



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE AREA COUNSEL,
S.B.S.E. AREA 8,
LAGUNA NIGUEL, GROUP 1

FROM: Kathryn A. Zuba
Chief, Branch 2 (Collection, Bankruptcy & Summonses)

SUBJECT: Review of Advisory Opinion--Offers in Compromise,
Signature Authority for Power of Attorney

This memorandum responds your request for advice sent November 1, 2000. You have asked us to review your advisory opinion concerning the authority of an enrolled agent operating under a valid power of attorney to sign Forms 656 and 433-A on behalf of a taxpayer. We have reviewed your memorandum, and we suggest revising it to address the following concerns.

Your memorandum concludes that acting pursuant to a valid Form 2848 power of attorney, an enrolled agent may sign a Form 656 offer in compromise on behalf of a taxpayer. You further recognize ambiguity regarding whether the taxpayer's representative may sign the required Form 433-A collection information statement, due to language in I.R.M. 5.8.1.5.5 stating that the taxpayer should sign the offer and the collection information statement personally unless prevented by "unusual circumstances," and requiring Form 2848 to be included with the offer in such cases. In light of the potential for ambiguity, you suggested the Service request taxpayers personally sign both forms even when they are represented under a valid power of attorney. You then indicated that an enrolled agent acting under a valid power of attorney has the authority to sign Form 656 and that the Service should not delay the compromise process by insisting the taxpayer personally sign in such cases. You concluded that due to the detailed financial information required by the collection information statement, the taxpayer must personally sign Form 433-A.

We agree with your analysis and conclusions regarding an enrolled agent's authority to sign Form 656. Provided the power of attorney applies for the tax period covered by the offer in compromise, line 5 of Form 2848 authorizes the representative to "perform any and all acts [the taxpayer] can perform" with respect to that tax period. In the interest of clarity and to facilitate the compromise process, we suggest you urge the taxpayer to list offers in compromise as a specific addition to the representative's powers in the space provided following line 5 of the form before including it with the offer in compromise.

Just as a representative may sign an offer in compromise, the representative may legally sign the associated collection information statement as well, based upon his authority to perform any and all acts the taxpayer could perform. Form 433-A contains the language, "[u]nder penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete." Thus, in order to sign a taxpayer's collection information statement, a representative must have detailed personal knowledge of the taxpayer's financial matters.

Should a representative knowingly provide false information on Form 433-A, the Service may face difficulty prosecuting the taxpayer for fraud, because the taxpayer did not sign the form. The language you reference in I.R.M. 5.8.1.5.5 stating the taxpayer should sign the form unless prevented by unusual circumstances expresses policy in this area. Thus, although you should urge taxpayers to personally sign Form 433-A, the taxpayer's representative acting pursuant to a valid power of attorney may legally do so on his behalf. Again, in the interest of clarity, you may urge the taxpayer to list this as a specific additional power in the space provided following line 5 on Form 2848.

If you have any further questions, please contact the attorney assigned to this matter at (202) 622-3620.