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Don't Robo-Sign Tax Returns

Along with the Timothy Geithner defense to tax return mistakes (“Gee, TurboTax made me do it!”), perhaps we should add the robo-signer defense: “I didn’t read my tax return—I just signed it.” (For more on Geithner, see [Tax Court Rejects Geithner/TurboTax Defense](#).) After all, if officials at big financial institutions can execute foreclosure documents willy-nilly without reading them, why can’t we? See [Robo-signing: Just the start of bigger problems](#).

For most people these days, tax return preparation is done by someone else. The IRS statistics bear this out. According to the most recent [IRS data](#), 57.7% of U.S. taxpayers used paid preparers during tax year 2008. With over half our returns being prepared by someone else, it is no wonder that most taxpayers assume their returns are written in some unintelligible runic script. Even lawmakers can’t figure out how to do their own! See [Few lawmakers file their own tax returns, citing code’s complexity](#).

True, we’re supposed to **read and understand** the return and we must sign under penalties of perjury. We **should** review it before signing and alert the return preparer to any mistakes we discover. But how often does this happen? With electronic wizardry, I’ve seen many preparers who seem to have almost no interaction with clients, and that concerns me.

In fact, the situation seems worse today than ever before, both because of the growing complexity of the system and electronic filing. Leaving my own prejudices against e-filing aside, I'm talking here about simple mechanics. There's a marked contrast between the mechanics of paper vs. electronic. The taxpayer with a traditional paper filing at least must **sign** the return before mailing, and that imports a certain amount of due diligence.

Sure, they can say they just signed without reading—a robo-signer before the term was fashionable. But with e-filing, the client may not even **see** the return. The client **should** review the return, and the return preparer should **ask** the client to verify that all figures are correct, the correct boxes are checked, and so on. But often, this isn't happening. And there's no "signature" in the traditional "affix your John Hancock" sense.

Neither the taxpayer nor the preparer **physically** signs the return. The taxpayer and the preparer both have PIN numbers they enter into the record when they file. The taxpayer has to sign a signature authorization form ([Form 8879](#)) that recites that the taxpayer has reviewed the electronic return, it is accurate, etc. This all happens **before** the return is submitted electronically, which makes sense.

In the old days, when there was a flurry of activity in the final days before a return was completed, at least it had to be printed out and the taxpayer had to actually sign it. Now, in my experience, changes are being made, and, since the authorization form was signed days before, the final return submitted may be significantly different from what the client saw. The client may be able to say with a straight face—like the bank execs signing foreclosure docs—"who knew?"

Yet the PIN procedure, says the IRS, counts as a signature for all purposes. See [Signing Your Electronic Tax Return](#).

Since our tax law has been around since 1913, it's useful to look over the storied history of the income tax. The "I didn't read it" defense has been used with less than successful results. Courts have consistently ruled that taxpayers have a duty to read their returns to ensure that all income items are included.

Since as early as 1928, courts have held that even if all data is furnished to the return preparer, the taxpayer still has a duty to read the return and make sure all income items are included. See [*Mackay v. Commissioner*](#), 11 B.T.A. 569 (1928). The Tax Court has also stated that reliance on a preparer with complete information regarding a taxpayer's business activities does not constitute a defense to return penalties if the taxpayer's cursory review of the return would have revealed errors. See [*Metra Chem Corp. v. Commissioner*](#), 88 T.C. 654 (1987).

Still, if I were a judge (I'm clearly not), I would be much more sympathetic today to the plight of a technologically malnourished waif who never sees the return except in a draft email, and then zap it's gone.

You may think I'm exaggerating, but consider this: over the last year with the advent of electronic filing, I've seen numerous mistakes committed by preparers. Some preparers hit "send" before the return is ready. In numerous cases, I've seen many moving pieces and the return simply zapped into cyberspace with little client input. Maybe this stuff all happened in the old days, but not to the degree it does now.

It may be years before we have good answers to the robo-signer defense. But want my advice? Don't be one.

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