S corporations, which can help guide how Treasury and the IRS move forward on these issues.

Overview

A universal allowance for some form of electronic signature, including digital signatures where applicable, and electronic filing is paramount to creating an efficient and modern tax administration. Technology has transformed the business and financial world, and communication now relies less on the sharing of printed materials. Aside from efficiency improvements, digital signature and electronic filing allowances increase safety and alleviate logistical concerns of taxpayers and tax practitioners.

The AICPA acknowledges and appreciates the technological improvements in tax administration made to date. Improvements include the issuance of IRS Memoranda [NHQ-01-1121-0004](#) and [NHQ-10-1121-0005](#) (the “Memos”), which temporarily expanded allowances for images of signatures and digital signatures due to the COVID-19 pandemic through October 31, 2023, as requested by the AICPA⁴ and provided by the IRS. Although this temporary relief has been welcome, its temporary nature inherently creates limitations. For example, we note that the October 31, 2023 deadline does not cover, but should cover, the upcoming November 15, 2023 extended filing deadline of the calendar year 2022 Forms 990 series. The October 31, 2023 deadline also does not cover other filings that will be made on or before December 31, 2023.

⁴ AICPA comment letters, “[Response to Request for Public Comments on Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, and Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner \(OMB Number: 1545-0159\)](#),” dated February 13, 2023, “[Suggested Updates to Form 1041 to Facilitate Electronic Filing, Foreign Tax Credits and Passive Foreign Investment Companies](#),” dated December 16, 2022, “[Temporary IRS Guidance for Electronic Signature Program for 2021](#),” dated December 10, 2020, “[Comments on Electronic Filing \(e-filing\) of Forms 706, 706-NA, and 709](#),” dated December 4, 2020, “[Request for Permanent Electronic Submission Options for Accounting Method Changes](#),” dated November 16, 2020, “[Temporary IRS Guidance for Electronic Signature Program](#),” dated August 19, 2020, “[IRS Guidance for Electronic Signature Program](#),” dated June 4, 2020, and “[Broad Filing Season Relief for Taxpayer and their Advisors](#),” dated April 7, 2020.

Specific issues pertaining to S corporations, regarding digital signatures that are currently not allowed, and should be, and electronic filing for forms and documents required to be filed with IRS include:

- Form 2553, *Election by a Small Business Corporation*⁵
- Form 8869, *Qualified Subchapter S Subsidiary Election*
- Elections required by Qualified Subchapter S Trusts and Electing Small Business Trusts
- All other S corporation-related documents filed with the IRS, including corporate and shareholder statements under Revenue Procedure 2013-30 and Revenue Procedure 2022-19.

Also, with respect to S corporations, digital signatures that are currently not allowed, and should be, include signed documents required to be maintained in company records, such as elections under section 1377(a)(2) and section 1368(e)(3).

Other examples are Form 5227, *Split-Interest Trust Information Return*, and Form 8855, *Election to Treat a Qualified Revocable Trust as Part of an Estate*, that are not currently included as forms allowed for a digital signature, as they should.

In addition, IRS currently does not, and should, permit e-filing of Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, Form 706-NA, *United States Estate (and Generation-Skipping Transfer) Tax Return (Estate of nonresident not a citizen of the U.S.)*, Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner*.⁶

We urge the IRS to further expand allowing digital signatures and electronic filing permanently for all forms and returns⁷ thereby eliminating manual signature requirements and minimizing paper filing requirements. If that is not possible, the IRS should immediately expand the Memos to additional forms and returns and extend the digital signature relief beyond the October 31, 2023 expiration of the Memos through December 31, 2023. In addition to simplifying tax administration for taxpayers and tax practitioners, these technological improvements assist the IRS by reducing paper intake, processing time, and backlogs.

⁵ Form 2553 may currently be filed via fax, therefore submission of the original document with the original signatures is not required for a valid election. If filed by fax, the corporation is required to maintain the original signed form in the corporate files. The AICPA recommends that the IRS clarify that the corporation can accept digital signatures from shareholders if the Form 2553 is filed by fax.

⁶ AICPA comment letters, "[Response to Request for Public Comments on Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, and Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner \(OMB Number: 1545-0159\)](#)," dated February 13, 2023, and "[Temporary IRS Guidance for Electronic Signature Program for 2021](#)," dated December 10, 2020, "[Comments on Electronic Filing \(e-filing\) of Forms 706, 706-NA, and 709](#)," dated December 4, 2020.

⁷ We note that Initiative 1.2 of the IRS's [Strategic Operating Plan](#), released on April 6, 2023, calls for all documents to be available for electronic filing.

Section 6011⁸ grants the Secretary of the Treasury (the “Secretary”) the ability to set the rules for acceptance of electronic forms. Section 6061(b) provides the Secretary with the ability to set the rules for acceptance of digital signatures. It is our understanding that, absent action by the National Office of the IRS, decisions on the matter of electronic or digital signatures are delegated to the divisional level. The Internal Revenue Manual states “Business operating division and functional operating division (BOD/FOD) owners and form owners are responsible for driving the process to implement an e-signature.”⁹

The IRS has steadily increased the number of forms that can be filed electronically.¹⁰ In addition, the IRS has, albeit on a temporary basis, allowed numerous tax forms and white paper section 83(b) elections to be signed digitally through the Memos discussed in the general comments. The time has come for electronic signatures and e-filing to be adopted universally across all BOD/FOD units.

Electronic Signature

The current electronic signature policy allows each IRS operating division to set forth its own rules for electronic signatures, including on which documents such signatures will be accepted and what type of electronic signatures (e.g., a facsimile of a wet signature, a certain type of digital signature, etc.) are acceptable. Section 6061 and the regulations thereunder are permissive regarding the method of signature acceptable on returns and other documents and provide the IRS significant flexibility to decide which signature methods will be accepted.¹¹

Given this expansive authority, which has been in place since at least 1996 (when Treas. Reg. § 301.6061-1 was published), we believe that it is long past due for Treasury and the IRS to adopt a universal policy for acceptance of electronic signatures, including the types of acceptable electronic signatures, on all submissions to the IRS. Current technological capabilities, the use of electronic signatures in a variety of commercial contexts, including complex financial transactions such as buying a home and obtaining financing for both personal and business purposes, and the shift to a more virtual work environment because of the COVID-19 pandemic should all motivate the IRS to immediately adopt such a policy to accept some type of electronic signature on all returns, documents, and other submissions.

We believe that the current limited list of IRS tax returns and documents that can be signed using some form of electronic signature is confusing. The list should be expanded and made consistent. There appears to be no clear rationale why electronic signatures are accepted on some IRS documents but not others. There is also an inconsistency regarding the type of electronic signature

⁸ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

⁹ Internal Revenue Manual, 10.10.1.9 (1).

¹⁰ We note that Initiative 1.2 of the IRS’s [Strategic Operating Plan](#), released on April 6, 2023, calls for all documents to be available for electronic filing.

¹¹ See TD 8689, 61 FR 65319 (Dec. 12, 1996).

acceptable on some documents and not others. These inconsistencies create traps for the unwary who might inadvertently affix an electronic signature (or the wrong type of electronic signature) to a document on which it is not acceptable, thereby adding significant burden and risk for taxpayers and tax practitioners trying to comply with unclear rules.

Recommendations

We urge Treasury and the IRS to end the policy of having each function at the IRS determine whether to accept electronic signatures and the kind of electronic signature that is acceptable and instead adopt a policy regarding methods of electronic signing that is applicable agency wide.

We recommend that a plan for implementing this policy be put in place and made public by the end of 2023.

In addition, we recommend that Treasury and the IRS set forth a policy for accepting electronic signatures on all documents submitted on paper (regardless of the means of transmission) that is effective as of January 1, 2024.

To assist with this process, we also recommend that Treasury and the IRS review all documents other than tax returns that require a signature and determine whether a signature on that document can be eliminated. For instance, a document that is attached to, and is part of, a tax return should not need a separate signature because the signature under penalties of perjury on the tax return covers all information, including schedules and other documents, attached to the tax return. Removing those signatures will simplify the taxpayer's ability to obtain a qualified practitioner to represent them before the IRS.

Electronic Filing

All returns should be able to be filed with the IRS electronically. Many other forms, statements, elections, and other documents should also be able to be filed electronically. We applaud the IRS for the recently added electronic filing capabilities, including electronic filing of Form 1040-X and the new IRIS web portal for submitting information returns. Given the IRS's \$80 billion of additional multi-year funding, the expectation is that progress on improvement and expansion of electronic filing capabilities will continue.

Recommendation

The AICPA requests that the IRS release to the public a schedule of when all forms and other documents that are not currently able to be electronically filed will be able to be electronically filed.

Electronic Transmission

Currently, documents including those containing signatures are transmitted to the IRS through the mail (USPS), via a private delivery service, or electronically using an IRS electronic filing system, fax, email, or other secure messaging or IRS uploading system.

The IRS has long distinguished between a “wet” signature on a paper document when sent to the IRS through the mail or a private delivery service as opposed to via electronic means (fax, email, or instant message or another secure messaging or uploading system). When it comes to signatures, the IRS has also distinguished between electronically transmitted documents and non-electronically submitted documents.

We urge the IRS to dispense with the antiquated notion that electronic transmission of a signed document to the IRS, other than through fax or an IRS-created secure system, cannot be sufficiently secure. We note that many sensitive business and personal documents including signatures are sent via secure email. We encourage the IRS to adopt these commercial norms and permit taxpayers and practitioners to send information to the IRS through commercially available secure email.¹² Treasury and the IRS should work to immediately provide a consistent uniform policy allowing all functions within the IRS that currently accept fax submissions to accept email submissions, ensuring that these offices have the tools to open the secure email files using common, commercially available products such as encrypted zip files.

Recommendation

The IRS must wean itself from reliance on fax technology. Email is ubiquitously used and much more efficient in most business and personal contexts. A modernized IRS must catch up and embrace email for communication with the public. The notion that faxing documents provides more security than advanced email encryption technologies is no longer defensible.

Accordingly, we urge Treasury and the IRS to adopt by September 30, 2023, a policy applicable to all functions within the IRS where any IRS office or employee that accepts fax submissions will also accept submissions via email, ensuring that the IRS offices and employees are able to accept such emails using commercially available secure email methods that will be accepted throughout the agency, such as password protected zip files.

In addition to the prior AICPA requests on specific issues noted in footnote 4, AICPA also requests the IRS immediately allow digital signatures and e-filing of the above-mentioned specific examples of S corporation and trust, estate and gift tax forms and documents.

¹² While some functions within the IRS, and some offices or personnel within those functions might accept taxpayer and practitioner submissions transmitted via a commercially available secure email method, there is no uniform policy. Further, practitioners often report being told by IRS employees that their computers are not equipped to read some types of encrypted emails or attachments.

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Page 7 of 7

The AICPA is the world's largest member association representing the CPA profession, with more than 421,000 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 contact Rochelle Hodes, Chair, AICPA IRS Advocacy and Relations Committee, at (202) 552-8033, or Rochelle.Hodes@crowe.com; Peter Mills, Senior Manager — AICPA Tax Policy & Advocacy, at (202) 434-9272, or Peter.Mills@aicpa-cima.com; James Sansone, Chair, AICPA E-signatures Task Force, at (847) 413-6912, James.Sansone@rsmus.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc:

Mr. Ken Corbin, Chief Taxpayer Experience Officer, Internal Revenue Service
Mr. Douglas O'Donnell, Deputy Commissioner, Services and Enforcement, Internal Revenue Service
Mr. Tom West, Deputy Assistant Secretary (Tax Policy), Department of Treasury