

ID: CCA\_2013040509273946

Number: **201316018**

Release Date: 4/19/2013

Office:

UILC: 6061.00-00

---

**From:**

**Sent:** Friday, April 05, 2013 9:27:45 AM

**To:**

**Cc:**

**Subject:** RE: Coordination request

Hi

Generally, documents must be signed as prescribed by the Secretary. Sec. 6061. The Conference and Practice Requirements of the Statement of Procedural Rules provide that a power of attorney for a partnership must be signed by all partners, or if signed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that he/she has such authority. 26 CFR § 601.503(c)(5). Section 601.503 does not indicate who must sign a power of attorney for an LLC. The person signing the power of attorney must also have the power to bind the entity on behalf of which the person is signing. State law determines who has the authority to act on behalf of an LLC.

The tax matters partner acts as a liaison between the LLC members and the Service in a TEFRA proceeding, which is an audit of the partners/LLC members with respect to partnership items, and has the authority to bind the LLC members with respect to extensions of the statute of limitations on assessment. In her capacity as an LLC member and manager (president), the TMP generally has the authority to bind the LLC unless state law warrants a contrary result. Unless any provision of state law or the LLC agreement warrants a different result, a Form 2848 signed by the TMP in the name of the LLC is sufficient to bind both the LLC and the LLC members. Although we have not researched the relevant state law, we see nothing in the LLC agreement that would prevent this result, and in fact, the LLC agreement provides that "the acts of each Member shall be binding on the Company." Although you have indicated that the RO has had some difficulty contacting the TMP, we strongly recommend that the RO obtain a Form 2848 signed by the TMP as TMP for the LLC. In box 3, the matters should be described as "TEFRA Partnership Proceedings" in order to comply with Treas. Reg. sec. 301.6223(c)-1(e). I have attached an example Form 2848 for your reference.

The CFO's signature on the LLC's Form 2848 does not meet the requirements of section 601.503(c)(5), relating to partnership Forms 2848. Although partners generally have the authority to bind partnerships, the question of who has the authority to bind an LLC is more complex. Most states allow members to designate either members or managers to act for the LLC, and where no such designation has been made, most state laws provide that whoever has the authority to manage the LLC (either members if member managed or managers if manager managed) has the authority to bind the LLC. In some cases, therefore, the requirements in the Conference and Practice Requirements do not match up with state law provisions as to who has the authority to act for an LLC. The FSA you asked about (which is not precedent) involved a situation where the LLC's operating agreement provided that no member of the LLC would act as agent for the LLC. In your case, however, the TMP appears to have the authority to act generally for the LLC. Although the CFO may have authority to act in certain capacities on behalf of the LLC, the LLC agreement does not appear to give him authority to enter into agreements or other written instruments on behalf of the LLC. Again, we have not researched the relevant state law. The best practice in this instance is to obtain a Form 2848 signed by the TMP.

Please let me know if you have any questions or if we can be of further assistance.

Thanks,