

A. REPRESENTATION OF TAXPAYERS BEFORE THE INTERNAL REVENUE SERVICE

1. Introduction

The purpose of this topic is to highlight some of the provisions set forth in Subpart E, Conference and Practice Requirements of the Statement of Procedural Rules, (SPR), 26 CFR, Part 601 and Treasury Department Circular 230, as amended, 31 CFR, Part 10, as they relate to the rules governing the representation of taxpayers before the Internal Revenue Service.

IRM 7200, Authorities and Standards, text 72 (10)0, outlines the procedures and guidelines for handling powers of attorney and other authorizations in the EP/EO organization. The manual also provides general instructions for the use of Form 2848, Power of Attorney, and Form 2848-D, Authorization and Declaration.

2. Background

Public Law 89-332, 1965-2 C.B. 640, enacted by Congress on November 8, 1965, was designed to do away with agency-established bars for attorneys who appeared before certain federal administrative agencies. The new law was also intended to wipe out agency-established admission requirements for licensed attorneys, and to allow persons to be represented before all federal agencies by counsel of their choice. Additionally, the law eliminated the special enrollment requirements for certified public accountants in representing others in accounting matters before the Service.

Before the enactment of the new law, the rules and regulations governing the right of attorneys to represent others before the Service included a cumbersome admission procedure, which required disclosing whether or not the applicants were persons of good moral character. All applicants desiring admission to practice before the Service were obligated to submit to a background investigation before being enrolled to practice. In addition to having to become familiar with the seventy provisions contained in Circular 230, the applicants were also required to affirm that they would conduct themselves in accordance with the laws, regulations, and rules of the Service.

In liberalizing the rules, Congress felt that there was a presumption that members in good standing of the professions of the law and certified public

accounting were of good moral character, and that the surveillance by State bar associations and State associations of public accountants were sufficient to insure the integrity of practice by such persons before the Service.

Pending the issuance of the amended regulations of the Conference and Practice Requirements of the SPR, the new provisions of the law were implemented by the Service with the publication of Rev. Proc. 66-44, 1966-2 C.B. 1252. Among other things, the revenue procedure provided the following:

1. Enrollment cards held by attorneys and certified public accountants were invalid and members of those professions were no longer required to be enrolled.
2. Attorneys and certified public accountants, who were in good standing and were not currently under disbarment or suspension to practice before the Service, were authorized to practice upon filing a written declaration in accordance with Circular 230.
3. Powers of attorney would continue to be required.

3. Disclosure Rules

The power of attorney requirements assure that the power-holder is authorized to act for the organization, and that only authorized individuals under IRC 6103 receive tax information.

IRC 6103(c) provides for the disclosure of returns and return information to a taxpayer's designee if the taxpayer has consented in writing to such disclosure.

IRC 7213 provides, in general, that unauthorized disclosures of return and return information as defined in IRC 6103(b) are a felony, punishable upon conviction by a fine of up to \$5,000, or imprisonment of not more than 5 years, or both, together with the payment of the costs of prosecution.

4. Who May Practice Before the Service

Section 10.3 of Circular 230 enumerates the persons who are entitled to represent taxpayers before the Service. Generally, authorized representatives for exempt organizations matters are attorneys, certified public accountants, or other

persons as set forth in section 10.7 of Circular 230, who are not under disbarment or suspension from practice before the Service or from practice of their profession by any other authority (in the case of attorneys and certified public accountants). All other persons may be denied permission to represent an organization if they engage in such conduct as would justify suspension or disbarment of any attorney or certified public accountant.

5. Requirement of Power of Attorney

Under the Conference and Practice Requirements of the SPR, a power of attorney must be furnished by any person representing a taxpayer before a Service office. In particular, Reg. 601.502(c)(1) of the SPR provides that a power of attorney, in proper form, or a copy thereof, executed by the taxpayer, will be required when the taxpayer's representative desires to perform one or more of the following on behalf of the taxpayer:

- a. To receive, but not to endorse and collect, checks in payment of any refund of Internal Revenue taxes, penalties, or interest.
- b. To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- c. To execute consents extending the statutory period for assessment or collection of taxes.
- d. To execute closing agreements under IRC 7121.
- e. To delegate authority or to substitute another representative.
- f. To receive refund checks and sign returns.

Form 2848, Power of Attorney, or a privately designed instrument which meets the requirements of Form 2848 must be used in order to be entitled to exercise the acts enumerated above.

6. Requirement of Authorization and Declaration

The Conference and Practice Requirements of the SPR require that in order for a taxpayer's representative to receive or inspect confidential tax information, a tax information authorization will be required. Examples of the receipt or inspection of confidential information for which a tax information authorization is required are the discussion with Service officials on the substance or merits of a taxpayer's request for a ruling or determination letter, the receipt from Service officials at a conference of information disclosing the position of the Service with respect to the taxpayer's liability or disposition of a case, and the receipt of certain notices and other communications, such as a notice of deficiency. If, however, the taxpayer's representative has filed a power of attorney which is sufficient to permit the performance of one or more of the acts specified in 5 above, the representative will be entitled to receive or inspect confidential information without being required to file a separate tax information authorization.

Form 2848-D, Authorization and Declaration, or a privately designed instrument that conforms to the requirements of Form 2848-D is sufficient in order for a representative to represent an organization in the matters discussed in this paragraph.

7. Exception to Requirement of Power of Attorney or Tax Information Authorization

Reg. 601.502(c)(3) of the SPR provides, among other exceptions, that a tax information authorization is not required of a taxpayer's representative at a conference which is also attended by the taxpayer. However, a power of attorney or an authorization is required if the representative wishes to act as an advocate for the organization, presenting facts and oral arguments.

8. Waiver of Power of Attorney or Other Authorization for Certain Congressional Correspondence

The question often arises as to whether a congressman is allowed to receive information on behalf of an organization without a valid power of attorney or other authorization.

IRC 6103(c) and the regulations thereunder establish the guidelines for disclosure of returns or return information to a designee of an organization in certain circumstances where the organization requests information or assistance from such designee. Specifically, Reg. 301.6103(c)-1(b) provides, in part, that Section 6103(c) applies to requests made by the taxpayer to other persons (for

example, members of Congress, friends, or relatives of the taxpayer, and, when not acting as a taxpayer representative, income tax return preparers) for information or assistance relating to the taxpayer's return or a transaction or other contact between the taxpayer and the Service. The taxpayer's request for information or assistance must be in the form of a letter or other written document signed and dated by the taxpayer. The taxpayer must also indicate in the written request --

- (1) The taxpayer's name, address, and identifying number;
- (2) The identity of the person to whom disclosure is to be made;
and
- (3) Sufficient facts underlying the request for information or assistance to enable the Service to determine the nature and extent of the information or assistance requested and the returns or return information to be disclosed in order to comply with the taxpayer's request.

Therefore, if an organization addresses a letter to a congressman about a perceived tax problem and the congressman transmits the original letter or a copy of the original letter to the Service for a reply, the Service will waive the requirement of a power of attorney or other authorization if the letter otherwise meets the requirement for a valid waiver of the taxpayer's confidentiality as described in Reg. 301.6103(c)-1(b). In this connection, particular caution should be taken to ensure that the response to the congressman does not contain any information which the organization did not authorize the congressman to receive.

On the other hand, if an organization addresses a letter to a congressman about a tax matter involving the organization, and sends a copy of that letter to another congressman, the copy sent to the second congressman does not constitute a valid waiver of the organization's confidentiality as to the second congressman.

9. Responsibility of Exempt Organizations Specialists

The specialist to whom a case is assigned is responsible for ensuring that a power of attorney or other authorization is prepared in accord with the Conference and Practice Requirements of the SPR before providing tax information to an individual other than the person to whom the tax matter relates. Particular care should be taken in reviewing privately designed powers of attorney and other authorizations to ensure that they contain the basic requirements regarding the

scope of authority granted and the specific tax matter to which the authority relates. The information required to be included in powers of attorney or other authorizations is set forth in IRM 72(10)3.1 and 3.2.

10. Examples of Applications of Power of Attorney or Authorization Guidelines

The following situations illustrate some of the common questions raised as to the validity of a power of attorney or other authorization. For simplicity, both will be referred to as "the power".

SITUATION A

The power does not specify that it applies to a specified tax or period, rather it states that it applies to a request for a ruling of a particular date.

DISCUSSION: It can be accepted as a valid instrument providing the date mentioned agrees with the date on the correspondence requesting the ruling. Section 601.503(b) of the SPR.

SITUATION B

The power states that it is for "all years" or "all periods", beginning January 1983.

DISCUSSION: The power is not an acceptable instrument. It cannot be open-ended. However, it is permissible to specify any number of years or periods and the tax matter to which the years or periods relate in the same power. An additional copy of the power must be filed for each type of tax and tax period in excess of one. Section 601.503(b) of the SPR.

SITUATION C

The power is similar to SITUATION B, above, except the authorized representative has modified the document to specify the type of tax and the years involved.

DISCUSSION: The power cannot be accepted. An authorized representative cannot alter an organization's power of attorney once it has been signed. Section 601.504(b) of the SPR.

SITUATION D

The power specifies the type of tax and period but adds "and any and all matters coming before the Internal Revenue Service."

DISCUSSION: The power cannot be accepted. Each tax matter constitutes a separate tax issue, and, therefore, a new power would be required before the representative could act on behalf of the organization. Section 601.503(b) of the SPR.

SITUATION E

The power names a law firm as the authorized representative.

DISCUSSION: The power cannot be accepted. The SPR provides that the names and addresses of all representatives who have been delegated authority to represent an organization must be included on the power. Section 601.502(c) of the SPR. However, a tax information authorization in the name of a firm is acceptable provided it is a limited power under which the firm is only empowered to receive information and not to act as an advocate.

SITUATION F

The power lists two organizations as the taxpayers, and only an officer from one of the organizations signed the power.

DISCUSSION: The power cannot be accepted unless it is signed by an officer of each organization. However, if the ruling is requested only by one of the named organizations, and an officer of that organization signed

the power it can be accepted. Section 601.504(b) of the SPR.

SITUATION G

A new power is filed by an organization relating to the same tax matter. An accepted power is currently on file with the Service.

DISCUSSION: A new power revokes all prior powers unless the new power contains a clause specifically to the contrary. If the prior power is not revoked, the new one must be attached to the old power. Section 601.505(b)(2) of the SPR.

SITUATION H

The power names an individual other than an attorney or public accountant as the authorized representative.

DISCUSSION: The power may be accepted providing it has been acknowledged before a notary public, or in lieu thereof, witnessed by two disinterested parties. The notarial seal must be affixed unless such seal is not required under the laws of the State in which the power is executed. A tax information authorization requires no acknowledgment or witnessing. Section 601.504(d) of the SPR.

SITUATION I

The power is signed by an individual who is not authorized to sign for the organization.

DISCUSSION: The power may not be accepted unless it is signed by an individual who has the authority to act for the organization. Section 601.504(b) of the SPR.

SITUATION J

The power of attorney is a mechanically reproduced copy.

DISCUSSION: The reproduced copy may be accepted. A reproduced copy by photographic or xerographic process does not have to be certified as a true and correct copy of the original.

Section 601.504(e) of the SPR.

SITUATION K

The authorized representative on file submits a substituted power of attorney naming another representative.

DISCUSSION: An authorized representative who has been granted the authority to substitute another individual may file a substituted power of attorney without written authorization from the organization. Language authorizing such substitution must be inserted in the original power of attorney. 601.502(c) of the SPR.