

Using a Durable Power of Attorney in Tax Matters

Normally, a taxpayer must sign an IRS Form 2848, *Power of Attorney and Declaration of Representative*, to allow someone to represent them in a tax matter with the IRS -- the representative must also have certain professional credentials. In some cases, however, a taxpayer is unable to complete and sign a Form 2848 because they become physically or mentally incompetent. What can you do to prepare for the day when you or someone you know may be in that situation? Plan ahead! In many cases, you may be able to use a “durable power of attorney” -- often used for estate planning or other purposes -- to overcome a legally incompetent taxpayer’s inability to complete a Form 2848.

Durable powers of attorney created for estate planning or other purposes give your designated agent or “attorney-in-fact” authority to make healthcare and financial decisions. The word “durable” means the power of attorney has staying power and will remain in effect if you later become incompetent. Needless to say, the durable power of attorney must be created before you become physically or mentally incompetent. For a durable power of attorney to work for federal tax matters, however, specific information required under the Internal Revenue Code and regulations needs to be included. The requirements related to use of durable power of attorneys in federal tax matters are stated in [Reg. 601.503\(b\), which can be found in Publication 216, click below.](#)

If care isn’t taken in preparing the durable power of attorney, it may not be sufficient to authorize your agent to act for you in tax matters for the IRS. In that case, your agent may also have to be designated a guardian or similar fiduciary, which is typically done by a state court and can be a lengthy process. Once your agent is designated a guardian or similar fiduciary, they would then have to file an additional form (Form 56) with the IRS that informs the IRS of the fiduciary relationship.

For more information about using durable powers of attorney as a substitute Form 2848 and about Form 56, please click on the links below.

National Taxpayer Advocate Blog: [When to Use a Durable Power of Attorney to Authorize Representation Before the IRS](#)

IRS Office of Professional Responsibility: [Can You Use that Durable Power of Attorney before the IRS? Form 2848 vs. Durable Power of Attorney](#)

[Form 2848, Power of Attorney and Declaration of Representative, and Instructions for Form 2848](#)

- Use Form 2848, Power of Attorney and Declaration of Representative, to authorize an individual to represent you before the IRS.
- [Instructions \(see “Substitute Form 2848,” page 3\).](#)

[Publication 216, Conference and Practice Requirements](#)

[About Form 56, Notice Concerning Fiduciary Relationship](#)

- You may use Form 56 to notify the IRS of the creation or termination of a fiduciary relationship under IRC 6903 or give notice of qualification as an executor under section 6036.
- [Form 56](#)
- [Instructions for Form 56](#)