



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.11.55

MAY 29, 2018

EFFECTIVE DATE

(05-29-2018)

PURPOSE

- (1) This transmits revised IRM 4.11.55, Examining Officers Guide (EOG), Power of Attorney Rights and Responsibilities.

MATERIAL CHANGES

- (1) During this revision, minor changes have been made to update websites, IRM references, references to documents, and to provide clarity. Significant changes to this IRM are listed in the table below.

IRM Reference	Description of Change
4.11.55.1	Has been re-purposed to align with IRM 1.11.2.2.5, Address Management and Internal Controls requirements to properly reflect the internal controls now contained in this IRM. All sections have been renumbered due to this addition.
4.11.55.1.1 through 4.11.55.1.7	Added content to provide background information, legal authorities, roles and responsibilities, information about program management and review, acronyms, and related resources to assist and inform users.
4.11.55.2	Removed reference to obsolete Pub 470, Limited Practice Without Enrollment. Added reference to Delegation Order 25-18, which gives students and law graduates at Low Income Taxpayer Clinics and Student Tax Clinic Programs the authority to practice before the Internal Revenue Service.
4.11.55.2.1.1	Added reference to Delegation Order 25-18 to define who can represent a taxpayer and practice before the Internal Revenue Service. Added a note about Licensed Public Accountants. Added reference to students in Low Income Taxpayer Clinics (LITCs) and Students Tax Clinic Programs (STCPs).
4.11.55.2.1.1.1	Added reference to Rev. Proc. 2014-42, Annual Filing Season Program. Updated section to reflect current rules governing unenrolled return preparers.
4.11.55.2.1.2	Section number changed from 4.11.55.1.2.2 to 4.11.55.2.1.2. Updated guidance previously supported by RPO to include support provided by OPR.
4.11.55.2.2	Section numbered 4.11.55.1.3 in prior version. Updated subsection to include additional guidance.
4.11.55.2.3	Section renumbered from 4.11.55.1.4. Updated to include Rev. Proc. 2014-42 information.

IRM Reference	Description of Change
4.11.44.2.3.2.1	Expanded the guidance to include verbal authorization of a consent.
4.11.55.2.4	Removed reference in paragraph 3 stating that, unless limited by the taxpayer, authorized individual generally can sign a return.
4.11.55.2.5.1 through 4.11.55.2.5.4	Renumbered from 4.11.1.6.1 through 4.11.1.6.4. Added a paragraph to 4.11.55.2.4 to highlight that persons designated using Form 8821, Tax Information Authorization, are not authorized to represent. Added a caution to 4.11.55.2.5.1.
4.11.55.2.6.1	Updated to reflect that spouses filing a joint return must each file a separate power of attorney if they both wish to be represented.
4.11.55.2.6.3	Updated language to match information included on the Disclosure website for non-IRS Power of Attorney documents. Added paragraph to state the Internal Revenue Service may accept a POA that does not include all information required by regulation, if attached to a Form 2848, Power of Attorney and Declaration of Representative, and is signed under penalties of perjury. Added reference to Pub 947, Practice Before the IRS and Power of Attorney.
4.11.55.2.7.1	Added language to indicate faxed signatures are acceptable, but electronic, printed or stamped signatures are not acceptable. Added note that electronic signatures filed through e-Services are acceptable.
4.11.55.2.7.2	Clarified language to state it is the receiving employee's responsibility to ensure the accuracy of the information on the POA before processing to the CAF unit. Added note relating to signature requirements on the POA. Clarified to indicate using e-fax to process a POA to the CAF is acceptable. Added paragraph to reflect the POA information must be added to RGS or similar software being used for the audit. Added paragraph to state examiners must check for the posting of a Transaction Code (TC) 960 to verify the POA was accepted and processed by the CAF unit.
4.11.55.2.9	Updated to show that copies of notices and written communications will be sent to both the first and second representatives listed on Form 2848, if the appropriate boxes are checked. Removed outdated tables which referenced older versions of Form 2848.
4.11.55.3	Renumbered from 4.11.55.2. Resources deleted, updated and moved to 4.11.55.1.7.

IRM Reference	Description of Change
4.11.55.3.1	Clarified the outcome of the interview will be used to help set the scope and depth of the examination.
4.11.55.3.1.1	Updated paragraphs (6) and (7) to stress the importance of interviewing the taxpayer. Revised section to match updated language relating to suspension of interview contained in IRM 4.10.3.3.7.2, Request for Representation - Suspension of Interview.
4.11.55.3.2	Revised section to include more specific information on ways to maintain control of the examination.
4.11.55.3.2.1	Clarified language concerning the importance of understand the various documents governing practice before the Internal Revenue Service.
4.11.55.3.2.1.2	Added reference to Rev. Proc. 2014-42 information, and defined effective dates for both Rev. Proc. 2014-42 and Rev. Proc. 81-38.
4.11.55.3.2.2.1	Added language concerning the importance of timely follow-up actions, and managerial involvement when necessary.
4.11.55.3.2.2.2	Renumbered from 4.11.55.2.2.2.2. Removed paragraphs 2 and 3 and cited another IRM for guidance.
4.11.55.5	Added reference to the OPR website.
4.11.55.5.1	Added language to clarify the application of Rev. Proc. 81-38 and Rev. Proc. 2014-42.
4.11.55.5.2	Renumbered from 4.11.55.4.2.1. Deleted obsolete information.
4.11.55.5.2.1	Updated to show unenrolled return preparers are now subject to the jurisdiction of OPR for disciplinary purposes.
4.11.55.5.2.1.1	Renumbered from 4.11.55.4.2.2.1. Deleted the note to remove guidance on an old law.
Exhibit 4.11.55-1	Deleted Exhibit 4.11.55-1, Glossary and incorporated glossary items into IRM 4.11.55.1.6.
Exhibit 4.11.55-2	Deleted Exhibit, 4.11.55-2, Other Documents because all documents are available via hyperlinks in the content of this IRM or are obsolete.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.11.55, dated April 20, 2010. This revision incorporates Interim Guidance Memorandum SBSE-04-1216-0049, Enclosures with Correspondence to Representatives and Appointees, dated December 5, 2016.

AUDIENCE

SB/SE and LB&I Examination

Michael W. Damasiewicz
Director, Examination - Field and Campus Policy
SE:S:E:HQ:EFCP
Small Business/Self-Employed

4.11.55

Power of Attorney Rights and Responsibilities

Table of Contents

4.11.55.1 Program Scope and Objectives

4.11.55.1.1 Background

4.11.55.1.2 Authority

4.11.55.1.3 Roles and Responsibilities

4.11.55.1.4 Program Management and Review

4.11.55.1.5 Acronyms

4.11.55.1.6 Terms

4.11.55.1.7 Related Resources

4.11.55.2 Power of Attorney and Tax Information Authorization

4.11.55.2.1 Practice Before the Internal Revenue Service

4.11.55.2.1.1 Who May Represent a Taxpayer

4.11.55.2.1.1.1 Authorized Representation by Persons Other Than a Practitioner

4.11.55.2.1.2 POA Not Authorized to Practice Before the Internal Revenue Service

4.11.55.2.1.3 Privileges Afforded a Practitioner

4.11.55.2.2 Rules of Practice

4.11.55.2.2.1 Submit Records and Information

4.11.55.2.2.2 Duty to Advise

4.11.55.2.2.3 Due Diligence

4.11.55.2.2.4 Restrictions

4.11.55.2.3 Power of Attorney

4.11.55.2.3.1 Special Situations

4.11.55.2.3.1.1 TEFRA Examinations

4.11.55.2.3.1.2 Representative Appointing Another Representative

4.11.55.2.3.1.3 Signature of the Representative(s)

4.11.55.2.3.1.4 Representative of a Decedent Appointing a Representative

4.11.55.2.3.1.5 Representative Calls the Examiner Without a POA

4.11.55.2.3.1.6 Picking Up Additional Periods Not Covered On the POA

4.11.55.2.3.2 POA Not Required

4.11.55.2.3.2.1 Witness

4.11.55.2.3.2.2 Tax Matters Partner

4.11.55.2.3.2.3 Fiduciary

4.11.55.2.3.2.4 Verbal Requests

4.11.55.2.3.2.5 Third Party Designee - Form 1040

4.11.55.2.4 Tax Information Authorization

4.11.55.2.5 Individual Authorized to Sign POA

-
- 4.11.55.2.5.1 Joint Tax Return
 - 4.11.55.2.5.2 TEFRA Partnership
 - 4.11.55.2.5.3 Partnership
 - 4.11.55.2.5.4 Corporation or S-Corporation
 - 4.11.55.2.6 Authorized Forms
 - 4.11.55.2.6.1 Form 2848 - Power of Attorney and Declaration of Representative
 - 4.11.55.2.6.2 Form 8821 - Tax Information Authorization
 - 4.11.55.2.6.3 Non-Internal Revenue Service Power of Attorney Document
 - 4.11.55.2.7 Receipt of POA or TIA Form
 - 4.11.55.2.7.1 Missing or Incorrect Information on Form 2848 or Form 8821
 - 4.11.55.2.7.2 Processing of the POA
 - 4.11.55.2.7.3 POAs Received for Specific Issues
 - 4.11.55.2.8 Revocation
 - 4.11.55.2.9 Notices and Communications
 - 4.11.55.3 Interviewing and Control of the Examination
 - 4.11.55.3.1 Taxpayer's Presence Required
 - 4.11.55.3.1.1 Request for Representation - Suspension of Interview
 - 4.11.55.3.2 Controlling the Examination
 - 4.11.55.3.2.1 Governing Documents for Representatives
 - 4.11.55.3.2.1.1 Circular 230
 - 4.11.55.3.2.1.2 Revenue Procedures 81-38 and 2014-42
 - 4.11.55.3.2.2 Managing Procrastination
 - 4.11.55.3.2.2.1 A Firmer Approach
 - 4.11.55.3.2.2.2 Correspondence
 - 4.11.55.3.2.2.3 Summons
 - 4.11.55.3.2.3 Refusal to Provide Books and Records Requested
 - 4.11.55.3.3 Privileged Communications
 - 4.11.55.3.3.1 Confidentiality Privilege Does Not Apply
 - 4.11.55.3.3.2 Assertion of the Confidentiality Privilege
 - 4.11.55.4 By-Pass of a Representative
 - 4.11.55.4.1 Prior to Requesting a By-Pass
 - 4.11.55.4.2 Procedures for By-Passing a Representative
 - 4.11.55.4.3 Use of Summons in Lieu of a By-Pass
 - 4.11.55.5 Referrals
 - 4.11.55.5.1 Referral to the Office of Professional Responsibility (OPR)
 - 4.11.55.5.2 Practitioners under the Office of Professional Responsibility's (OPR) - Authority
 - 4.11.55.5.2.1 When Ought a Referral Be Made to the OPR
 - 4.11.55.5.2.1.1 Situations Requiring a Mandatory Referral
 - 4.11.55.5.2.1.2 Situations Which May Warrant a Referral

4.11.55.5.2.2 Referral to the OPR - Procedures

4.11.55.5.2.3 Routing of Referral to the OPR

4.11.55.6 Centralized Authorization File (CAF)

4.11.55.6.1 Before Requesting a POA - Check IDRS

4.11.55.6.2 CFINK

4.11.55.6.3 RPINK

4.11.55.1
(05-29-2018)
Program Scope and Objectives

- (1) *Purpose.* This section is intended to provide uniform guidelines to employees who interact with representatives and/or who receive and inspect Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization, and similar documents.
- (2) *Audience.* These procedures apply to Small Business and Self-Employed (SB/SE) and Large Business and International (LB&I) employees.
- (3) *Policy Owner.* Field Examination Special Processes (FESP), which is under the Director, Examination Field and Campus Policy.
- (4) *Program Owner.* FESP, which is under the Director, Examination Field and Campus Policy.
- (5) *Primary Stakeholders.* Stakeholders include SB/SE and LB&I employees.
- (6) *Contact Information.* To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section Outside of Clearance.
- (7) *Program Goals.* The goal of this section is to establish procedures for the processing and proper application of authorizations granted by the submission of a valid POA.

4.11.55.1.1
(05-29-2018)
Background

- (1) This IRM provides examiners with information and guidance on interactions with taxpayer representatives and the required forms to make such a designation.

4.11.55.1.2
(05-29-2018)
Authority

- (1) By law, the Service has the authority to discuss income tax return information with a designated representative under Title 26, IRC, Subtitle F – Procedure and Administration, Chapter 61, Information and Returns which includes, but is not limited to, the following IRC section:
 - IRC 6103, Confidentiality and disclosure of returns and return information.

4.11.55.1.3
(05-29-2018)
Roles and Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for SB/SE Examination employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.3.5, Headquarters Examination for additional information.
- (2) The Director, Examination Field and Campus Policy (formerly known as the Director, Examination AUR/Policy), reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the SB/SE examination process. See IRM 1.1.16.3.5.1, Exam/AUR Policy for additional information.
- (3) FESP, which is under the Director, Examination Field and Campus Policy, is the group responsible for providing oversight and policy and procedural guidance on specialized examination processes to SB/SE field examiners and managers. See IRM 1.1.16.3.5.1.2, Examination-Field Special Processes.

4.11.55.1.4
(05-29-2018)

**Program Management
and Review**

- (1) Periodic program reviews are conducted by FESP to:
- Assess the effectiveness of specific programs within Examination or across the organization,
 - Determine if procedures are followed,
 - Validate policies and procedures, and
 - Identify and share best/proven practices.

4.11.55.1.5
(05-29-2018)

Acronyms

- (1) The following table lists commonly used acronyms:

Acronym	Definition
AFSP	Annual Filing Season Program
CAF	Centralized Authorization File
CC	Command Code
CPA	Certified Public Accountant
FESP	Field Exam Special Processes
FPAA	Final Partnership Administrative Adjustment
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LITC	Low Income Taxpayer Clinic
LPA	Licensed Public Accountant
NBAP	Notice of Beginning Administrative Proceeding
OPR	Office of Professional Responsibility
PCS	Partnership Control System
POA	Power of Attorney
RGS	Report Generation Software
RPO	Return Preparer Office
STCP	Student Tax Clinic Program
TCO	Tax Compliance Officer
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
TIA	Tax Information Authorization
TIN	Taxpayer Identification Number
TMP	Tax Matters Partner

4.11.55.1.6
(05-29-2018)

(1) The following table lists commonly used terms and associated definitions:

Terms

Term	Definition
Advocate	One who acts on behalf of the taxpayer in urging particular determinations with respect to issues or controversies.
Appointee	An individual or entity named on a TIA; same as designee.
Attorney	Any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.
Attorney-in-fact	An agent authorized by a principal under a POA to perform a certain specified act(s) or kind of act(s) on behalf of the principal.
Blind Trust	A device used to give management of one's investments to an outside person over whom the beneficiary has no control.
Centralized Authorization File (CAF)	A computerized system of records which houses authorization information from both POAs and TIAs. The CAF system contains two types of records: taxpayer records (CAFT) and representative records (CAFR).
Certified Public Accountant (CPA)	Any person who is duly qualified to practice as a CPA in any state, possession, territory, commonwealth, or the District of Columbia.
Circular 230	Treasury Department Circular No. 230 (Subtitle A, 31 CFR Part 10), which sets forth the rules governing practice before the Internal Revenue Service.
Declaration of Representative	A recognized representative must attach to the POA a signed declaration (which may be made by completing Part II of Form 2848) stating the following: <ol style="list-style-type: none"> The representative is not currently under suspension or disbarment from practice before the Internal Revenue Service; The representative is aware of the regulations contained in Circular 230, concerning the practice of attorneys, CPAs, enrolled agents, enrolled actuaries, and others; The representative is authorized to represent the taxpayer(s) identified in the POA; The representative is an individual recognized to practice before the Internal Revenue Service.
Delegation of Authority	An act performed by a recognized representative where authority given under a POA is delegated to another representative. After a delegation is made, both the original representative and the newly recognized representative to whom a delegation is made will be allowed to represent the taxpayer. The authority to delegate must be specifically stated on Form 2848, Power of Attorney and Declaration of Representative.
Designee	A person authorized by the taxpayer to receive the taxpayer's confidential tax return information.
Disbarment	A form of disciplinary action taken to preclude a representative from practice before the Internal Revenue Service. Representatives who are disbarred can no longer represent clients before the Internal Revenue Service.

Term	Definition
Enrolled Actuary	Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 USC §1242. Enrollment by board; standards and qualifications; suspensions or termination of enrollment, and is in active status as such.
Enrolled Agent	Any individual who is enrolled as an agent to practice before the Internal Revenue Service and is in active status pursuant to the requirements of Circular 230.
Fiduciary	A person acting on behalf of a taxpayer in one of the following capacities: guardian, executor, receiver, administrator, or trustee.
Form 2848	Power of Attorney and Declaration of Representative. The Internal Revenue Service form that may be used by any taxpayer who wishes to appoint an individual that meets the criterion to represent the taxpayer before the Internal Revenue Service.
Form 8821	Tax Information Authorization. The Internal Revenue Service form on which taxpayers may authorize a designee to inspect and/or receive confidential tax information. The disclosure may be made to any individual, corporation, firm, organization, or partnership designated by the taxpayer.
Matter	The application of each tax for each taxable period, for a particular taxpayer or taxpayers, imposed by the IRC and the governing regulations constitutes a separate matter.
POA	<p>A document signed by the taxpayer, as principal, by which an individual is appointed as attorney-in-fact to perform certain specified act(s) or kinds of act(s) on behalf of the principal. Specific types of POAs, other than the Internal Revenue Service Form 2848, Power of Attorney and Declaration of Representative, include the following:</p> <ul style="list-style-type: none"> a. General POA - An authorization of the performance of any or all acts, including, but not limited to, conducting real estate transactions, making financial arrangements, taking legal actions, filing tax returns and other documents and handling tax matters. Executed in accordance with State law. b. Durable POA - An authorization that specifies that it will not end due to the principal's subsequent incompetency. For instance, a durable POA would remain in effect for a taxpayer if the taxpayer becomes unable to handle their business affairs. c. Limited POA - An authorization that is limited in any facet, such that the agent is authorized to perform certain, specified acts. The Internal Revenue Service Form 2848 is a limited POA.
Practice before the Internal Revenue Service	<p>This encompasses all matters connected with a presentation of information to the Internal Revenue Service relating to a taxpayer's rights, privileges, or liabilities. These include preparation and filing of necessary documents, correspondence/communications with the Internal Revenue Service, and representation at conferences, hearings, and meetings.</p> <p>Caution: The preparation of tax returns or the furnishing of information at the request of the Internal Revenue Service does not constitute "practice before the Internal Revenue Service."</p>

Term	Definition
Practitioner	Any individual authorized under section 10.3 of Circular 230 to practice before the Internal Revenue Service. Those authorized include attorneys, CPAs, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.
Principal	A person, legal or natural, who authorizes an agent to act to create one or more legal relationships with a third party.
Recognized Representative	An individual who is appointed as an attorney-in-fact under a POA and who is a member of one of the categories described in section 10.3 or 10.7 of Circular 230 and who files a declaration of representative.
Representation	Acts performed on behalf of a taxpayer by a representative in practice before the Internal Revenue Service.
Specific Use POA or TIA	An authorization that is executed for a specific item and will not be recorded on the CAF. Examples of specific items include: civil penalty cases, Trust Fund Recovery Penalty (TFRP), requests for private letter rulings, application for an employer identification number, and disclosure requests to release information to schools, universities, and mortgage companies.
Substitution of Representative	An act performed by an attorney-in-fact whereby authority given under a POA is transferred to another representative. After a substitution is made, only the newly recognized representative will be considered the taxpayer's representative.
Suspension	A form of disciplinary action prohibiting a representative from practice before the Internal Revenue Service. Representatives who have been suspended can not represent clients before the Internal Revenue Service during the suspension period.
Tax Matter(s)	Types of tax, tax form, and year or period.
TIA	A document, such as Form 8821, Tax Information Authorization, signed by the taxpayer authorizing the Internal Revenue Service to release confidential tax information to a designee. The designee may be an individual or entity (for example, corporation, partnership, trust or organization).

4.11.55.1.7
(05-29-2018)

(1) The following table contains related resources referenced in this IRM.

Related Resources

Resources	Title
26 CFR 601.501 through 509	Scope of rules; definitions, et al.
<i>Other Gov TD Circular 230</i>	(Circular 230) Regulations Governing Practice before the Internal Revenue.
IRC 6001	Notice or regulations requiring records, statements, and special returns.
IRC 7521(c)	Procedures involving taxpayer interviews. (c) Representatives holding power of attorney.

Resources	Title
IRC 7525(a)	Confidentiality privileges relating to taxpayer communications with practitioners. (a) Uniform application to taxpayer communications with federally authorized practitioners.
IRC 7601	Canvass of districts for taxable persons and objects.
IRC 7602	Examination of books and witnesses.
IRC 7605	Time & Place of Examination.
IRM 1.2.10.34, Policy Statement 1-233 (formerly 11-86)	Names of Disbarred taxpayers representatives published.
IRM 1.2.52.19, Delegation Order 25-18 (Rev. 2)	Authority to Authorize Students and Law Graduates at LITCs and Student Tax Clinic Programs (STCPs) to Practice Before the Internal Revenue Service.
IRM 1.2.65.3.5, SBSE 1-23-17	Authority to Request and Inspect Preparer Records.
IRM 4.10.1.2.1.8	Right to Confidentiality.
IRM 4.10.2.9.1	Scheduling the Initial Appointment with the Taxpayer and/or Representative.
IRM 4.10.2.9.3	Scheduling Problems.
IRM 4.10.2.9.4	Rescheduling the Initial Appointment.
IRM 4.10.2.10.3	Authority to Request Books, Records, and Accountant's Workpapers.
IRM 4.10.3.3.1	Who To Interview.
IRM 4.10.3.3.1.1	Powers of Attorney.
IRM 4.10.3.3.7	Interview Techniques.
IRM 4.19.10.6.2	Office of Professional Responsibility.
IRM 11.3.3	Disclosure to Designees and Practitioners.
IRM 21.3.7	Processing Third Party Authorizations onto the Centralized Authorization File (CAF).
IRM 25.5.1	Summons, Introduction.
Pub 216	Conference and Practice Requirements.
Pub 947	Practice Before the IRS and Power of Attorney.
Pub 4019	Third Party Authorization, Levels of Authority.
Rev. Proc. 68-29	The extent to which employees of the Internal Revenue Service may accord recognition to persons acting on behalf of taxpayers as a witness.
Rev. Proc. 81-38	Limited Practice Without Enrollment.
Rev. Proc. 2014-42	Annual Filing Season Program.

Note: Rev. Proc. 2014-42 modifies and supersedes Rev. Proc. 81-38 for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015. It is important to refer to the appropriate Revenue Procedure based on the date of return preparation.

4.11.55.2
(05-29-2018)
**Power of Attorney and
Tax Information
Authorization**

- (1) The examiner must remember the following items when working with someone other than the taxpayer.
- a. Unauthorized disclosure of taxpayer return information is strictly prohibited;
 - b. Practice before the Internal Revenue Service is restricted to properly qualified and authorized persons; and
 - c. A valid POA submitted by a taxpayer must be recognized unless the criteria for bypassing the POA have been met and implemented.

4.11.55.2.1
(04-20-2010)
**Practice Before the
Internal Revenue Service**

- (1) Practice before the Internal Revenue Service covers all matters connected with a presentation to the Internal Revenue Service relating to a taxpayer's rights, privileges, or liabilities under laws and regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to:
- a. Corresponding and communicating with the Internal Revenue Service;
 - b. Representing a taxpayer at conferences, hearings, or meetings with the Internal Revenue Service; and
 - c. Preparing and filing documents with the Internal Revenue Service for a taxpayer.

Note: Generally, any person may prepare a tax return, furnish information at the request of the Internal Revenue Service, or appear as a witness for the taxpayer.

4.11.55.2.1.1
(05-29-2018)
**Who May Represent a
Taxpayer**

- (1) *(Circular 230) Regulations Governing Practice before the Internal Revenue Service* and IRM 1.2.52.19 , Delegation Order 25-18 (Rev. 2) define practitioners who may represent a taxpayer and practice before the Internal Revenue Service to include any of the following individuals:
- a. Attorney,
 - b. CPA,
 - c. Enrolled Agent,
 - d. Enrolled Actuary,
 - e. Enrolled Retirement Plan Agent (Representation limited to retirement plan issues only),
 - f. Law, business, or accounting student or law graduate working in a LITC or STCP. See IRM 21.3.7, Processing Third Party Authorizations onto the Centralized Authorization File (CAF), for limitations and processes.

Note: The OPR has identified some states where LPAs are given accountancy privileges equivalent to CPAs and thus can practice before the Internal Revenue Service the same as CPAs. An LPA can file and claim CPA authority on Form 2848, Power of Attorney and Declaration of Representative. It is suggested an asterisk be included next to the designation level with an explanation for the LPA status. See IRM 21.3.7.5.2, Form 2848 and Form 8821 Screening, Coding and Editing.

- (2) In general, individuals cannot practice before the Internal Revenue Service if they are not eligible; or they have lost the privilege, as a result of certain actions. If an individual is ineligible to practice, a POA designation will not be recognized by the Internal Revenue Service. See IRM 4.11.55.2.1.2, for more information on a POA not authorized to practice before the Internal Revenue Service.
- (3) Corporations, associations, partnerships, and any other non-individuals are not eligible to practice before the Internal Revenue Service.

4.11.55.2.1.1.1
(05-29-2018)

**Authorized
Representation by
Persons Other Than a
Practitioner**

- (1) Under certain circumstances, an individual other than an attorney, CPA, enrolled agent, enrolled actuary, or student in LITC/STCP who prepares and signs a tax return or claim for refund, may represent the taxpayer before the Internal Revenue Service as an unenrolled return preparer, or non-credentialed preparer. Unenrolled or non-credentialed return preparers may represent the taxpayer before revenue agents, tax compliance officers, customer service representatives, or similar officers or employees of the Internal Revenue Service, including the Taxpayer Advocate Service. Unenrolled or non-credentialed return preparers may not:
 - a. Receive refund checks,
 - b. Sign consents to extend the statutory period for assessment or collection of tax,
 - c. Sign closing agreements regarding a tax liability, or
 - d. Sign waivers of restriction on assessment or collection of a tax deficiency.

Note: An unenrolled return preparer may not represent a taxpayer, regardless of the circumstances, before appeals officers, revenue officers, counsel, or similar officers or employees of the Internal Revenue Service.

- (2) For tax returns and claims for refund prepared and signed before January 1, 2016, unenrolled and non-credentialed return preparers are limited to representing the taxpayer during an examination of the taxable year or period covered by the return prepared. See Rev. Proc. 81-38, for more information.
- (3) For tax returns and claims for refunds prepared and signed after December 31, 2015, limited practice by unenrolled or noncredentialed preparers will be accorded to only those preparers participating in the Internal Revenue Service Annual Filing Season Program. The tax return preparer must participate in the Annual Filing Season Program for both the year of the return preparation and the year they are representing clients. See Rev. Proc. 2014-42, for more information.
- (4) Because of the special relationship with the taxpayer, the following unenrolled individuals can represent the specified taxpayer before the Internal Revenue Service regardless of whether they prepared the tax return in question. They must provide satisfactory identification and documented authority (for example, Form 2848, Power of Attorney and Declaration of Representative,) to represent the taxpayer:
 - a. A family member - an individual may represent immediate family members. Immediate family members includes a spouse, child, parent, brother or sister of the individual.

- b. An officer - a bona fide officer of a corporation (including a parent, subsidiary or other affiliated corporation), association or organized group may represent the corporation, association or organized group. An officer of a governmental unit, agency, or authority in the course of official duties, may represent the organization before the Internal Revenue Service.
- c. A partner - a general partner may represent the partnership before the Internal Revenue Service.
- d. An employee - a regular full-time employee may represent his or her employer. An employer may be, but is not limited to, an individual, partnership, corporation (including a parent, subsidiary, or other affiliated corporation), association, trust, receivership, guardianship, estate, organized group, governmental unit, agency, or authority.
- e. A fiduciary (trustee, executor, administrator, receiver, or guardian) - a fiduciary stands in the position of a taxpayer and acts as the taxpayer, not as a representative. Fiduciaries must file Form 56, Notice Concerning Fiduciary Relationship, rather than Form 2848.

Note: An individual may represent before the Internal Revenue Service by presenting satisfactory identification. The individual does not have to file a written declaration of authority.

4.11.55.2.1.2
(05-29-2018)

POA Not Authorized to Practice Before the Internal Revenue Service

- (1) If a taxpayer designates someone who is not authorized to practice before the Internal Revenue Service as a representative on the Form 2848, Power of Attorney and Declaration of Representative, and the designated individual did not prepare the taxpayer's tax return for the tax year or period at issue, they may not represent the taxpayer before the Internal Revenue Service with a Form 2848. See IRM 4.11.55.2.4, for more information on the proper form to use.
- (2) Although the Internal Revenue Service generally may rely, in good faith, on Part II, Declaration of Representative, of Form 2848 concerning the eligibility of an individual to practice before the Internal Revenue Service, there may be circumstances where an individual completes Part II of Form 2848 indicating they are an attorney, CPA, enrolled agent, etc., when they never had such status or were no longer entitled to claim such status.

Note: To check the status of a taxpayer's representative, the examiner can perform an internet search for CPA license holders, state bar members, etc. Current license or bar membership information is available on the internet at <https://cpaverify.org/> and <https://www.justice.gov/eoir/attorney-licensing-verification>. Not all states provide online information; therefore, a phone call to the appropriate state agency may be required.

- (3) The RPO provides search features on its website for active enrolled agents at <https://www.irs.gov/tax-professionals/enrolled-agents/active-enrolled-agents-and-the-freedom-of-information-act>. The RPO also provides a searchable Directory of Federal Tax Return Preparers with Credential and Select Qualifications, such as Records of Completion for the Annual Filing Season Program at <https://irs.treasury.gov/rpo/rpo.jsf>. The OPR provides search features on its website to indicate whether a practitioner has been suspended or disbarred from practice before the Internal Revenue Service or enjoined from representing taxpayers at <https://www.irs.gov/tax-professionals/search-for-disciplined-tax-professionals>.

4.11.55.2.1.3
(05-29-2018)

**Privileges Afforded a
Practitioner**

- (1) If authorized on a POA, CPAs, attorneys, enrolled agents, enrolled actuaries, and enrolled retirement plan administrators, and students in LITC or STCP are entitled to:
 - a. Practice anywhere in the country,
 - b. Sign consents, reports, waivers, and claim disallowance reports,
 - c. Represent taxpayers in Appeals,
 - d. File a written response to a 30-day letter,
 - e. Sign returns if specifically authorized,
 - f. Receive and inspect confidential tax return information,
 - g. If the appropriate box is checked on Form 2848, Power of Attorney and Declaration of Representative, the POA may receive notices and correspondence,
 - h. Discuss proposed examination adjustments, and
 - i. Receive (but not negotiate) a refund check for the taxpayer; if specifically authorized. See 26 CFR 601.504(a)(5), Requirements for Filing Power of Attorney.
- (2) A taxpayer's rights include the right to have the taxpayer's representative present whenever the taxpayer is interviewed, interrogated, or requested to furnish information to the Internal Revenue Service. This right must be respected by Internal Revenue Service personnel at all times. The taxpayer may waive this right. The examiner must document in the workpapers that this right was waived.
- (3) If a representative has unreasonably delayed or hindered an examination, collection or investigation by failing to furnish non-privileged information after repeated requests, the examiner may request their immediate supervisor's permission to contact the taxpayer directly, to request the non-privileged information. See IRM 4.11.55.4, for more information on by-pass of a representative.

4.11.55.2.2
(05-29-2018)

Rules of Practice

- (1) Practitioners have the duty to perform certain acts and are restricted from performing other acts.
- (2) A practitioner cannot engage in disreputable conduct. Any practitioner who does not comply with the rules of practice or engages in disreputable conduct is subject to disciplinary action.
- (3) Circular 230 provides the regulations governing the practice of attorneys, CPAs, enrolled agents, enrolled retirement plan agents, enrolled actuaries and appraisers before the Internal Revenue Service and must be consulted regarding rules of practice.
- (4) Unenrolled return preparers must comply with the rules of practice and conduct to exercise the privilege of limited practice before the Internal Revenue Service. Rev. Proc. 81-38 and Rev. Proc. 2014-42 provide additional rules for limited practice by unenrolled return preparers. As part of the Annual Filing Season Program requirements for returns prepared and signed after December 31, 2015, unenrolled return preparers must consent to follow the regulations in Circular 230.

4.11.55.2.2.1
(04-20-2010)
Submit Records and Information

- (1) A practitioner must promptly submit records or information requested by employees of the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the information requested is privileged. See IRM 4.11.55.3, for more information on privileged communications.

4.11.55.2.2.2
(04-20-2010)
Duty to Advise

- (1) A practitioner who knows his or her client has not complied with the revenue laws or has made an error or omission in any return, document, affidavit, or other required paper, has the responsibility to advise the client promptly of the noncompliance, error, or omission.
- (2) The practitioner must advise the client of any consequences as provided under the IRC and regulations of such noncompliance, error, or omission.

4.11.55.2.2.3
(04-20-2010)
Due Diligence

- (1) A practitioner must exercise due diligence when performing the following duties:
 - a. Preparing or assisting in preparing, approving, and filing returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;
 - b. Determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and
 - c. Determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

4.11.55.2.2.4
(05-29-2018)
Restrictions

- (1) A practitioner must not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.
- (2) A practitioner must not knowingly, directly or indirectly, do the following:
 - a. Employ or accept assistance from any person who is under disbarment or suspension from practice before the Internal Revenue Service, if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.
 - b. Accept employment as an associate, correspondent, or subagent from, or share fees with, any person under disbarment or suspension from practice before the Internal Revenue Service if the employment, correspondence, or sub-agency, or fee sharing relates to a matter or matters constituting practice before the Internal Revenue Service.
 - c. Accept assistance from any former government employee where provisions of *(Circular 230) Regulations Governing Practice before the Internal Revenue Service* or any federal law would be violated.
- (3) A practitioner who is a notary public and is employed as counsel, attorney, or agent in a matter before the Internal Revenue Service, or has a material interest in the matter, cannot engage in any notary activities related to the matter.
- (4) Practitioners must not endorse or otherwise negotiate (cash) any refund check issued to the taxpayer, including directing or accepting payment, electronically or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with which the practitioner is associated.

- (5) Any practitioner may be disbarred or suspended from practice before the Internal Revenue Service for incompetence or disreputable conduct. Circular 230 (31 CFR 10.51) provides examples of incompetence and disreputable conduct of a representative.

Note: Unenrolled return preparers are ineligible to exercise the privilege of limited practice before the Internal Revenue Service if the unenrolled return preparer has engaged in any conduct (including incompetence) prohibited by Rev. Proc. 81-38 or Rev. Proc. 2014-42.

- (6) If there are suspected violations of the rules governing practice before the Internal Revenue Service, a referral to the OPR must be considered. See IRM 4.11.55.5, for more information on referrals.

4.11.55.2.3
(05-29-2018)

Power of Attorney

- (1) A POA is a taxpayer's written authorization for an individual to perform certain specified acts on the taxpayer's behalf.

- (2) The POA must include:

- a. Name and mailing address of the represented party;
- b. Identification number of the represented party (for example, social security number and/or employer identification number);
- c. Employee plan number (if applicable);
- d. Name and address of the recognized representative(s);
- e. Description of the matter(s) for which representation is authorized;
- f. A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s); and
- g. Declaration of Representative.

- (3) Unless limited by the taxpayer, the authorized individual generally can:

- a. Negotiate with the Internal Revenue Service on behalf of the taxpayer.
- b. Advocate the taxpayer's position to an Internal Revenue Service official or employees.
- c. Offer or execute a waiver of restriction on assessment or collection of a deficiency in tax.
- d. Offer or execute a waiver of notice of claim disallowance.
- e. Execute a consent to extend the period of assessment or collection of tax.
- f. Execute a closing agreement.
- g. Receive, but not endorse, a check drawn on the United States Treasury with respect to a tax.
- h. Specific election on line 5a of Form 2848, Power of Attorney and Declaration of Representative.

- (4) The authority granted to an unenrolled return preparer cannot exceed what is allowed under the special rules of limited practice described in Rev. Proc. 81-38 and Rev. Proc. 2014-42.

4.11.55.2.3.1
(04-20-2010)

Special Situations

- (1) This subsection describes POA requirements under special situations, including special language that may be required to be included in the Form 2848, Power of Attorney and Declaration of Representative.

4.11.55.2.3.1.1
(04-20-2010)

TEFRA Examinations

- (1) A TMP may appoint an attorney-in-fact to represent the TEFRA partnership partners before the Internal Revenue Service and to perform various acts on his or her behalf. However, it is recommended that the Internal Revenue Service obtain the signature of the TMP for the execution of certain legally significant documents. The term legally significant documents include, but is not limited to:
 - A settlement agreement entered into pursuant to IRC 6224(c)(3), Tax Matters Partner May Bind Certain Other Partners that is intended to bind non-notice partners, including a formal closing agreement under IRC 7121, Closing Agreements; and
 - An extension of the limitation period for assessment with respect to the entity items.
 - (2) Other situations in which it is necessary to deal directly with the duly designated TMP rather than the POA include, but are not limited to, the mailing of required notices, such as NBAP or FPAA. However, a copy of the notice will also be mailed to the POA, though it must not be sent via certified mail.
 - (3) Form 2848, Power of Attorney and Declaration of Representative must be completed as follows:
 - a. The TMP must execute the Form 2848 in their capacity as TMP;
 - b. The name and address of the entity must be clearly set forth;
 - c. Under the heading "Type of Tax" insert "TEFRA partnership proceedings"; and
 - d. Under the heading "Federal Tax Form Number", enter "1065 and consequential adjustments."
 - (4) The POA for a TEFRA entity becomes null and void upon the death of the duly designated TMP. A new TMP must be designated and a new Form 2848 executed.
 - (5) A Form 2848 for a TEFRA investor must specifically identify the TEFRA entity by name.
 - (6) If the representative is going to represent the TEFRA investor (partner) with respect to TEFRA-related issues, including signing a consent to extend the period of time for assessment or waiver of restriction on assessment and collection which covers TEFRA partnership items and/or affected items, then Form 2848, Part 1, Line 5 must specifically state that the acts authorized by the Form 2848 include representation for purposes of Subchapter C of Chapter 63 of the IRC and identify the entity by name. See 26 CFR 301.6223(c)-1(e), for additional information regarding partners furnished to the Internal Revenue Service, Power of Attorney.
- Note:** Correspondence may only be sent to a TEFRA investor's POA if the Form 2848 meets the requirements of 26 CFR 301.6223(c)-1(e). This requirement is in addition to the regular taxpayer identification by name, address, TIN, and tax year of the investor.
- (7) No TEFRA letters (for example, 60-day letter, FPAA) may be issued to a TEFRA investor's POA unless the TEFRA entity issue is specifically stated on the Form 2848. The PCS will not generate any PCS letters to anyone listed on

the CAF. No other system must be used to generate any PCS letters to a taxpayer's POA unless the specific TEFRA issue being examined is specifically stated on the Form 2848.

4.11.55.2.3.1.2
(01-15-2005)
**Representative
Appointing Another
Representative**

- (1) A representative can substitute a representative or delegate authority to another representative if the taxpayer specifies this on Line 5 of Form 2848, Power of Attorney and Declaration of Representative.
- (2) 26 CFR 601.505, and the Instructions to Form 2848 provide procedures for a taxpayer or a representative in revoking, changing, substituting or delegating a representative.

4.11.55.2.3.1.3
(04-20-2010)
**Signature of the
Representative(s)**

- (1) The Form 2848, Power of Attorney and Declaration of Representative, must be signed in Part II by each of the representatives listed on the form.
- (2) If more than one representative is shown, but only one representative signed the declaration, the POA is valid only for the signing representative.
- (3) If the tax periods are changed or new ones are added on Page 1 of Form 2848, then a new page 2 of the Form 2848 is required with the signature of the taxpayer and date signed.

Note: The Form 2848 cannot be modified without written taxpayer approval. Therefore, if any modification is made to Form 2848, the taxpayer must re-sign and date page 2 after the modification or the examiner must secure a new Form 2848. Request that the taxpayer initial and date next to any modifications.

4.11.55.2.3.1.4
(04-20-2010)
**Representative of a
Decedent Appointing a
Representative**

- (1) The personal representative/executor of a decedent's estate may appoint a representative on a Form 2848, Power of Attorney and Declaration of Representative, to represent the estate. Form 56, Notice Concerning Fiduciary Relationship, and a copy of the letters of administration, trust agreement, letters testamentary or court order must be attached to the POA whenever the signature is of an administrator, executor, trustee, or other fiduciary.

4.11.55.2.3.1.5
(04-20-2010)
**Representative Calls the
Examiner Without a POA**

- (1) If a tax return preparer, CPA, attorney, or enrolled agent calls to make an appointment, or to discuss a case, and the Internal Revenue Service does not have a Form 2848, Power of Attorney and Declaration of Representative, on file, the examiner may NOT discuss the examination, including acknowledging that an examination is underway, or schedule an appointment with the individual before a Form 2848 is received to avoid any possibility of an unauthorized disclosure. To facilitate the process, examiners may remind representatives that a Form 2848 can be sent by fax.
- (2) If the taxpayer's representative calls to obtain taxpayer account or return information, the examiner must ensure that they are, in fact, speaking with the representative designated on the Form 2848 by asking for the taxpayer's name and TIN, and representative's name and identification number. See IRM 21.1.3.2.3, Required Taxpayer Authentication.
- (3) The CAF system must also be reviewed to determine the extent of the authority of the third party requester to receive information.

4.11.55.2.3.1.6
(04-20-2010)

**Picking Up Additional
Periods Not Covered On
the POA**

- (1) The examiner must notify the taxpayer if the scope of the examination is expanded to include additional tax periods. Consequently, the taxpayer must be given time to secure a POA to cover the additional periods before any examination action is taken on those periods.

4.11.55.2.3.2
(04-20-2010)

POA Not Required

- (1) A POA is not always required when working with a third party.

Example: A third party may provide information to the Internal Revenue Service without a POA. See IRM 4.11.55.2.3.1.5, for more information on representative calls without a POA.

4.11.55.2.3.2.1
(05-29-2018)

Witness

- (1) Under Rev. Proc. 68-29, the taxpayer also has the right in cases involving issues or controversies to have any person who has knowledge of pertinent facts accompany the taxpayer or the taxpayer's duly authorized representative to conferences. However, if the Internal Revenue Service employee plans to discuss return or return information at the conference, the taxpayer must provide the Internal Revenue Service with a disclosure authorization for the witness. The disclosure authorization can be written or verbal. If the disclosure authorization is verbal, the examiner will document this on Form 9984, Examining Officer's Activity Record, or equivalent case history.

4.11.55.2.3.2.2
(01-15-2005)

Tax Matters Partner

- (1) A TMP is not required to file a POA to perform various acts on behalf of the partnership.

4.11.55.2.3.2.3
(01-15-2005)

Fiduciary

- (1) A fiduciary (trustee, executor, administrator, receiver or guardian) of a taxpayer is deemed to be the taxpayer and thus, is not required to file a POA. However, a fiduciary must file Form 56, Notice Concerning Fiduciary Relationship to notify the Internal Revenue Service of the fiduciary relationship.

4.11.55.2.3.2.4
(04-20-2010)

Verbal Requests

- (1) The Internal Revenue Service is allowed under 26 CFR 301.6103(c)-1(c)(2) and 26 CFR 301.6103(c)-1 to discuss with a third party designee, tax return or return information after receiving a taxpayer's non-written (oral) consent.
- (2) These regulations clarify that the taxpayer can verbally approve Internal Revenue Service disclosures to someone who accompanies the taxpayer at in-person meetings with the Internal Revenue Service, or someone participating in a telephone conversation.

Note: It is no longer necessary for the taxpayer to stay in the room or on the telephone after giving a verbal authorization to disclose return information. The designee does not have to be present or on the telephone when the taxpayer gives consent.

- (3) Examiners must confirm the identity of the taxpayer, the identity of the designee and the date, nature, and extent of the assistance requested. The designee might be a friend, relative, witness, or translator.
- (4) Details of the oral consent must be recorded on Form 9984, Examining Officer's Activity Record, or equivalent case history sheet. Verbal requests or consent for disclosure DO NOT take the place of a POA to represent the taxpayer before the Internal Revenue Service.

4.11.55.2.3.2.5
(04-20-2010)

**Third Party Designee -
Form 1040**

- (1) A taxpayer can authorize the Internal Revenue Service to discuss a return with a friend, family member, or any other person if the "Yes" box in the third party designee area of the tax return was checked and the required information was provided.
- (2) The authorization allows the designee to:
 - a. Give the Internal Revenue Service information missing from the taxpayer's return,
 - b. Call the Internal Revenue Service for information about the processing of the taxpayer's return, or the status of a refund or payment(s),
 - c. Receive copies of notices or transcripts related to the return, upon request, and
 - d. Respond to certain Internal Revenue Service notices about math errors, offsets, and return preparation.
- (3) The designee cannot receive refund checks, bind the taxpayer to any agreements, or represent the taxpayer before the Internal Revenue Service.
- (4) The authorization cannot be revoked, but will automatically terminate no later than the due date (without regard to extensions) for filing the subsequent tax year's return.

Example: If an individual checks the box on the 2017 Form 1040, U.S. Individual Income Tax Return, to appoint a third party designee, the designation expired on April 15, 2019.

4.11.55.2.4
(05-29-2018)

**Tax Information
Authorization**

- (1) A TIA is a disclosure authorization that conforms to the requirements of IRC 6103, Confidentiality and disclosure of returns and return information.
- (2) Form 8821, Tax Information Authorization, authorizes any individual, corporation, firm or partnership the taxpayer designates to inspect and/or receive confidential information from any office of the Internal Revenue Service for the type of tax matters and taxable periods listed on the form. See IRM 4.11.55.2, for more information.
- (3) Use of Form 8821 itself is not mandatory; however, this is the only TIA that will be processed to the CAF. Authorizations not on Form 8821 will be accepted for release of information, provided they conform to IRC 6103, Confidentiality and disclosure of returns and return information requirements. A copy of the non-Internal Revenue Service TIA document must be retained in the case file.
- (4) An appointee cannot sign a closing agreement or tax return, or receive a refund check.
- (5) Form 8821 allows a third party to obtain tax information such as a copy or transcript of a filed return and copies of notices and communications, but does not authorize a third party to represent a taxpayer during audit.

4.11.55.2.5
(01-15-2005)

**Individual Authorized to
Sign POA**

- (1) The signature of the taxpayer is required in order to appoint a representative. The person required to sign the POA is dependent upon the type of entity involved.

4.11.55.2.5.1
(05-29-2018)
Joint Tax Return

- (1) If a joint return is involved, each spouse must file a separate Form 2848, Power of Attorney and Declaration of Representative, if they both want to be represented, even if the representative is the same person. If only one spouse wants to be represented in the matter, that spouse files a Form 2848. Each spouse signs only their respective Form 2848.

4.11.55.2.5.2
(05-29-2018)
TEFRA Partnership

- (1) The TMP of a TEFRA partnership may sign the POA. The TMP must be carefully determined per 26 CFR 301.6231(a)(7)-1, Designation or Selection of Tax Matters Partners. A general partner may also sign a POA, but the POA will only give the designated representative limited powers.

4.11.55.2.5.3
(05-29-2018)
Partnership

- (1) The POA must be signed by a general partner duly authorized to act for the partnership. See Form 2848, Power of Attorney and Declaration of Representative instructions, Pub 216, Conference and Practice Requirements, and 26 CFR 601.503(c)(5).

4.11.55.2.5.4
(05-29-2018)
Corporation or S-Corporation

- (1) The POA is to be signed by an officer of the corporation having authority to bind the corporation. See Form 2848, Power of Attorney and Declaration of Representative, instructions and 26 CFR 601.504, Requirements for filing power of attorney, of the Conference and Practice Requirements Statement of Procedural Rules, which are reprinted in Pub 216, Conference and Practice Requirements, and 26 CFR 601.503(c)(3).

4.11.55.2.6
(04-20-2010)
Authorized Forms

- (1) The Internal Revenue Service has available forms that a taxpayer can use to designate a representative or provide tax information authorization.

4.11.55.2.6.1
(05-29-2018)
Form 2848 - Power of Attorney and Declaration of Representative

- (1) A Form 2848, Power of Attorney and Declaration of Representative is used by a taxpayer to appoint a representative to perform specified acts on behalf of the taxpayer. Instructions for Form 2848, Power of Attorney and Declaration of Representative, found at <http://publish.no.irs.gov/cat12.cgi?request=CAT1&catnum=11981> provide line by line instructions for completing the Form 2848. Also, Form 2848 is used to appoint an unenrolled return preparer to represent a taxpayer in limited circumstances. Therefore, examiners must ensure that the unenrolled return preparer identified on Part II of Form 2848 with an "h" designation prepared and signed the return.
- (2) In order to process, the Form 2848 must contain:
 - a. The taxpayer's information,
 - b. The representative(s) information,
 - c. The type of tax, tax form number, tax period(s),
 - d. The taxpayers signature and date signed, and
 - e. The representative(s) designation(s), licensing jurisdiction(s), and date(s) signed.

Caution: The use of terms, such as, "all years" or "all taxes" are not acceptable.

Note: Electronic signatures by representatives filed through e-Services are acceptable. E-Services is an online tool offered by the Internal Revenue Service for Tax Professionals and can be accessed at the following address <https://www.irs.gov/tax-professionals/resources-for-tax-professionals>.

Note: Faxed signatures are permissible; however, electronically signed, printed or stamped signatures are not acceptable.

- (3) The representative must complete Part II, "Declaration of Representative" of Form 2848.
- (4) Form 2848 is valid for only the types of tax, tax forms, tax periods, and tax matters that the taxpayer specifies.
- (5) Only a specific designated individual or individuals may represent the taxpayer. A firm or corporation cannot be designated a representative.
- (6) In order for the representative to receive refund checks, sign returns, or appoint other representatives, Form 2848 must specifically state this authority in Line 5a, Additional acts authorized.
- (7) Form 2848 allows taxpayers to limit powers of the representative. The taxpayer may cross out any authorities that they do not want to grant to the representative on the form. A taxpayer may also list on Line 5b of Form 2848 other specific deletions of act that a representative is otherwise authorized to perform.
- (8) All representatives must use the latest revision of the applicable form. If a representative uses a prior version, it must contain the same information as the current form.

Caution: The CAF processing sites will reject Form 2848 with a revision date prior to October 2011. See IRM 21.3.7.5.3, Form 2848 and Form 8821 Research and Processing, for details.

- (9) A representative must file a separate Form 2848 for each taxpayer.

Caution: The representative does not represent the non-signing spouse. Thus, the representative may not bind the non-signing spouse and cannot execute documents, including a waiver of restrictions on assessment or a consent extending the statutory period for assessment for the non-signing spouse.

4.11.55.2.6.2
(04-20-2010)
**Form 8821 - Tax
Information
Authorization**

- (1) Form 8821, Tax Information Authorization, allows taxpayers to authorize individuals, corporations, firms, organizations, or partnerships to inspect and/or receive confidential tax information.
- (2) Form 8821 is used only to authorize an individual to receive and inspect confidential tax return information of the taxpayer. It **cannot** be used to appoint a representative. If Form 8821 is for a joint return, only one spouse's signature is necessary.
- (3) Form 8821 is valid only for the types of tax, tax forms, tax periods, and tax matters the taxpayer specifies on the form.
- (4) In order to process, Form 8821:
 - a. The taxpayer's information,
 - b. The information of the designee,
 - c. Sufficient information to determine the tax return, or portion thereof, or tax return information to be disclosed, and
 - d. The taxpayer's signature and date.

Note: The use of terms such as “all years” or “all taxes” are not acceptable. In estate matters, the decedent’s date of death must be included on Form 8821.

- (5) If any of the above items are missing, the Form 8821 is invalid. The taxpayer must make any additions/corrections to the Form 8821. This may be accomplished through face-to-face contact or correspondence with the taxpayer.

4.11.55.2.6.3
(05-29-2018)
**Non-Internal Revenue
Service Power of
Attorney Document**

- (1) The Internal Revenue Service will accept a non-IRS POA document. In order for a non-IRS POA to be entered on the CAF system, it must be attached to a completed Form 2848, Power of Attorney and Declaration of Representative. The taxpayer’s signature is not required on the Form 2848; however, the representative must sign the Declaration of Representative, (see Part II of Form 2848). If a non-IRS POA document is used, it must contain the following information:
- The taxpayer’s name and mailing address.
 - The taxpayer’s social security number and/or employer identification number.
 - The taxpayer’s employee plan number, if applicable.
 - The name and mailing address of the representative.
 - The type(s) of tax involved (income, etc.).
 - The federal tax form number.
 - The specific year(s) or period(s) involved.
 - For estate tax matters, the decedent’s date of death.
 - A clear expression of the taxpayer’s intent concerning the scope of authority granted to the representative.
 - The taxpayer’s signature and date.
- (2) A signed and dated statement made by the representative must also be attached to the non-IRS POA document. The statement must contain the same declarations contained in Part II of Form 2848.
- (3) Internal Revenue Service will accept a non-IRS POA that does not include all information required by regulation if the attorney in fact completes and attaches a Form 2848 that includes the missing information and a statement, signed under penalty of perjury, that the original POA is valid under the laws of the governing jurisdiction.
- (4) See Pub 947, Practice Before the IRS and Power of Attorney and Pub 216, Conference and Practice Requirements, for additional information.

4.11.55.2.7
(04-20-2010)
**Receipt of POA or TIA
Form**

- (1) Upon receipt of a POA, Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, the employee must ensure that all required elements are properly completed and the form must be date stamped.

Note: Only documents which concern a tax period that ends no later than three years after the date a POA is received by the Internal Revenue Service will be processed to the CAF.

- (2) Form 2848 or Form 8821 may be a fax or a copy. If there are questions concerning forgery or its validity, the representative could be required to produce the original.

4.11.55.2.7.1
(05-29-2018)

**Missing or Incorrect
Information on Form
2848 or Form 8821**

- (1) A complete Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, with accurate information must be provided to the Internal Revenue Service before the representative or party designated to receive tax information is recognized in the respective capacities and before the forms are submitted to the CAF.

Note: Faxed signatures are permissible; however, electronically signed, printed or stamped signatures are not acceptable.

Exception: Electronic signatures by representatives filed through e-Services are acceptable.

4.11.55.2.7.2
(05-29-2018)

Processing of the POA

- (1) When a POA form is received, it is the Internal Revenue Service employee's responsibility to check the document for accuracy and completeness before submitting to the CAF unit for processing. See IRM 21.3.7.5.1, Essential Elements, for Form 2848, Power of Attorney and Declaration of Representative and Form 8821, Tax Information Authorization.

Note: The representative's signature cannot be electronic or stamped, unless submitted via e-Services. A signature date is required (can be stamped or typed). The representative's signature date must be within 45 days of taxpayer's signature date if the representative signed after the taxpayer (60 days if international). If the taxpayer signed after the representative, the 45 and 60 day rule does not apply.

- (2) When a determination is made that the POA or TIA is valid and can be processed by the CAF, the employee must take the following actions:
 - a. Enter the name, telephone number, function of the person reviewing the POA or TIA, and the date of the review in the space provided on the first page. This can be done manually or electronically.
 - b. Fax a copy of the POA or TIA to the appropriate campus based on the "Where-to-File" chart contained in Instructions for Form 2848, Power of Attorney and Declaration of Representative at <http://publish.no.irs.gov/cat12.cgi?request=CAT1&catnum=11981>, Form 8821, Tax Information Authorization, or other instructions issued by the applicable business operating division. Campus fax numbers and addresses are provided in IRM 21.3.7.1.3, Audience-Processing Sites (CAF Function). You may also find additional contact information in IRM 4.5.2.1.3, Power of Attorney/Tax Information Authorization.
 - c. Note across the top of page 1 "Faxed to (Appropriate Campus) on (Date)."
- (3) Document the case activity record (Form 9984, Examining Officer's Activity Record, or equivalent case history) with the receipt and processing of the POA or TIA.
- (4) Add the POA information to RGS or similar software being utilized to conduct the audit. For RGS refer to IRM 4.10.15.2.2, Paragraph 3, Contacts.
- (5) The examiner must keep the original POA or TIA in the case file attached to the back of the first page of the return. If the POA or TIA covers more than one

year, copies must be made and attached to all returns that the POA or TIA covers. A copy of subsequent POAs must be stapled to the top of the prior POAs in the same manner.

- (6) The receipt, review, and forwarding of the POA or TIA to the CAF Unit must be completed as soon as possible or within 24 hours of the receipt date. See IRM 21.3.7.1.3(5), Audience-Processing Sites (CAF Function).
- (7) Examiners will check IDRS for posting of a Transaction Code (TC) 960 to make sure the Form 2848, Power of Attorney and Declaration of Representative, was accepted by the CAF unit. Examiners should allow several weeks for processing of the TC 960 to post to IDRS.

Note: If the examiner receives a faxed or other copy of a Form 2848 that is difficult to read due to the size or quality of print, the examiner must ask the representative or taxpayer to send a clear copy to the CAF unit to make sure the form is readable and able to be processed.

4.11.55.2.7.3
(04-20-2010)
**POAs Received for
Specific Issues**

- (1) POAs filed for specific issues are NOT to be detached from the related document that is sent to the CAF function in the Campus.

Exception: The document authorizes recognition for a return, in addition to, the specific issue. In this case a copy of the original POA or TIA must be sent to the CAF function.

- (2) Examples of specific issues are provided in IRM 21.3.7.8.12, Specific Use Authorizations.

4.11.55.2.8
(04-20-2010)
Revocation

- (1) A new POA or TIA regarding the same tax matter(s) and tax period(s) revokes a prior POA or TIA unless the box on step 6 of Form 2848, Power of Attorney and Declaration of Representative, or the box on step 6 of Form 8821, Tax Information Authorization, is checked. If the box is checked, a copy of the POA or TIA not being revoked must be attached.
- (2) A Form 8821 will never revoke a previously submitted Form 2848, and a Form 2848 will never revoke a previously submitted Form 8821.
- (3) A taxpayer can revoke an existing POA or TIA without naming a new representative/authorized person. There are two ways a taxpayer can accomplish this:
 - a. File a copy of the POA or TIA to be revoked with each office of the Internal Revenue Service where the POA or TIA was filed. This copy must have a current signature and date under the signature already on line 7 (Form 2848) or (Form 8821) and the word "REVOKE" written across the top of the first page with a current signature and date below this annotation.
 - b. File a revocation statement with each office of the Internal Revenue Service where the POA or TIA was filed. The statement of revocation must indicate that the authority of the POA/designee is revoked and must be signed by the taxpayer(s). Also, the name and address of each recognized representative/designee whose authority is revoked must be listed.
- (4) A recognized representative/designee may withdraw from representation by filing a statement with the Internal Revenue Service office where the POA or

TIA to be revoked was filed. The statement must be signed and dated by the representative/ designee and must identify the name(s), TIN, address of the taxpayer(s), and the tax matter(s) from which the representative/designee is withdrawing.

- (5) Upon receipt of a document (POA, TIA, revocation statement, or withdrawal statement) revoking an authorization, the examiner must:
 - a. Make a copy of the document and send the copy to the CAF Unit where the original POA or TIA was filed as soon as possible or within 24 hours of receipt; and
 - b. Attach the original document to the prior Form 2848 or Form 8821, attached to the tax return.

4.11.55.2.9
(05-29-2018)
**Notices and
Communications**

- (1) Original notices and other written communications will be sent to the taxpayer and a copy to the first and second listed representative(s) if the taxpayer checks appropriate boxes on the Form 2848, Power of Attorney and Declaration of Representative.
- (2) Original notices and other written communications are sent to the taxpayer and a copy to the appointee, if the taxpayer checks the appropriate box on Form 8821, Tax Information Authorization.
- (3) If copies of letters and notices are sent to the authorized designee, Form 3198, Special Handling Notice For Examination Case Processing, must be annotated to reflect this requirement under the section titled "Letter Instructions for CCP" found on page two.

Note: Form 2848 specifically authorizes the representative to receive and inspect confidential tax information. Therefore, Internal Revenue Service employees are not prohibited from providing a copy of a notice or communication to a representative if the box on Form 2848 indicating copies are to be sent to the representative is not checked. However, representatives cannot expect courtesy copies of notices and communications when the box is not checked. Form 8821 specifically authorizes the appointee to receive and inspect confidential tax information. Therefore, Internal Revenue Service employees are not prohibited from providing a copy of a notice or communication to an appointee unless the box on Form 8821 stating the taxpayer does not want copies of notices or communications sent to the appointee is checked. Appointees cannot expect courtesy copies of notices and communications when the box indicating copies will be sent is not checked.

4.11.55.3
(05-29-2018)
**Interviewing and Control
of the Examination**

- (1) The purpose of an initial interview is to obtain an understanding of the taxpayer's financial history, the business operations, and the accounting records. Please see IRM 4.10.2 , Pre-Contact Responsibilities, for more information.
- (2) The examiner will use the outcome of the interview as one of the important factors in determining the depth and scope of the examination.

4.11.55.3.1
(05-29-2018)
**Taxpayer's Presence
Required**

- (1) IRC 7521(c), Representatives Holding Power of Attorney permits a representative authorized by a taxpayer to represent that taxpayer at any interview. A taxpayer may not be required to accompany a representative in the absence of an administrative summons.

- (2) IRC 7521(b), Safeguards require taxpayers to be clearly informed of rights to be represented at interviews and to suspend the interview if the taxpayer wishes to consult with a person authorized to practice before the Internal Revenue Service. Pub 1, Your Rights as a Taxpayer, and Pub 3498, The Examination Process explain these rights.
- (3) Examiners must not violate or give the perception of violating the taxpayer's right to representation.
- (4) Although a request for the taxpayer's voluntary presence must be made through the representative, the taxpayer's presence will not be mandated as long as the person being interviewed:
 - a. Has first hand knowledge of the taxpayer's business, business practices, bookkeeping methods, accounting practices and the daily operation of the business;
 - b. Provides factual, reliable information to questions asked by the examiner;
 - c. Timely provides follow-up information for any questions that could not be answered at the time of the initial interview; and
 - d. Has a properly executed Form 2848, Power of Attorney and Declaration of Representative, or equivalent POA. See IRM 4.11.55.2.7, for more information.
- (5) If the taxpayer is not available for the initial interview, or if the representative is resolute in not having the taxpayer present at the initial interview, the examiner must attempt to conduct the initial interview with the taxpayer's representative.
- (6) In many cases, the taxpayer will be the only one who has the information necessary for the examiner to determine the accuracy of the books and records. This has a direct bearing on the ultimate scope and depth of the examination. If the examiner determines the representative does not have sufficient knowledge of the taxpayer and the business to provide factual information, the examiner must request an interview with the individual who has first-hand knowledge of the taxpayers business operations.
- (7) If the taxpayer's representative does not comply with the request to interview someone more knowledgeable, including the taxpayer, the examiner must consider management involvement and/or an administrative summons.

Note: The examiner must not conduct the audit with someone who will merely serve as a courier, shuttling questions and answers between the examiner and the taxpayer. This type of arrangement obstructs the flow of the examination.

4.11.55.3.1.1
(05-29-2018)

**Request for
Representation -
Suspension of Interview**

- (1) Taxpayers have the right to representation at any time during the examination process. See IRM 4.10.3.3.7.2, Request for Representation - Suspension of Interview, and IRM 4.10.2.9.3.1, Taxpayers Who Delay, for more details.

4.11.55.3.2
(05-29-2018)

**Controlling the
Examination**

- (1) The Taxpayer Bill of Rights does not alter the right and obligation of the examiner to control the examination.

- (2) The examiner has the right to determine the time and place of the examination under IRC 7605, Time and Place of Examination, as long as the examiner does not abuse this right. The time and place of the examination must be reasonable and the examiner will attempt to accommodate reasonable requests. See IRM 4.10.2.9.2, Place and Time of Examination. Neither the taxpayer nor the taxpayer's representative will be allowed to control or unduly influence the scope or depth of an examination.
- (3) The examiner sets the scope and depth of the examination. The examiner must exercise professional judgement to determine what books, records, and accountant's work papers to request. See IRM 4.10.2.10, Requesting Information: Overview. The examiner must be firm yet courteous in his or her demeanor with the representative and taxpayer.
- (4) Examiners must be aware that an uncooperative representative may employ one or more of the following tactics in an attempt to gain control of the examination:
 - Procrastinating.
 - Failing to provide requested documents.
 - Failing to attend conferences.
 - Constantly questioning the need for certain information.
 - Denying the examiner access to the taxpayer.
 - Demonstrating abusive and/or aggressive behavior and attitude.
- (5) Examiners will document all contacts, cancellations of appointments, and unanswered telephone calls and letters.
- (6) If a pattern of noncooperation is developing, the examiner must notify the manager. Depending on the circumstances, the examiner and the manager will consider:
 - a. The group manager's involvement to assist in moving the examination forward;
 - b. Issuing an administrative summons. See IRM 4.11.55.3, for additional guidance, and
 - c. By-passing the representative. See IRM 4.11.55.4, for additional information.

4.11.55.3.2.1
(05-29-2018)
**Governing Documents
for Representatives**

- (1) The examiner must have a complete understanding of the information contained in the documents governing who may practice before the Internal Revenue Service. These documents outline the standards of conduct a representative must uphold. Understanding these standards will help set clear, objective expectations for the pace and conduct of the examination.

4.11.55.3.2.1.1
(04-20-2010)
Circular 230

- (1) *(Circular 230) Regulations Governing Practice before the Internal Revenue Service* is an effective tool to reference when working with procrastinating representatives.
- (2) Circular 230 sets forth regulations governing the practice of Attorneys, CPAs, Enrolled Agents, Enrolled Retirement Plan Agents, and Enrolled Actuaries before the Internal Revenue Service.
- (3) Some of the pertinent sections of Circular 230 are provided below:

- a. 31 CFR 10.20 - Information to be furnished.
- b. 31 CFR 10.23 - Prompt disposition of pending matters.
- c. 31 CFR 10.51 - Incompetence and disreputable conduct.
- d. 31 CFR 10.53 - Receipt of information concerning practitioner.

4.11.55.3.2.1.2
(05-29-2018)
**Revenue Procedures
81-38 and 2014-42**

- (1) Rev. Proc. 81-38 is applicable to returns signed before January 1, 2016. Rev. Proc. 2014-42 is applicable to returns prepared after December 31, 2015.
- (2) Rev. Proc. 81-38 allows unenrolled tax return preparers the privilege of limited practice before the Internal Revenue Service as the taxpayer's representative without enrollment. The standards of conduct, the scope of authority, the circumstances, and the conditions, are the same as, or comparable to, the standards governing licensed and enrolled practitioners under *(Circular 230) Regulations Governing Practice before the Internal Revenue Service*.
- (3) The following is a sampling of key provisions listed in Rev. Proc. 81-38:
 - a. The unenrolled preparer will be expected to recognize questions, issues, and factual situations of such difficulty as to require additional expert assistance and to suggest to the taxpayer that they seek such assistance.
 - b. An unenrolled preparer shall act in such a manner as to not commit any act of disreputable conduct. Disreputable conduct includes, but is not limited to, the items contained in section 31 CFR 10.51, Incompetence and Disreputable Conduct of Circular 230.
 - c. An unenrolled preparer shall not neglect or refuse to submit records or information in any matter before the Internal Revenue Service upon proper and lawful request and shall not interfere, or attempt to interfere, with any proper and lawful efforts to obtain information, unless the preparer believes in good faith and on reasonable grounds that the information is privileged.
 - d. An unenrolled preparer shall exercise due diligence in preparing or assisting in preparing, approving, and filing of returns, documents, affidavits, or other papers relating to Internal Revenue Service matters. The preparer will also exercise due diligence in determining (1) the correctness of oral and written representations made by the preparer to the Service, and (2) the correctness of representations made by the preparer to the client with reference to any matter administered by the Internal Revenue Service.
 - e. Any examining officer, or other Internal Revenue Service officer or employee who has reason to believe that an unenrolled preparer's conduct has been or is such as would render the preparer ineligible to appear as the taxpayer's representative before the Internal Revenue Service, shall communicate this information to the Area Director of the taxpayer.
- (4) Rev. Proc. 2014-42 requires unenrolled tax return preparers to consent to be subject to the duties and restrictions in Subpart B of Circular 230 relating to practice before the Internal Revenue Service and to the prohibitions on disreputable and incompetent conduct contained in section 10.51 of Circular 230.

4.11.55.3.2.2
(04-20-2010)
**Managing
Procrastination**

- (1) Examiners need to be firm and resourceful when communicating with taxpayers and representatives, when appropriate. There are a variety of tools available to the examiner to address examination delays.

- (2) There is no clear-cut solution to the problem, but examiners must take action to address procrastination on the part of the representative/taxpayer. Typically, a variety of actions need to be taken when faced with delays. The examiner's ability to recognize the problem and properly document the case file is essential.
- (3) In addition, receiving support from management is very important.

4.11.55.3.2.2.1
(05-29-2018)

A Firmer Approach

- (1) The ability to exercise good judgment cannot be overemphasized. Still, there are times when a more aggressive approach to procrastination and untimely IDR responses needs to be taken by examiners and managers.

Reminder: Some of the delays in an examination are attributable to the Internal Revenue Service. For example, the priorities and assignments of the examiner can change.

- (2) When appropriate, examiners need to take a firmer position with respect to allowing additional time for information and allowing a representative to postpone an appointment without a valid reason.
- (3) Examiners need to maintain activity records and document all contacts, tactics, and misrepresentations made by representatives and taxpayers. As each procrastinating tactic occurs, it must be timely documented in the activity record. These contemporaneously documented repetitive actions will then form the basis for pursuing a representative bypass or summons, if necessary.
- (4) Problem cases need to be aggressively worked. Timely follow-up by the examiner can positively influence the responsiveness of a representative/taxpayer.
- (5) Pending IDRs must be current and when responses are overdue or insufficient, action needs to be taken immediately.
- (6) IDRs must be as specific as possible, including a due date or follow-up appointment date. This may help deter uncooperative representatives who provide partial responses with the expectation the examiner will settle for insufficient documentation or support.
- (7) Examiner must initiate managerial involvement when unreasonable delays have occurred as a direct result of the taxpayer's or the representative's actions, or lack of action.

4.11.55.3.2.2.2
(05-29-2018)

Correspondence

- (1) Although the examiner is obligated to recognize the taxpayer's representative, taxpayers must be kept informed of all stages of the examination. See IRM 4.10.1.3.3, Written Communication to the Taxpayer's Representative, for more information.

4.11.55.3.2.2.3
(04-20-2010)

Summons

- (1) In instances of abuse of process, the examiner and group manager may consider issuing an administrative summons.
- (2) If the representative and the taxpayer will not consent to an interview with the taxpayer for those cases in which the examiner determines it is appropriate, the examiner and group manager may strongly consider issuing a summons.

- (3) A taxpayer does not need to refuse a request to produce records or information before a summons can be issued. However, if there is a refusal, whether direct or indirect, it must be properly established and clearly documented by the examiner.
- (4) To determine whether or not a summons may be issued, the examiner may take the following into consideration:
 - a. A clear refusal to provide books, records, and/or testimony.
 - b. Vital information is required for a material matter, and cannot be obtained from any other source within a reasonable period of time, and without extraordinary effort.
 - c. A statute of limitations issue.
- (5) A decision to use the summons based on the information above will provide reasonable assurance that the summons can be successfully enforced if it becomes necessary.

4.11.55.3.2.3
(04-20-2010)
**Refusal to Provide
Books and Records
Requested**

- (1) Under IRC 7602(a), Authority to Summon, etc., the examiner is authorized to “examine any books, papers, records, or other data which may be relevant or material to such inquiry.”
- (2) If necessary, the examiner must remind the taxpayer and/or representative that the Internal Revenue Service has the right by law to examine the books and records. Also, if necessary, the examiner must remind the representative of duties and obligations under Circular 230.
- (3) An accountant’s or other return preparer’s workpapers used to prepare the return (including workpapers reconciling the books to the return and adjusting entries) are included under IRC 7602(a), Authority to Summon, etc.

4.11.55.3.3
(04-20-2010)
**Privileged
Communications**

- (1) IRC 7525, Confidentiality Privileges Relating to Taxpayer Communications creates a statutory confidentiality privilege for communications from a taxpayer to any “federally authorized tax practitioner” concerning “tax advice.”
- (2) Although this communications privilege is partly defined by reference to, and is no broader than, the attorney-client privilege, it is clearly a different privilege, created solely by statute, and defined as much by the statutory language as by reference to the common law attorney-client privilege.
- (3) The confidentiality protection applies to communications that would be considered privileged if they were between the taxpayer and an attorney and that relate to non-criminal:
 - a. Tax matters before the Internal Revenue Service, or
 - b. Tax proceedings brought in federal court by or against the United States.
- (4) Federally authorized tax practitioner - Any person described in Circular 230 who is an Attorney, CPA, Accountant, Enrolled Agent, Enrolled Retirement Plan Agent, or Enrolled Actuary.
- (5) Tax advice - Advice given by a federally authorized tax practitioner acting within the scope of authority to practice before the Internal Revenue Service.

4.11.55.3.3.1
(04-20-2010)

**Confidentiality Privilege
Does Not Apply**

- (1) The confidentiality privilege does NOT apply to the following:
 - a. Communications made prior to the enactment date (July 22, 1998);
 - b. Information disclosed to a tax practitioner for the purpose of preparing a return;
 - c. Written communications between the tax practitioner and a director, shareholder, officer, employee, agent, or representative of a corporation that promotes the direct or indirect participation of the corporation in any tax shelter as defined in IRC 6662(d)(2)(C)(ii);
 - d. Information that is also available from non-privileged sources;
 - e. Communication between the taxpayer's tax practitioner and a third-party who provides information about the taxpayer to the practitioner (US vs. Ackert, 169 F. 3d 136 (2d Cir. 1999)).

Note: This confidentiality privilege cannot be used in any administrative proceeding with an agency other than the Internal Revenue Service.

4.11.55.3.3.2
(04-20-2010)

**Assertion of the
Confidentiality Privilege**

- (1) The taxpayer must assert the confidentiality privilege; it is not automatic.
- (2) The taxpayer can assert the confidentiality privilege in any "non-criminal" tax matter before the Internal Revenue Service and any "non-criminal" tax proceeding in federal court with respect to such matter.
- (3) A case is a "non-criminal tax matter before the Internal Revenue Service" until the matter is referred to the Criminal Investigation Division for the assignment of a special agent to the matter. Once the matter ceases to be a non-criminal tax matter, the taxpayer may no longer assert the statutory privilege created under IRC 7525, Confidentiality Privileges Relating to Taxpayer Communications. Thus, the Internal Revenue Service may obtain the information previously withheld.
- (4) If the taxpayer asserts the confidentiality privilege, the examiner must do the following:
 - a. Request a written statement from the Federally authorized tax practitioner providing the reasons why the privilege is being asserted; and,
 - b. Contact area counsel for guidance.

4.11.55.4
(04-20-2010)

**By-Pass of a
Representative**

- (1) IRC 7521(c), Representatives Holding Power of Attorney states that an examiner, with the manager's approval, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.
- (2) If taxpayer notification does not resolve the delays, then by-pass procedures (outlined below) permit the employee to contact the taxpayer directly and to request any information necessary to complete the examination.
- (3) The representative continues to represent the taxpayer; and copies of all correspondence issued to the taxpayer, must still be sent to the representative. The taxpayer may, at their discretion, forward the requested information/ documentation through the representative to the employee.

- (4) The by-pass procedures do not constitute a disbarment or a suspension of the practitioner. The taxpayer still has a statutory right to representation per IRC 7521(c).

4.11.55.4.1
(04-20-2010)
**Prior to Requesting a
By-Pass**

- (1) If any of the following occur, the employee must document the case file:
- The representative impedes or delays an examination by failing to submit the taxpayer's records or information requested by the employee.
 - The representative impedes or delays an examination by failing to keep scheduled appointments.
 - The representative impedes or delays an examination by failure to return telephone calls and written correspondence.
- (2) If a trend is noted and the examination is being hindered because of the representative, the examiner will notify the group manager of the representative's actions. The manager will ensure that all reasonable efforts have been taken to work directly with the representative and that the case file sufficiently details the facts that support how the representative has delayed or hindered the examination.
- (3) Prior to initiating by-pass procedures, the following steps must be taken, depending on the circumstances:
- If the employee has not done so already, the taxpayer will receive copies of all written correspondence to the representative. This includes all IDRs.
 - Either Letter 4020-A, Warning for Bypass Procedures for Preparers covered under Circular 230, (attorneys, CPAs, enrolled agents and enrolled actuaries) or Letter 4020-B, Warning for Bypass Procedures for Unenrolled Preparers, must be prepared and sent to the representative from the group manager advising the representative of responsibilities under Circular 230 and conveying advance notice of a possible by-pass because the representative is violating Circular 230. Copies of prior document requests, a list of outstanding items and a brief chronology of events must be attached to the letter. A copy of the letter will not be sent to the taxpayer.

Caution: The taxpayer will not be sent a copy of the warning letter. A copy of the letter must be sent to the Territory Manager, and the Area Return Preparer Coordinator must be contacted and advised of the possible by-pass.

4.11.55.4.2
(04-20-2010)
**Procedures for
By-Passing a
Representative**

- (1) If the representative delays or refuses to provide the information requested after repeated attempts, a by-pass request must be prepared for the territory manager's signature.
- (2) The decision to seek a by-pass rests with the employee and group manager. In taking such an action, the following items must be considered:
- It is imperative that the case file be properly documented with the efforts made by the employee to obtain the information and the actions (or lack thereof) of the representative. It is suggested that when the employee first suspects uncooperative behavior all appointments and document requests must be confirmed in writing.

- b. As previously mentioned, prior to initiating the by-pass procedures, the group manager may contact the representative in writing and advise him of his responsibilities under *(Circular 230) Regulations Governing Practice before the Internal Revenue Service* and explain the consequences of his continued conduct.
 - c. The permission to by-pass must be obtained from the territory manager. A letter to the representative from the territory manager must be prepared. Letter 4020-C, Final Bypass, must be used for this purpose. The letter must outline the facts and circumstances which constitute the basis for the by-pass. The letter is prepared by the employee with the assistance of the area return preparer coordinator, as needed. This letter must be routed through the examiner's group manager and the area return preparer coordinator to the territory manager for signature.
 - d. The employee may not circumvent the representative until the territory manager approves the by-pass by signing and issuing the letter in item above to the representative.
- (3) The by-pass permits the employee to contact the taxpayer directly. The practitioner can continue to represent the taxpayer, if accompanied by the taxpayer. The representative will be afforded the courtesy of being advised of the time and place for future appointments with the taxpayer.

Note: Employees will not use by-pass procedures routinely or simply to interview the taxpayer.

4.11.55.4.3
(01-15-2005)
**Use of Summons in Lieu
of a By-Pass**

- (1) A summons must be utilized as opposed to by-pass procedures in the following circumstances:
- a. The taxpayer and the representative are both intentionally uncooperative.
 - b. The representative refuses to provide the requested documentation when they believe this documentation is privileged or that the request for such records is of doubtful legality. Issuance of a summons in this situation permits the representative to request a court to consider the legal issue of privilege or whether the information is relevant and material to the examination.

4.11.55.5
(05-29-2018)
Referrals

- (1) To monitor potential problems, the Internal Revenue Service has a process of referring practitioners to the OPR for consideration of disciplinary action.
- (2) When an employee has reason to believe, or receives information, that a tax practitioner has violated any of the rules in *(Circular 230) Regulations Governing Practice before the Internal Revenue Service*, a written report must be promptly forwarded to the Area Return Preparer Coordinator for possible referral to the OPR. This includes unenrolled tax preparers covered under Rev. Proc. 81-38 and Rev. Proc. 2014-42.

4.11.55.5.1
(05-29-2018)
**Referral to the Office of
Professional
Responsibility (OPR)**

- (1) A referral to OPR is a consideration to institute disciplinary action against a practitioner. If OPR has reason to believe that a provision of the law or regulations governing practice before the Internal Revenue Service has been violated based on the referral, OPR may reprimand or institute proceedings for disbarment or suspension. Each referral must describe and document the practitioner's actions in order to support potential disciplinary action.

- (2) Announcements of censures, disbarments, and suspensions normally are published in the Internal Revenue Bulletin. Also, employees can access this listing via OPRs intranet website at <https://www.irs.gov/tax-professionals/enrolled-actuaries/disciplinary-sanctions-internal-revenue-bulletin>.
- (3) As long as the preparer's name appears on the list, they are not permitted to appear before the examiner as an advocate with or without the taxpayer, but only as a witness for the taxpayer under Rev. Proc. 68-29.

4.11.55.5.2
(05-29-2018)
**Practitioners under the
Office of Professional
Responsibility's (OPR) -
Authority**

- (1) OPR exercises jurisdiction over all professionals who practice before the Internal Revenue Service, including unenrolled tax preparers.

4.11.55.5.2.1
(05-29-2018)
**When Ought a Referral
Be Made to the OPR**

- (1) Examiners are to exercise discretion in making referrals of specific cases to the Director, Office of Professional Responsibility.
- (2) In matters involving non-willful conduct in tax return preparation subject to a penalty, a referral may only be made when it can be established that the preparer has a pattern of failing to meet the required due-diligence standards of Circular 230.
- (3) An isolated instance in which a penalty may apply will not, in and of itself, require a referral unless willful conduct is involved. Accordingly, the imposition of penalties under IRC 6694(a), Understatement Due to Unreasonable Positions, and IRC 6695(a), Failure to Furnish Copy to Taxpayer through IRC 6695(g), Failure to be Diligent in Determining Eligibility for Certain Tax Benefits may not automatically generate a referral to the Director, Office of Professional Responsibility.

4.11.55.5.2.1.1
(05-29-2018)
**Situations Requiring a
Mandatory Referral**

- (1) A mandatory referral must be prepared when the following penalties are asserted against a practitioner:
 - a. Willful or reckless conduct (IRC 6694(b), Understatement Due to Willful or Reckless Conduct) - when closed agreed, sustained in Appeals, or closed unagreed without Appeals contact.
 - b. Aiding and abetting penalties (IRC 6701, Penalties for Aiding and Abetting Understatement of Tax Liability) - The assessment of an aiding and abetting penalty against a tax practitioner or appraiser mandates an automatic referral. In addition, referrals must be considered in those situations in which the aiding and abetting penalty was considered but not imposed.
 - c. Promoting abusive tax shelters (IRC 6700, Promoting Abusive Tax Shelters, etc.) - The assessment of an IRC 6700 penalty against an attorney, CPA or enrolled agent.
 - d. Action to enjoin a tax return preparer, who is also a (*Circular 230*) *Regulations Governing Practice before the Internal Revenue Service* practitioner, for engaging in unlawful conduct (IRC 7407, Action to Enjoin Tax Return Preparers, and IRC 7408, Actions to Enjoin Specified Conduct Related to Tax Shelters and Reportable Transactions).

- e. Injunctive action under IRC 7408, Actions to Enjoin Specified Conduct Related to Tax Shelters and Reportable Transactions taken against an attorney, CPA or enrolled agent.

4.11.55.5.2.1.2

(04-20-2010)

Situations Which May Warrant a Referral

- (1) The following situations may warrant a referral to the OPR:

- a. Examiners must exercise discretion in making referrals to OPR when penalties are asserted against attorneys, CPAs, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers under IRC 6694(a), Understatement Due to Unreasonable Positions, and IRC 6695(a), Failure to Furnish Copy to Taxpayer through IRC 6695(g).

Note: The referral(s) must be based on a pattern of failing to meet the due-diligence or other standards of practice as prescribed by the Internal Revenue Service.

- b. Return preparer referrals made to Criminal Investigation under IRC 7206, Fraud and False Statements.
- c. An appraiser who aids or assists in the preparation or presentation of an appraisal in connection with the tax laws may be subject to disciplinary action if the appraiser knows the appraisal will be used in connection with the tax laws and will result in an understatement of the tax liability of another person. Therefore the assessment of an IRC 6695(a), Failure to Furnish Copy to Taxpayer penalty warrants a referral to OPR.
- d. A by-pass of representative letter was issued to a tax practitioner.
- e. Disreputable conduct or incompetence described in *(Circular 230) Regulations Governing Practice before the Internal Revenue Service*, Section 10.51.
- f. The implication of a tax practitioner in a frivolous tax return matter (IRC 6702, Frivolous Tax Submissions) must result in a referral.
- g. The accuracy-related penalty under IRC 6662(d), Substantial Understatement of Income Tax for a substantial understatement, is asserted and the facts of the case suggest the practitioner did not exercise due diligence in the preparation of the return.

Note: IRM 20.1.5.8, IRC 6662(d), Substantial Understatement of Income Tax, provides that whenever IRC 6662(d) is not asserted because the taxpayer has met the "advice" standard under the reasonable cause exception, contact with the preparer is mandatory to obtain information from the preparer concerning the "advice" provided before the case is closed from the group. A comment must be made in the client examination workpapers' penalty section as to consideration of a referral to the OPR.

- h. The erroneous claim for refund or credit penalty under IRC 6676, Erroneous Claim for Refund or Credit is asserted when there is no reasonable basis for the refund claim, and the facts suggest the practitioner did not exercise due diligence in the preparation of the claim.
- i. Referral must be made to OPR in instances where a practitioner fails to comply with the requirements for reportable transactions or characterizes the reporting/disclosure of a tax shelter or other reportable transaction as an Internal Revenue Service endorsement of the shelter or transaction under IRC 6111, Disclosure of Reportable Transactions, and IRC 6112, Material Advisors of Reportable Transactions Must Keep Lists of Advisees, etc., and takes a position on a tax return which reflects the purported endorsement.

- j. Opinions rendered by tax practitioners and used or referred to in the marketing of tax shelters (abusive or otherwise). Tax shelter opinions which violate Circular 230 will be referred to OPR.
- k. Examination report of any tax return of an attorney, CPA, or enrolled agent, or of a return prepared by an attorney, CPA or enrolled agent where a Pre-filing Notification Letter was issued in connection with a tax shelter and the loss and/or credit from the tax shelter was nevertheless claimed on the tax return.

4.11.55.5.2.2
(04-20-2010)

**Referral to the OPR -
Procedures**

- (1) Once it has been determined that a referral is necessary or appropriate, a referral package to OPR must be prepared and closed separately from the related case. Include in the referral package:
 - a. Completed Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility, to OPR, including disposition of the case (agreed, unagreed).
 - b. A complete copy of the tax return(s) involved.
 - c. A complete copy of the Form 4549, Income Tax Examination Changes, or equivalent (including explanation of items and workpapers).
 - d. Letters, memoranda, copies of Form 2311, Affidavit, or similar attested document, and Form 2797, Referral Report for Potential Criminal Fraud Cases, if applicable.
 - e. Penalty summary from RGS.
 - f. Other penalty assessment documents that are not on RGS (for example, Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties.)
 - g. Form 2848, Power of Attorney and Declaration of Representative, if available.
 - h. Explanatory memorandum, which details the actions of the practitioner. The actions of the practitioner must be described and documented in sufficient detail to develop a substantial position for potential disciplinary action. Include relevant documentation and exhibits from the income tax file. In the case of a return preparer, include a statement regarding the preparer's appearance before the Internal Revenue Service (a record of contacts and activity of the preparer).
 - i. Document the practitioner's position, whether a protest to Appeals will be made, and the extent the individual referred practices before the Internal Revenue Service.
 - j. The name, tax period, and TIN of the related case(s) must be noted in the referral package.
- (2) Form 9984, Examining Officer's Activity Record, for the related tax case must note the referral was prepared and forwarded to the area return preparer coordinator.
- (3) A comment must be made in the client examination workpapers' penalty section as to consideration of a referral to the OPR.

4.11.55.5.2.3
(04-20-2010)

**Routing of Referral to
the OPR**

- (1) Examiners will send referrals to OPR utilizing Form 8484, Suspected Practitioner Misconduct Report for the Office of Professional Responsibility. The referral package must be routed through the area return preparer coordinator.

4.11.55.6
(04-20-2010)

**Centralized
Authorization File (CAF)**

- (1) The CAF contains information routinely recorded from Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, that is input when a POA or TIA is received. CAF numbers are assigned to representatives to help in the processing of POAs and TIAs.

Caution: CAF numbers do not indicate that a representative is qualified to practice before the Internal Revenue Service. See IRM 4.11.55.2.1.1, for more information on who may represent a taxpayer.

4.11.55.6.1
(04-20-2010)

**Before Requesting a
POA - Check IDRS**

- (1) The CAF is an automated file containing information on the authority of representatives that will allow the Internal Revenue Service to handle matters regarding authorizations and representatives quickly and efficiently. The CAF allows employees to identify representatives and the scope of authority.
- (2) Employees must check IDRS before the start of an examination to see if there is a POA or TIA on file for the specific tax period for the taxpayer. The following codes on a transcript will reflect if a POA is on file:
 - a. ENMOD - will display a "C" in the "CAF" indicator next to the SSN if a POA is present on at least one tax period.
 - b. TXMODA - will display a "1" in the "CAF" indicator next to the ASED and CSED if a POA is on file for the tax period requested.
 - c. Transaction Code 960 - will be present on a transcript of account if a POA is on file for the tax period requested.

Caution: A Transaction Code 960 **only** indicates a Form 2848, Power of Attorney and Declaration of Representative, was processed by the CAF unit. It does not mean the alpha designation is correct. For additional information on verification of the alpha designation, see IRM 4.11.55.2.1.2.

- d. The IDRS CC CFINK must be requested for additional information.

4.11.55.6.2
(04-20-2010)
CFINK

- (1) The CAF contains taxpayer records regarding POAs on file with the Internal Revenue Service. It contains the years for which POAs are on file for a given taxpayer.
- (2) The IDRS CC that is input to access the tax periods for which a POA is present is "CFINK". The CFINK command with the taxpayer's TIN will yield a listing of all years for which a POA is on file. IRM 2.3.31-1, CFINK with Taxpayer SSN through IRM Exhibit 2.3.31-10 provides a description of all the information available via IDRS CC CFINK and RPINK:
 - a. Name and CAF number of the representative,
 - b. Date the POA was signed,
 - c. Last action to CAF for this representative for this taxpayer,
 - d. Type of Representative (attorney, CPA, enrolled agent, etc.),
 - e. Whether the representative is authorized to receive correspondence,
 - f. Whether the duties the representative is authorized to perform have been changed or modified,
 - g. Form number,
 - h. If it is a blind trust. In which case, only one representative is authorized to receive confidential information,
 - i. If the POA was submitted with the original filed return, and

- j. If the tax year on the Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, has been revised.

Note: The output field labeled “SUPPRESSED” is for internal use in case there is a discrepancy with the information on IDRS. The representative will still receive all correspondence if the response is “Yes” or “No”.

- (3) CC CFINK input with the CAF Number of the representative will provide the following information:
 - a. The first and second representatives’ names,
 - b. The representatives’ addresses and telephone numbers,
 - c. The date the POA was signed.

4.11.55.6.3
(04-20-2010)
RPINK

- (1) CAF contains representative records. It contains the name and address information for the representative. RPINK is the IDRS CC used to access this information if the representative’s CAF number is available. For a complete discussion of the use of this CC and the information available via this CC, see IRM 2.3.31.3, Command Code RPINK — Description and Use.

