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DIVISION OF FINANCIAL ASSISTANCE**

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SEEDS MANAGEMENT MEMORANDUM

State Enterprise and Economic Development Section

Memorandum Number 8-02

Date: May 15, 2008

TO: Enterprise Zone Coordinators

From: Frank Luera, Chief
State Enterprise and Economic Development Section

SUBJECT: Guidance for the Use of Electronic Signatures

Effective immediately, enterprise zones may accept electronic signatures on the two federal documents used to verify that an employee resided in a Targeted Employment Area (TEA). These documents consist of the Form I-9, U.S. Department of Justice, Immigration, and Naturalization Service (I-9), and the Form W-4, Employee's Withholding Allowance Certificate (W-4).

This directive is considered temporary for the use of the I-9 because the Department of Housing and Community Development (Department) intends to withdraw, in the near future, the I-9 from the list of acceptable documents for the TEA category. The following sections provide background on this new procedure.

Requests To Use Electronic Signatures

Under Section 8466(p) of the California Code of Regulations, Title 25, a business in an enterprise zone may receive a hiring tax credit if it hires a resident of a TEA. To obtain a certificate or voucher, which allows the business to claim the credit, the employer must demonstrate that the employee's address was in a TEA immediately preceding employment. To meet this requirement, the employer can provide a copy of the employee's I-9, which presumably shows the address at the time of hire. Recently, the Department also permitted employers to use a W-4 to support eligibility for the TEA category.

Over the past year or so, many employers and their agents have requested permission to submit copies of I-9s and, more recently, W-4s with electronic signatures to support TEA eligibility. Until now, the standard practice has been to require employers to submit a copy of the I-9 with the employee's original signature. However, according to some employers, they no longer require employees to sign a hard copy of their I-9. Instead, they have their employees electronically attest to the information on their I-9s and, subsequently, retain the I-9s in electronic format. Because of this administrative change, these employers argue that they cannot follow the standard practice of providing the I-9 with the employee's original signature. As a result, the employers have asked if they could use copies of the electronic I-9s, which include an electronic signature, to support their application for TEA eligibility.

Standards for the Use of Electronic Signatures

To determine whether enterprise zones may accept the electronic versions of the documents used to support the TEA category, the Department researched the availability of standards or guidelines for the use of electronic signatures. Based on the U.S. Immigration and Customs Enforcement's website, there appears to be no single government-wide electronic signature or record-keeping standard. However, even without a single, universal standard, we determined that there are several factors that may favor the acceptance of electronic signatures.

For example, we noted that the Government Paperwork Elimination Act requires federal agencies, when practicable, to transact and maintain information electronically. Furthermore, we found that the Congress passed legislation in October 2004 authorizing employers to retain I-9s in electronic format and also authorized the attestations on the I-9 to be manifested by an electronic signature.

During our research, we also learned that some federal agencies, such as the Internal Revenue Service (IRS), have established standards that provide helpful guidance for the electronic storage of records for taxpayers. Specifically, the IRS Revenue Procedure 97-22, Section 4, outlines the Electronic Storage System requirements, which employers should use as a reference when employing an electronic process for the storage of the records used to support their tax returns. Most notably, the procedure establishes general requirements for an electronic storage system. According to the IRS, an electronic storage system is a system to prepare, record, transfer, index, store, preserve, retrieve, and reproduce books and records by either (1) electronically imaging hardcopy documents to an electronic storage media, or (2) transferring computerized books and records to an electronic storage media using a technique, which allows books and records to be viewed or produced without the use of the original program.

Among its requirements, the IRS procedure states that the electronic storage system must include reasonable controls that perform the following:

- Ensure the integrity, accuracy, and reliability of the storage system; and
- Prevent and detect the unauthorized creation of, addition to, alteration or deletion of, or deterioration of electronically-stored books and records

In addition, the procedure requires that the electronic storage system must ensure an accurate and complete transfer of the hardcopy or computerized books and records to an electronic storage media. The procedures further require the electronic storage system to index, store, preserve, retrieve, and reproduce the electronically-stored books and records.

Guideline

Based on the actions taken by the IRS and Congress, it appears that the federal government supports the electronic storage of records and the use of electronic signatures. Moreover, with Procedure 97-22, the IRS has established standards for the electronic storage of records, such as the I-9s and the W-4s. These factors indicate that the IRS has accepted the use of electronic signatures for these documents. In addition, because the IRS Procedure specifies the controls employers must observe, it provides some assurances on the integrity, accuracy, and reliability of the information found on the electronic copies of these documents.

Given the above findings, the Department considers the electronic signatures on the I-9s and W-4s as acceptable support for TEA eligibility. As a result, effective immediately, enterprise zones may accept electronic signatures for these documents.

Contact Information

If you need more information about the use of electronic signatures, please contact Teena Atalig at (916) 324-6757.