

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Stephen H. Kesselman
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(Small Business/Self-Employed)

from: Curtis G. Wilson
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(Procedure & Administration)

subject: POA Issue: Director Authority in Virginia

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

LEGEND

A =

Date 1 =

Date 2 =

ISSUE

Is the signature of a solitary (out of many) former director of a Virginia nonstock corporation sufficient, under Treas. Reg. § 601.503(c)(3), to constitute the signature of "an officer of the corporation having authority to legally bind the corporation?"

CONCLUSION

We recommend that your office advise the Service to return the POA to the purported representative noting that it does not appear to satisfy the requirements of Treas. Reg.

§ 601.503. The Service should instruct the purported representative either 1) have a POA signed by a former officer, or 2) provide the necessary information and an analysis of state law that supports the former director's authority to bind A in this matter.

FACTS

A dissolved on Date 1. Almost ten years later, A, evidently, wishes to now contest collection proceedings against it for unpaid employment taxes. The issuance of a Notice of Levy (since rescinded) prompted its interest in challenging the collection. An attorney claiming to have a POA from A submitted a purported POA signed by a former director of A, rather than by a former corporate officer. The signature on the POA is dated Date 2, almost ten years after the dissolution of the corporation. Treas. Reg. § 601.503(c)(3) requires that of "an officer of the corporation having authority to bind the corporation," sign a POA. We have no information indicating that the former director who signed the POA served as a corporate officer when A dissolved, or otherwise had or has authority to bind the corporation in "winding up" this employment tax matter.

LAW AND ANALYSIS

While we need additional information to form a firm opinion, the purported POA appears insufficient on its face because it was not signed by an officer of the former corporation. Although Treas. Reg. § 601.503(e) allows the Commissioner some flexibility to substitute other requirements, at a minimum, the POA should be signed by someone authorized to bind A under state law. In addition, Treas. Reg. § 601.503(d)(1) provides that dissolved corporations can act through a liquidating trustee, or a majority stockholder on the date of dissolution. With regard to a liquidating trustee, as with respect to the authority of the former director, we lack sufficient information to determine that the POA being offered is valid.

State law governs the authority of the agents of a corporation in the process of winding up its affairs. United States v. Krueger, 121 F.2d 842 (3d Cir. 1941). Virginia law provides that a dissolved corporation continues in existence as necessary for the purpose of winding up its affairs. Va. Code § 13.1-750. Authority to wind up corporate affairs generally includes resolving federal tax matters from tax periods preceding the dissolution. See for example, United States v. Adams Building Company, 531 F.2d 342 (6th Cir. 1976) (corporate existence for winding up continues for as long as there was a possibility that the government could lawfully make an assessment of taxes due from the corporation for the applicable periods).

A board of directors has authority to do all things proper to conduct the affairs of the corporation, but this power is vested in the in the board as a whole; individual directors lack authority to bind the corporation unless authorized to do so by the board collectively. Monacan Hills, Inc. v. Page, 203 Va. 110, 122 S.E. 2d 654 (1961). The extent to which the director can bind the corporation depends on the authority conferred on him by the board as a whole.

Given that we know little of the requisite underlying facts, including the extent to which the board of directors of this dissolved corporation authorized the former director to act, the signature of the former director, standing alone, is insufficient under Treas. Reg.

§ 601.503(c)(3). The attorney claiming representative status may be able to provide information to overcome this defect, but the burden is on the private attorney, not the government, to provide the necessary facts and analysis under Virginia law to support the claim that the former director has the authority to bind the corporation.

Given the limited factual development and absence of assurances from the claimed representative, we cannot accept that the signature of a former director is sufficient to support the validity of the POA. We understand that A had multiple officers and directors, and, as of last week, the field suspected that the signing former director was the only director remaining in the United States. We understand that the Service now has information indicating that another former director is also in the United States. We cannot assume that the any director, acting alone, was authorized to bind the corporation, and it is not appropriate for the Service to investigate the whereabouts of the individual directors in an attempt to prove the validity of the POA.

Typically, the person claiming representative status, or the taxpayer, must undertake the burden to provide appropriate assurances as to the validity of the POA. Given that the defect requiring assurances appears to be procedural in nature, the Service can return the defective POA to the person claiming representative status. IRM 21.3.7.18.2.

We recommend that your office advise the Service to return the POA to the purported representative noting that it does not appear to satisfy the requirements of Treas. Reg. § 601.503. The Service should instruct the purported representative either 1) have a POA signed by a former officer, or 2) provide the necessary information and an analysis of state law that supports the former director's authority to bind A in this matter.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions concerning this advice, please do not hesitate to call Brinton Warren of my office (202) 622-7800.