

Office of Chief Counsel
Internal Revenue Service
Memorandum

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from: Bridget Tombul
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subject:

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

LEGEND

LLC Partnership =
Member 1 =
Member 2 =
Parent =

ISSUE

Who must sign a Form 2848, *Power of Attorney and Declaration of Representative*, for a non-TEFRA LLC partnership, where the LLC member manager is an indirect subsidiary and included on the consolidated group return of a parent corporation.

CONCLUSION

The Form 2848 must be signed by a corporate officer of the common parent for the consolidated year to which representation applies. [REDACTED]



FACTUAL BACKGROUND

The partnership entity, LLC Partnership, is a non-TEFRA entity. It has two members: Member 1 and Member 2. Both members are domestic C corporations. On the Schedule K-1s attached to the return, Member 1 is identified as an LLC member-manager and Member 2 is identified as an LLC member. Member 1 is also designated as Tax Matters Partner on the Form 1065. Member 1 is a subsidiary and included on the consolidated group return of Parent.

LAW AND ANALYSIS

A power of attorney is required for the representation of taxpayers before the Internal Revenue Service (Service). A taxpayer uses a Form 2848 to authorize an individual who is authorized to practice before the Service to represent the taxpayer before the Service. The individual who must execute a Form 2848 depends on the type of taxpayer involved. Treas. Reg. § 601.503(c).

In the case of an affiliated group of corporations that file a consolidated return, a power of attorney should be signed by the group's agent for the consolidated return year to which the representation applies. In general, the common parent for the consolidated return year is the group's agent for that year.

Under Treas. Reg. § 1.1502-77(a), applicable for return years beginning on or after June 28, 2002, the common parent is the sole agent for each member of the group for all matters relating to the income tax liability for the consolidated return year, unless it is a matter reserved to a subsidiary under Treas. Reg. § 1.1502-77(a)(3).


In the case of a corporation, a power of attorney must be signed by an officer of the corporation, having the authority to legally bind the corporation, who must certify that he or she has that authority. Treas. Reg. § 601.503(c)(3).

In the case of a partnership, a power of attorney must be executed by all the partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that it has that authority. A partner is authorized to act in the name of a partnership if, under state law, the partner has authority to bind the partnership. See Treas. Reg. § 601.503(c)(5), and Instructions for Form 2848 (Rev. July 2014).

In Publication 3402, *Taxation of Limited Liability Companies*, the Service defines a member manager as any owner of an interest in the LLC who, alone or together with others, has the continuing authority to make the management decisions necessary to conduct the business for which the LLC was formed.

The taxpayer being represented on the Form 2848 is an LLC Partnership, and Member 1 is a member manager of LLC Partnership. Ordinarily, since Member 1 is a corporation, the Form 2848 would be signed by a corporate officer of Member 1. Member 1, however, is also a member of a consolidated group, and under Treas. Reg. § 1.1502-77(a), the common parent is the sole agent for each member of the group for all matters relating to the income tax liability for the consolidated return year, unless it is a matter reserved to a subsidiary under Treas. Reg. § 1.1502-77(a)(3). Signing a Form 2848 for an LLC is not a matter reserved to a subsidiary under the consolidated return regulations. Indeed, Treas. Reg. § 1.1502-77(a)(2)(iv) provides that a parent of a consolidated group executes “all other documents” not listed therein.

Accordingly, we recommend that the taxpayer secure the signature of an officer of the common parent on the Form 2848. The common parent should be described as “[John Doe], [Corporate Office Title] Parent (EIN), as the common parent and agent for Parent and Subsidiaries, including Member 1, as Member Manager of LLC Partnership. See IRM Exhibit 4.31.2-7 “Formats for TMP Signatures When Signing Extensions.”



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