

CC-2013-005

January 23, 2013

Communications with Taxpayers
Unrepresented in Tax Court
Subject: Litigation

Effective Until Further
Cancel Date: Notice

Purpose

This Notice provides guidance regarding communications with a taxpayer appearing pro se in a case docketed in the United States Tax Court when the taxpayer has filed with the Internal Revenue Service a valid Form 2848, Power of Attorney and Declaration of Representative (POA), for a representative named in the Form 2848 who has not entered an appearance in the Tax Court case.

Discussion

Practitioners in the Tax Court, including Chief Counsel attorneys, are required to carry on their practice in accordance with the letter and spirit of the American Bar Association Model Rules of Professional Conduct. T.C. Rule 201(a). The ABA Model Rules provide that:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer *in the matter*, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

ABA Model Rules of Prof'l Conduct R. 4.2 (emphasis added.) This rule does not "preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client *in the matter*." ABA Model Rules of Prof'l Conduct R. 4.2 cmt. [4] (emphasis added). The ABA Model Rules are directly applicable to practitioners representing parties in the Tax Court, and Model Rule 4.2 is also consistent with state bar ethics rules applicable to members of the bar in their respective states, many of which are modeled after the ABA rules. See, e.g., Rule 4.2, Virginia Rules of Professional Conduct; Rule 4.2, Utah Rules of Professional Conduct.

An attorney is only considered to be representing a party in a matter in litigation in the Tax Court if that attorney enters an appearance in the case. See T.C. Rule 24(b) ("[i]n the absence of an appearance by counsel, a party will be deemed to appear on the party's own behalf. An individual party may *represent* himself or herself." (Emphasis added.)) The Tax Court provides specific rules regarding how an attorney enters an appearance in a case. Under T.C. Rule 24(a),

Distribute to:	Tax Litigation staff	Tax Litigation staff & Support personnel
	X All Personnel	X Electronic Reading Room

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