



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

OFFICE OF  
CHIEF COUNSEL

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June 4, 2001

MEMORANDUM FOR JAMES E. CANNON, ASSOCIATE AREA COUNSEL,  
KANSAS CITY  
Attn: Charles M. Berlau

CC:SB:5:KCY

FROM: Alan C. Levine  
Chief, Branch1 Collection, Bankruptcy & Summonses  
CC:PA:CBS:Br1

SUBJECT: Power of Attorney—Request for a Collection Due Process  
Hearing

You requested our views on the reliance upon a self-styled "General Power of Attorney and Appointment of Attorney-in-Fact" (the General Power of Attorney) in connection with a request for a collection due process hearing. Specifically, you asked what is the legal effect of the General Power of Attorney, which does not meet all of the Service's requirements for powers of attorney. You also noted that Appeals believes that there may be similar powers of attorney at the service center submitted in connection with other collection due process cases.

In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

With respect to a request for a collection due process hearing, what is the legal effect of a power of attorney submitted by or on behalf of a taxpayer that does not meet all of the Service's requirements for powers of attorney.

CONCLUSION

The taxpayer should be given a collection due process hearing because the request substantially complies with the requirements for requesting a hearing. While the taxpayer should be given the opportunity to sign the request and have a hearing, because the General Power of Attorney presented here is not valid, it cannot be relied upon for representation purposes. While the taxpayer's signing the request will entitle

her to a hearing, it does not cure the defects in the General Power of Attorney. If the taxpayer wishes to authorize a representative to act on her behalf, she must do so in accordance with the Service's procedures for granting an individual (or individuals) power of attorney.

### FACTS

The facts as we understand them can be summarized as follows: the taxpayer and the purported representative signed the General Power of Attorney on May 19, 2000 and May 23, 2000, respectively. They did not use Form 2848 (Rev. 12/97), Power of Attorney and Declaration of Representative. Rather, they used a self-styled General Power of Attorney. The document submitted identifies a business entity as the representative and does not contain a declaration of representative. Thereafter, the purported representative submitted a self-styled Request for a Collection Due Process Hearing on behalf of the taxpayer.

### DISCUSSION

For the reasons articulated in your memorandum, as well as the memoranda of the Appeals team manager and the Director of Practice, we believe that the General Power of Attorney is not sufficient to authorize the purported representative to act on behalf of the taxpayer. In sum, although the Instructions for Form 2848 provide that only individuals may be named as representatives, 1/ the document submitted does not do so. In addition, the document does not contain the Declaration of Representative contained in Part II of Form 2848. While it is not necessary to always use Form 2848, a non-Service power of attorney must attach a signed and dated Declaration of Representative which contains all of the information contained in Part II of Form 2848. See Publication 947, p. 7. Finally, it appears from the information you provided that the purported representative is not recognized to practice before the IRS.

We agree with your analysis of Carstenson v. Commissioner, 57 T.C. 542 (1972), but do not believe that the case is dispositive here. As you noted, this case is distinguishable because the purported representative was not at the time authorized to practice before the Service. 2/ In Carstenson, the Tax Court found that the amended petition filed by the petitioners related back to the date of the original petition filed by the petitioners' agent which was timely, but defective. It reasoned that the petitioners ratified the defective petition that was timely filed by their authorized agent. While ratification may have been sufficient to satisfy the Tax Court that the agent acted with

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1/ Publication 947 (Rev. January 1999), Practice Before the IRS and Power of Attorney, also provides that individuals can be appointed representatives.

2/ In addition, we understand from your office that the purported representative has recently been convicted of numerous charges against him.

“the knowledge, consent, and approval” of the petitioners, knowledge, consent, and approval are not all that is required for a valid power of attorney for the purpose of representing taxpayers before the Service. We note that Publication 947 addresses what should be done where a non-Service power of attorney does not meet the Service’s requirements: the taxpayer can submit a Form 2848 or a new non-Service power of attorney that contains all the necessary information; or, under certain circumstances, the non-Service power of attorney may submit a Form 2848 on behalf of the taxpayer.

The Temporary Treasury Regulations on collection due process provide:

The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated.

Treas. Reg. § 301.6330-1T(c), Q&A C1 (emphasis added). The regulations do not address the effect of a defect in a request, generally, or, more specifically, a defect with respect to the authority to represent the taxpayer. However, it is clear that the right to a collection due process hearing is dependent on a timely written request. It is our position that a request, although deficient, that substantially complies with the requirements for making a request is timely and, therefore, sufficient to afford the taxpayer the opportunity for a collection due process hearing. What the instant case presents is, in effect, an unsigned or improperly signed request. <sup>3/</sup> In such cases, the Service affords the taxpayer(s) the opportunity to correct an error in the request: the Internal Revenue Manual provides that “[i]f the appropriate signatures are not present on the CDP hearing request, give the taxpayer a reasonable time to provide the necessary signatures.” IRM 5.1.9.3.6. The only distinction here is that signing the request will provide the taxpayer the opportunity to have a collection due process hearing, but will not cure the defects in the power of attorney.

If you have questions concerning the foregoing, please contact Branch 1 of CBS at (202) 622-3610.

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<sup>3/</sup> Although we do not have all of the documents related to this matter, it appears from the information you provided us that improper power of attorney is the only defect.