

Office of Chief Counsel
Internal Revenue Service
memorandum

Number: **200503001**
Release Date: 01/21/2005
CC:GLS:EGG
GLS-151550-04
UILC: 9999.00-00

date: October 05, 2004

to:

(Disclosure Specialist, Communications & Liasion, SB/SE)
from: Chief
(Ethics and General Government Law Branch)

subject: Military Power of Attorney

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

This responds to your request for advice concerning the military power of attorney (POA) executed by _____, who is currently on active duty in _____, in favor of his _____ . _____ executed a general military POA pursuant to 10 U.S.C. § 1044(b), which includes the power to conduct all financial transactions on _____ behalf. Under Treas. Reg. § 601.502, a recognized representative of the taxpayer must be both appointed as the taxpayer's attorney-in-fact under a POA and be a member of one of the categories recognized to practice before the Service. Because _____ does not qualify within the specifically designated categories for limited practice before the agency, your office would like to know if there is another way to accept the general military POA as valid.¹ As discussed below, the Director of the Office of Professional Responsibility (OPR) has the authority to grant _____ the power to make a special appearance before the agency. See Treas. Reg. § 601.502(b)(5)(iv); see also 31 C.F.R. § 10.7(d). In combination with the general military POA and written permission from OPR to make a special appearance, _____ may then complete and submit Form 2848 to represent her _____ .

_____ executed a general military POA granting legal powers for representing him in financial matters to his _____ . The military POA was executed

¹ An individual who is not a practitioner may represent a taxpayer before the IRS provided they are a member of the immediate family. 31 C.F.R. § 10.7(c)(1)(i). As discussed further, a _____ is not a member of a taxpayer's immediate family.

in accordance with the authority of 10 U.S.C. § 1044b, stating that the military POA is to be given the same legal effect as the POA prepared and executed in accordance with the laws of the jurisdiction where it is presented. 10 U.S.C. § 1044b.

resides in and statutes provide for a uniform durable POA to act as an agent on behalf of the principal in all matters. W.S.A. § 243.07.²

Under the Treasury Regulations, an individual may appoint another to represent them before the Service. Treas. Reg. § 601.502. A recognized representative is an individual who is (1) appointed as an attorney-in-fact under a POA, and a (2) member of one of the categories described in § 601.502(b) and who files a declaration of representative, as described in § 601.502(c). Treas. Reg. § 601.502(a). The categories of persons permitted to represent a taxpayer if they possess a valid POA are as follows: an attorney, a certified public accountant, an enrolled agent, an enrolled actuary, or certain other individuals, including those who may practice based on their relationship with the taxpayer, or who are authorized to make a special appearance. *Id.* at § 601.502(b). A number of individuals may qualify for limited practice before the agency including a member of the individual's immediate family. See Treas. Reg. § 601.502(b)(5)(ii); and 31 C.F.R. § 10.7(c)(i). However, a does not qualify as an immediate family member and does not fall within the other specified categories; therefore, must gain permission from the Director of OPR to make a special appearance in order to represent . See Treas. Reg. § 601.502(b)(5)(iv).³ Pursuant to Treasury Circular 230, the Director of OPR has the authority to determine that under special conditions an individual who is not otherwise eligible to practice before the Service may represent another person in a particular matter.⁴ 31 C.F.R. § 10.7(d).

Once is given permission to make a special appearance, she must then complete a declaration of representative, Form 2848, Part II. Treas. Reg. § 601.502(c). Where a POA fails to include all the information required for an IRS POA, in accordance with Treas. Reg. 601.503(a), the attorney-in-fact can cure this defect by executing a Form 2848 which includes the missing information, and the agent must

² In addition to authorizing his to act as attorney-in-fact in financial matters, the military POA executed by authorizes to prepare, complete, sign and file his Federal tax returns along with endorsing, accepting, and receiving his federal income tax refund checks for tax years 2004.

³ We note that the Treasury Regulation has not been updated to reflect the changes to the updated Treasury Circular 230, and Treas. Reg. § 601.502(b)(5)(iv) references 31 C.F.R. § 10.7(b) rather than 31 C.F.R. § 10.7(d).

⁴ Based upon the unique circumstances concerning this matter, is serving in a combat zone and the nature of the issues for which wishes to represent her , we are not aware of any reasons why she would not be granted permission to make a special appearance.

attach a copy of the original POA. Treas. Reg. § 601.503(b)(3). Because the general military POA received by _____ from her _____ gives her the authority as attorney-in-fact, she may use this method to cure the defect in the IRS POA.⁵

⁵ We note that the military POA satisfies Treas. Reg. § 601.503(b)(3)(i).

may simply execute the sworn statement as required by § 601.503(b)(3)(ii), since the military POA is valid under _____ law.