

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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to: Edward F. Peduzzi, Jr.  
Associate Area Counsel (Small Business/Self-Employed)  
Pittsburgh, PA

from: Ashton P. Trice  
Chief, Branch 2 (Procedure & Administration)

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subject: Validity of Consent to Extend the Statute of Limitations on Assessment

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

ISSUES

1. Whether the period of limitations on assessment has expired on the basis that the Revenue Agent who signed the consent, Form 872-I, to extend the period did not have the delegated authority to sign the consent on behalf of the Internal Revenue Service.
2. Whether a copy of the executed Form 872-I should be given to the taxpayers' representative.

CONCLUSIONS

1. The period of limitations on assessment for taxpayer's taxable year 2005 has expired because the Revenue Agent was not authorized to sign the Form 872-I and the Campus Compliance Services Department Manager attempt to ratify the Revenue Agent's signature is ineffective.
2. A copy of this Form 872-I should be sent to the taxpayers, or their authorized representative, in accordance with the Internal Revenue Manual.

## FACTS

The facts, as provided in your March 8, 2012 memorandum from your office, essentially are as follows:

Taxpayers' income tax return for taxable year 2005 were under examination. The tax return was timely filed in October of 2006 pursuant to an extension of time to file. Based upon this extension, the period of limitations on assessment for taxable year 2005 would expire in October of 2009.

Taxpayers' representative, through a valid power of attorney, signed a Form 872-I, Consent to Extend the Time to Assess Tax as Well as Tax Attributable to Items of a Partnership, on August 24, 2009. A Revenue Agent serving in the SB/SE Campus Compliance function signed the consent on September 10, 2009. A Campus Compliance Services Department Manager attempted to ratify this signature on January 25, 2012.

A copy of the Form 872-I was not sent to the taxpayers, or their authorized representative, after the Service Center Department Manager's attempt to ratify the Revenue Agent's signature.

## LAW AND ANALYSIS

### The Form 872-I Was Not Properly Signed or Ratified

To be valid, an agreement by the taxpayer to extend the statute of limitations on assessment must be (1) in writing; (2) entered into before the expiration of the original collection period or a previously agreed upon extension; and (3) executed by the taxpayer and an authorized delegate of the Commissioner. I.R.C. § 6502(a); Treas. Reg. § 301.6502-1(a)(2)(i). In an Action on Decision regarding Rohde v. United States, 415 F.2d 695 (9th Cir. 1969), the Service acceded that, under applicable Treasury Regulations, the Commissioner (or his delegate) must counter-sign a waiver form prior to the expiration of the period of limitations for the waiver to be effective. AOD-1973-442, 1973 WL 35098 (IRS AOD). Although Rohde only addressed the validity of a waiver of the six-year period of limitations on collection after assessment, the AOD states that the signature requirement also applies to extensions of time for the assessment of income tax (i.e. Form 872). Id.

Delegation Order 25-2, effective since July 2009, gives the authority to sign a consent extending the period of assessment to SB/SE Campus Compliance personnel who are department managers or higher. Previously, under Delegation Order 42 (Revision 28), Service Center personnel assigned to the Examination Support Unit (i.e. Campus Compliance personnel) at Grade GS-11 or higher could execute consents to extend the period of assessment.

Under your facts, the Revenue Agent signed the consent prior to the expiration of the period of assessment, but did not have authority to do so under Delegation Order 25-2. It is irrelevant that the Revenue Agent was previously authorized to sign the consent under the former delegation order. Therefore, consent was not effectuated by the agent's signature.

The attempted ratification of the Revenue Agent's signature by the Campus Compliance Services Department Manager does not make the consent valid because the manager's signature did not occur before the assessment period expired. The doctrine of ratification "is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority." Restatement (Third) of Agency, Ratification § 4.01 (2006). A ratification of a transaction is not effective if it would cause adverse or inequitable effects on the rights of third parties. Restatement (Third) of Agency, Ratification § 4.05 (2006). The Supreme Court has held:

The intervening rights of third persons cannot be defeated by the ratification. In other words, it is essential that the party ratifying should be able not merely to do the act ratified at the time the act was done, *but also at the time the ratification was made.*

Federal Election Commission v. NRA Political Victory Fund, 513 U.S. 88, 98 (1994), citing Cook v. Tullis, 85 U.S. 332 (1874) (emphasis added).<sup>1</sup> Under this rule, the Campus Compliance Services Department Manager could not ratify the Revenue Agent's signature because the attempted ratification occurred after the period for assessment had expired and the Manager could not have validly signed the consent at that time.

#### Release of Form 872-I

A copy of the Form 872-I with the Campus Compliance Services Department Manager's attempted ratification should be sent to the taxpayers, or their authorized representative, in accordance with the Internal Revenue Manual. See I.R.M. 25.6.22.5.11 (08-26-2011).

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.

Please call (202) 622-4940 if you have any further questions.

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<sup>1</sup> The Supreme Court in Federal Election Commission used the Restatement (Second) of Agency § 90 (1958) in their analysis. This section corresponds to the Restatement (Third) of Agency § 4.05. See Restatement (Third) of Agency § 4.05, comment a.