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[Third Party Communication:

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From:

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Cc:

Subject: Request

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Based on the incoming draft and facts represented, we would conclude that in this situation, the officer of the sole remaining member of an LLC, which is the manager of the taxpayer (an LLC), has authority to sign the Form 1120 for the taxpayer.

Counsel for taxpayer have represented that the officer has authority to act on behalf of the taxpayer. In absence of proof otherwise, the Service is entitled to rely on Section 6062, which provides in part, "The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation." See also Treas. Reg. § 1.6062-1(c).

Taxpayer may also be estopped in the future from asserting that the officer did not authority to sign the return, or any Forms 2848 and Forms 872. The elements of estoppel have been variously described, but for our purposes, to claim estoppel, the Service must prove that:

- (1) there was a false representation or a wrongful misleading silence by the taxpayer;
- (2) the false representation or wrongful silence related to a question of fact and not an opinion or statement of law;
- (3) the IRS was adversely affected by the acts or statements (or failure to act or make statements) by the taxpayer; and
- (4) the Service was ignorant of the true facts.

See *Union Texas International Corp v. Commissioner*, 110 T.C. 321 (1998).

Whether or not a representation that a certain officer has authority to sign a return or other document is more in the nature of a question of fact, and not an opinion or statement of law. We believe the elements of estoppel could be met in this case.

Although the weighing of litigation risk lies with your office, in our view the risk of disavowal is low, and the Service should be able to rely on the prima facie rule in I.R.C. § 6062 to proceed in this case.

Please contact this office if you seek further assistance.