



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
July 26, 2002

OFFICE OF
CHIEF COUNSEL

Number: **200236043**
Release Date: 9/6/2002
UILC: 6012.00-00, 6061.00-00

CC:PA:APJP:1
SCANO-136533-02

INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR Sharon Walters
Philadelphia Service Center

FROM: James C. Gibbons
Branch Chief
CC:PA:APJP:1

SUBJECT: Unenrolled Preparer Signing Returns for Taxpayers and
Requesting That Taxpayer Refund Checks be Delivered to
the Unenrolled Preparer

This Chief Counsel Advice responds to your memorandum dated July 8, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

- 1) Can an unenrolled tax preparer sign returns on behalf of taxpayers in the situation described below?
- 2) Can an unenrolled tax preparer receive refund checks for taxpayers in the situation described below?
- 3) What should a Service Center do with undeliverable refund checks for taxpayers in the situation described below?

CONCLUSIONS

- 1) An unenrolled tax preparer may only sign a return on behalf of a taxpayer if the preparer has a properly completed power of attorney which specifically authorizes him to sign the taxpayer's returns.
- 2) An unenrolled preparer may not receive refund checks for a taxpayer.
- 3) A Service Center, when asked to send a taxpayer refund check to an unenrolled preparer, should contact the unenrolled preparer to determine the

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current address of the taxpayer. The refund check should then be mailed directly to the taxpayer.

FACTS

An unusually large number of refund checks for non-resident aliens have been returned to the Philadelphia Service Center ("Service Center"). The refunds derived from a group of returns that were primarily 1040EZs and 1040NRs. The returns were filed with the Service Center by non-resident aliens ("taxpayers"), who were citizens of India. The taxpayers all worked in the United States temporarily, but returned to India within the same tax year.

An unenrolled preparer prepared each of the taxpayer's returns and signed in the portion of the return designated for a taxpayer signature. Each return reflected the unenrolled preparer's address as the taxpayer's address so that all of the affected taxpayers' refund checks were mailed to the unenrolled preparer.

A Form 2848 (Power of Attorney and Declaration of Representative) was attached to each return. Each power of attorney listed the preparer's name and address and the taxpayer's name with the address of the preparer in the place designated for the taxpayer's address. The powers of attorney were signed by both the unenrolled preparer and the taxpayer, and included, in the Acts Authorized section, the statement "Power to sign my income tax return pursuant to regulations section 1.6012-1(a)(5) by reason of my absence from the United States."

The Service processed the returns and mailed a refund check to the address listed on the return. As all of the returns at issue used the unenrolled preparer's address for the taxpayer's address, all of the refund checks were mailed to the unenrolled preparer's address. The refund checks were returned to the Service Center as undeliverable.

LAW AND ANALYSIS

Section 6012(a) of the Internal Revenue Code (Code) provides that individuals having gross income that equals or exceeds the exemption amount are required to file income tax returns. Treas. Reg. § 1.6012-1(b) requires that every nonresident alien individual who is engaged in trade or business in the United States at any time during the year or who has income which is subject to taxation under Subtitle A of the Code shall make a return on Form 1040NR. A nonresident alien must file a return even if (i) he has no income which is effectively connected with the conduct of a trade or business in the United States, (ii) he has no income from sources within the United States, or (iii) his income is exempt from income tax by reason of an income tax convention or any section of the Code. Treas. Reg. § 1.6012-1(b)(1)(i).

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If a person required to make a return is unable to prepare his or her own return, such return can be prepared by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. I.R.C. § 6012(b)(2). Treas. Reg. § 1.6012-1(a)(5) permits the return of income to be made by an agent if (i) by reason of disease or injury, the person liable for the making of the return is unable to make it, (ii) by reason of continuous absence from the United States (including Puerto Rico as if a part of the United States) for a period of at least 60 days prior to the date prescribed by law, the taxpayer is unable to make it, or (iii) if the taxpayer requests permission from the Service, in writing, and the Service determines that good cause exists for permitting the return to be so made. Nonresident aliens may also use a duly authorized agent to file their returns. Treas. Reg. § 1.6012-1(b)(3)(ii).

Whenever a return is filed by an agent, it must be accompanied by a power of attorney (or copy thereof) authorizing him to represent his principal in making, executing, or filing the return. Treas. Reg. § 1.6012-1(a)(5). A properly completed Form 2848 satisfies this requirement. Generally, as a representative of the taxpayer, the agent is authorized to perform any and all acts the taxpayer can perform, such as signing consents extending the time to assess tax, recording the interview, or executing waivers agreeing to a tax adjustment. See: Form 2848 and accompanying instructions.

Agents and representatives that have been given a power of attorney to represent a taxpayer must be eligible to practice before the Service. Unenrolled return preparers are among those permitted to represent taxpayers. An unenrolled preparer, however, receives only limited privileges to practice before the Service. Rev. Proc. 81-38, 1981-2 C.B. 592. Unenrolled preparers, for example, are not permitted to represent or correspond as the taxpayer's representative before the Appeals offices or officials in the National Office; additionally, these preparers may not (i) execute claims for refund; (ii) receive checks in payment of any refund of Internal Revenue taxes, penalties, or interest; (iii) execute consents to extend the statutory period for assessment or collection of a tax; (iv) execute closing agreements with respect to a tax liability or specific matter; or (v) execute waivers of restriction of a deficiency in tax.

Authorization must be specifically listed in the power of attorney, and the requirements of Treas. Reg. § 1.6012-1(a)(5) or (b) must be satisfied before a representative may sign a taxpayer's return on behalf of the taxpayer. Treas. Reg. § 1.6061-1(a). Therefore, agents or representatives (including unenrolled preparers) may be permitted to sign the return in place of the taxpayer if the taxpayer receives permission, in writing, of the Service where the Service has found good cause for permitting the return to be made by an agent, or if the taxpayer is unable to sign due to disease or injury or continuous absence from the United States for a period of at least 60 days prior to the date prescribed by law for making

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the return, or if the taxpayer is a nonresident alien. See: Treas. Reg. § 1.6012-1(a)(5) and (b).

Power of attorney documents must detail the taxpayer's name, social security number, and street address or post office box. The reason for the taxpayer's use of an agent or representative must be explained on the document. The taxpayer must also sign and date the power of attorney. If using Form 2848, the taxpayer must explain on line 5 which of the reasons discussed above applies to his circumstances, entitling him to use an agent. The taxpayer's representative must also enter his name, address, identification number, and sign and date the power of attorney. See: Form 2848 and accompanying instructions.

In this case, the power of attorney documents (Forms 2848) sent to the Service Center were completed accurately with the exception of the use of the unenrolled preparer's address instead of the taxpayer's address in the space designated for the taxpayer's address on the form. Accordingly, we believe the unenrolled preparer was duly authorized to sign returns for the taxpayers.

While enrolled agents are permitted to receive checks for taxpayers, unenrolled preparers may not receive checks in payment of any refund of Internal Revenue taxes, penalties, or interest. Rev. Proc. 81-38, 1981-2 C.B. 592. Accordingly the unenrolled preparer in this situation may not receive the taxpayers' refunds.

The instructions to Form 2848 specifically direct taxpayers not to "use [their] representative's address or post office box for [their] own," when entering address information in the taxpayer information section of the form. See: Form 2848 and accompanying instructions. Since the taxpayers did not enter their addresses on either the powers of attorney or on their tax returns, the Service Center should contact the duly authorized representative of the taxpayers, the unenrolled preparer, and request the taxpayers' addresses. Once the various taxpayer addresses have been ascertained, the refund checks should be mailed directly to each of the taxpayers.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call 202-622-4910 if you have any further questions.