

## Part III - Administrative, Procedural, and Miscellaneous

### Obtaining Permission for a Trustee to Make the Income Tax Return of an Eligible Individual

[26 CFR 601.602]: Forms and Instructions  
(Also: Part I, Section 6012, 6012-1)

Notice 2009-87

#### PURPOSE

This notice invites public comments on possible modifications to the conditions established in Rev. Proc. 80-59, 1980-2 C.B. 855, under which a trustee of a blind trust that meets the requirements of section 102(f)(3) of the Appendix to Title 5 of the United States Code (or any successor provision of the United States Code) may execute and file an income tax return on behalf of any individual described in section 101(f) of the Appendix to Title 5 of the United States Code (or any successor provision of the United States Code) (“eligible individual”).

#### BACKGROUND

Section 102(f)(4)(B) of the Appendix to Title 5 of the United States Code provides that, in the case of a trust created for the benefit of an eligible individual, an asset placed in trust will not be considered a financial interest of the individual for purposes of section 208 of Title 18 of the United States Code, and any other conflict of interest statutes or regulations, if certain requirements are met, including giving the trustee the power to prepare on behalf of the individual the personal income tax return and similar

returns which may contain information relating to the trust.

Section 1.6012-1(a)(5) of the Income Tax Regulations, concerning returns made by agents, permits a return to be made by an agent if the taxpayer requests permission, in writing, and the appropriate IRS official determines that good cause exists for permitting an agent to make the return. That section provides that whenever a return is made by an agent it must be accompanied by a power of attorney (or copy thereof) authorizing the agent to represent the principal in making the return.

Section 601.504(a) of the Conference and Practice Requirements, Statement of Procedural Rules, provides that a power of attorney is required when the taxpayer wishes to authorize a recognized representative to represent the taxpayer before the Internal Revenue Service or perform the following acts on behalf of the taxpayer: (1) offer or execute either a waiver of restriction on assessment or collection of a deficiency in tax or a waiver of notice of disallowance of a claim for credit or refund on behalf of the taxpayer, (2) execute a consent to extend the statutory period for assessment or collection of a tax on behalf of the taxpayer, (3) execute a closing agreement on behalf of the taxpayer, (4) receive (but not endorse or collect) a check in payment of any refund of taxes, penalties or interest on behalf of the taxpayer, or (5) sign a tax return under a certain conditions.

Section 601.506(a) of the Conference and Practice Requirements, Statement of Procedural Rules, provides that any notice or communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service shall be given to the taxpayer and, unless restricted by the taxpayer,

to the taxpayer's recognized representative.

Revenue Procedure 80-59, 1980-2 C.B. 855, requires an eligible individual to receive advance written permission from the appropriate IRS official for the trustee to make the income tax return on behalf of the eligible individual prior to filing of the eligible individual's income tax return. The trustee must submit the letter granting the trustee permission to file the eligible individual's return when the trustee files the return. In addition, the return and letter must be accompanied by a power of attorney (or copy thereof) that grants the trustee authority to sign the return, to receive (but not endorse or collect) a refund check, to execute a waiver of restriction on assessment or collection, to execute a waiver of notice of disallowance, to execute a consent to extend the period for assessment or collection, and to execute a closing agreement. Finally, notwithstanding the provisions of section 601.506(a) of the Conference and Practice Requirements, Statement of Procedural Rules, all notices or other written communication required or permitted to be given to the eligible individual are given only to the trustee.

#### POSSIBLE CHANGES

The Internal Revenue Service is considering modifying the requirement that an eligible individual receive advance permission from the Internal Revenue Service for the trustee to make the income tax return on behalf of the eligible individual prior to filing the eligible individual's income tax return. Under the possible modifications being considered by the Internal Revenue Service:

- An eligible individual who has an interest in a blind trust that meets the

requirements of section 102(f)(3) of the Appendix to Title 5 of the United States Code (or any successor provision of the United States Code) would request permission, in writing, for the trustee of the blind trust to execute and file the Federal income tax return of the eligible individual.

- Both the letter requesting permission and a power of attorney (or copy thereof) that grants the trustee authority to sign the return, to receive (but not endorse or collect) a refund check, to execute a waiver of restriction on assessment or collection, to execute a waiver of notice of disallowance, to execute a consent to extend the period for assessment or collection, and to execute a closing agreement would be submitted to the Internal Revenue Service with the eligible individual's Federal income tax return when the tax return is filed.
- The eligible individual who has an interest in a blind trust that meets the requirements of section 102(f)(3) of the Appendix to Title 5 of the United States Code (or any successor provision of the United States Code) and who submits the written request for permission and power of attorney consistent with these procedures, would be considered to have shown good cause for having the return filed by the trustee, and would be deemed to have been granted such permission.
- The eligible individual would submit a separate request for permission for the trustee to execute and file the Federal income tax return each taxable year.

REQUESTS FOR PUBLIC COMMENT

The Internal Revenue Service requests comments on whether the existing procedures for an eligible individual to receive permission from the Internal Revenue Service for a trustee to make the eligible individual's income tax return should be modified. The Internal Revenue Service is particularly interested in receiving comments on whether taxpayer burden will be reduced if the requirement that an eligible individual receive advance permission from the Internal Revenue Service for the trustee to make the income tax return on behalf of the eligible individual is eliminated and any other ways that the Internal Revenue Service can reduce taxpayer burden or simply these procedures.

Written comments should be sent to: CC:PA:LPD:PR (Notice 2009-87), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2009-87), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: [Notice.Comments@irsounsel.treas.gov](mailto:Notice.Comments@irsounsel.treas.gov). Please include "Notice 2009-87" in the subject line of any electronic communications.

Comments, if any, must be received by November 30, 2009. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is Richard S. Goldstein of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact Richard S. Goldstein at (202) 622-3400 (not a toll-free call).