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From:

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To:

Cc:

Subject: Third Party Authorizations

As requested, attached is a document on third party authorizations that can be used in your presentation of the topic to your employees. Please note: The text of the document has been copied into this email below.

THIRD PARTY AUTHORIZATIONS

February 2009

What Is A Third Party Authorization

A third party authorization is a signed document and/or an oral statement made, by a taxpayer, granting a third party the authority to perform specified acts relative to specific tax matters on behalf of the taxpayer.

Examples of Third Party Authorizations

Third Party Authorizations include:

- Tax information authorizations
 - ▶ Written (Form 8821)
 - ▶ Oral
 - ▶ e-Services disclosure authorization
 - ▶ Third party designee (aka Checkbox)
- Powers of Attorney (Form 2848)

Tax Information Authorizations

Permits designated third party to inspect or receive return or return information

- Designee always entitled to inspect or receive return
- Taxpayer cannot compel disclosure of return information; designated IRS official must withhold return information if disclosure if will seriously impair tax administration

Tax Information Authorizations

REQUIRED ELEMENTS

- Taxpayer's Identity
- Identity of Designee
 - ▶ May be an individual or other person
- Type of return (or portion of return) or return information to be disclosed

Power of Attorney

A taxpayer may either represent oneself or, with proper written authorization, an individual authorized to practice before the IRS represent the taxpayer.

Representation

Acts performed on behalf of a taxpayer by a representative in practice before the IRS

Section 601.501(b)(13), Conference and Practice Requirements, Statement of Procedural Rules

Practice Before the IRS

- **The Secretary of the Treasury is authorized to Regulate Practice Before the Department of Treasury**
 - ▶ 31 USC § 330(a)(1)

Regulations governing practice before the Internal Revenue Service

- ▶ 31 CFR part 10 (Circular 230)

Practice Before the IRS

Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings, and meetings. Circular 230 §10.2(d).

Practice Before the IRS

Outside the United States

- Circular 230 § 10.7(c)(vii) authorizes any individual to represent any individual or entity who is outside the United States before IRS personnel when that representation takes place outside the United States
- A foreign person must be represented by a person eligible to practice before the IRS when the representation takes places within the United States

What is Practice?

Practice Before the IRS includes:

- negotiating with the IRS on behalf of the taxpayer
- advocating the taxpayer's position to IRS official or employees
- offering or executing a waiver of restriction on assessment or collection of a deficiency in tax
- offering or executing a waiver of notice of claim disallowance

What is Practice?

continued

Practice Before the IRS includes:

- executing a consent to extend the period of assessment or collection of tax
- executing a closing agreement
- receiving a check drawn on the United States Treasury with respect to a tax
- signing a tax return

Admitting a Representative to Practice

Attorneys and CPAs have a statutory right to represent persons before the Internal Revenue Service

- ▶ 5 USC § 500
- **The Secretary may admit other individuals to practice**
 - ▶ 31 USC § 330(a)(2)

Qualifications of a Representative

Before admitting a representative to practice, Secretary may require the representative to demonstrate

- good character
- good reputation
- necessary qualifications to enable the representative to provide persons valuable service
- competency to advise and assist persons in presenting their cases

Who may Practice before the IRS

Persons eligible to practice before the IRS:

- attorneys • CPAs enrolled agents • enrolled actuaries enrolled retirement
- government officers plan administrators or employees • state officers or
- others eligible to practice employees under Circular 230 §§ 10.5(d) or 10.7

Circular 230 § 10.3

Power of Attorney

A document signed by a taxpayer by which an individual is appointed as attorney-in-fact to perform certain specific act(s) on behalf of the principal.

Section 601.501(b)(9), Conference and Practice Requirements, Statement of Procedural Rules

Power of Attorney

REQUIRED ELEMENTS

- name and mailing address of the represented party;
- identification number of the represented party (*i.e.*, social security number and/or employer identification number);
- employee plan number (if applicable);
- name and address of the recognized representative(s);
- description of the matter(s) for which representation is authorized
- a clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s)
- Declaration of Representative

Declaration of Representation

Statement made under penalties of perjury

- ▶ Not currently under suspension or disbarment from practice before the IRS
- ▶ Aware of the regulations contained in Circular 230 (31 CFR Part 10)
- ▶ Authorized to represent the person identified for the matters specified in the power of attorney
- ▶ Individual described in Section 601.502((b), Conference and Practice Requirements, Statement of Procedural Rules

Bypassing a Taxpayer's Representative

Where a recognized representative has unreasonably delayed or hindered an examination, collection, or investigation by failing to furnish, after repeated request, nonprivileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection, or investigation may request permission from his/her immediate supervisor to bypass the representative and contact the taxpayer directly for such information

Bypass – Unreasonable Delay

May be necessary to bypass the representative if the representative repeatedly:

fails to provide the taxpayer's records or information upon request
 fails to return telephone calls or respond to written correspondence
 cancels scheduled appointments at the last minute without timely notification
 requests extensions of time beyond established deadlines for submitting requested records or information

- ◆ Do **not** bypass a representative simply because you wish to interview the taxpayer

Bypass – A Two-Step Process

- **Warning**
 - ▶ Document actions
 - ▶ Letter 4016–A, *Bypass Warning Letter (Power of Attorney)*
 - ▶ Do not notify taxpayer
- **By-Pass**
 - ▶ Letter 4016–B, *Bypass Letter (Power of Attorney)*
 - ▶ Notify representative and taxpayer of ByPass
 - ▶ POA continues to represent taxpayer and you must continue to send copies of **all** correspondence with the taxpayer to the representative

For more information, please contact:

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