

Section of Taxation

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January 12, 2018

William M. Paul,
Acting Chief Counsel and Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

Re: Timeliness of Electronic Tax Return after Failed Transmission

Dear Mr. Paul:

On December 15, 2017, we submitted to you a letter in response to our discussion on November 7, 2017, concerning the application of the section 6651 failure to file penalty when a taxpayer timely attempts to submit a tax return electronically, the transmission fails, and the taxpayer then later submits the return after the due date for the return (the “Initial Letter”). We are writing to provide additional information that we believe further supports our recommendation that the existing 10-day “grace” period for filing a paper return after a failed electronic-filing submission be extended to 30 days. Primary responsibility for the preparation of this letter was exercised by Keith Fogg of the Section’s Pro Bono and Tax Clinics Subcommittee.

The Service does not accept for processing paper-filed returns filed that do not have a valid signature. Nevertheless, as reflected in the following 2011 Policy Statement, the taxpayer is not penalized if a signed return is filed after Service request:

1. Unsigned income tax returns will not be accepted for processing; delinquency penalty generally will not be imposed on timely filed unsigned income tax returns
2. An unsigned tax return is not a valid tax return. The Service, therefore, will not accept unsigned income tax returns for processing, although these returns may constitute informal claims for refund or credit if the taxpayers report overpayments of tax on the returns.
3. The Service will return unsigned income tax returns to taxpayers requesting that the taxpayers sign the tax returns and resubmit them for processing.
4. Except as provided in the paragraph below, the Service will not impose a delinquency penalty when an unsigned tax return is filed timely on the prescribed form and accompanied by proper payment, and the taxpayer, upon request, subsequently files a proper income tax return

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5. The Service will impose a delinquency penalty when the facts show willful intent to disobey the Internal Revenue laws or gross negligence in connection with the taxpayer's failure to sign the income tax return. Additionally, the Service may impose a delinquency penalty if the taxpayer asserts a statute of limitations defense to the assessment of tax stated on the income tax return that relies in whole, or part, on the filing of the unsigned tax return.¹

The Service sends the taxpayer the unsigned return to correct using Form 3531 pursuant to authority in Internal Revenue Manual provision 3.11.3.5.2.1(2).² IRM Exhibit 3.11.3-16 provides a copy of IRS Form 3531, which allows the taxpayer 20 days to respond without incurring a penalty if the signature is missing.³ If the taxpayer does respond, IRM 3.11.3.8.2(3) provides the taxpayer a grace period of 30 days without incurring a penalty.⁴

When an unsigned paper return is rejected for transmission, correcting the error and resubmitting the return involves only the Service and the taxpayer. When an electronic return transmission fails, the preparer of the electronic return is also involved in correcting the return, which adds a lawyer of complication. For the reasons discussed in our Initial Letter, and for the reasons supporting the 30-day period for correcting paper returns, we reiterate our request that taxpayers who have a failed electronic transmission receive 30 days to correct the submission by filing a paper return.

We thank you for your time and attention to this important matter affecting taxpayers of all types and would look forward to meeting with you and your staff to discuss these issues further.

Sincerely,



Karen L. Hawkins
Chair, Section of Taxation

cc: Hon. David Kautter, Assistant Secretary (Tax Policy), Department of the Treasury
Drita Tonuzi, Deputy Chief Counsel (Operations), Internal Revenue Service
Thomas West, Tax Legislative Counsel, Department of the Treasury
Katherine Zuba, Associate Chief Counsel, Procedure and Administration Division, Internal Revenue Service

¹ IRS Policy Statement 3-5 (Formerly P-2-11), approved July 26, 2011

² Correspondence When Sending Return Back to the Taxpayer, IRM 3.11.3.5.2.1(2).

³ Form 3531 Instructions, IRM 3.11.3-16

⁴ Determining the Received Dates, IRM 3.11.3.8.2(3).