

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Associate Area Counsel (Denver)
(Large Business & International)
CC:LBI

from: Pamela Fuller
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(Procedure & Administration)
CC:PA:2

subject: Power of Attorney Question

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

ISSUE

Whether a Form 2848, *Power of Attorney and Declaration of Representative*, should be rejected as to a representative who did not personally sign the Declaration of Representative and should the Internal Revenue Service (Service) correct the Centralized Authorization File?

CONCLUSION

Yes. Section 601.502(c) of the Statement of Procedural Rules states the representative “must” provide the requested declaration. It is inconsistent with the purposes of the Declaration of Representative and impermissible for one representative to sign the declaration on behalf of another. The Form 2848 should be rejected as to a representative who did not personally sign the Declaration of Representative and the Service should correct the Centralized Authorization File

BACKGROUND

One of the named representatives on a Form 2848 signed Part II in his own name on behalf of the third designated representative. In signing for the third designated representative, the named representative makes no indication that he is signing on that other representative's behalf. Section 5(a) of Part I of the Form 2848 does not authorize a representative to substitute or add other representatives. The Service processed the Form 2848 and all three designated representatives appear on the Centralized Authorization File. The three representatives designated on the Form 2848 represent many other taxpayers on research credit refund issues. The revenue agent was advised that the third representative who did not personally sign the Form 2848 in the present case typically does not personally sign the Form 2848 in other cases either because he is often out of the office and relies on one of the other designated representatives to sign Part II of the Form 2848 on his behalf.

You have asked whether the Form 2848 should be rejected as to the third representative who did not personally sign the Declaration of Representative and whether the Service should correct the Central Authorization File.

LAW AND ANALYSIS

The Service's conference and practice regulations require an individual appearing as an advocate to enter an appearance by filing:

- (1) a power of attorney or tax information authorization permitting the holder to perform certain acts or to receive confidential tax information, and
- (2) a practice declaration, which is a declaration that the person is recognized to practice before the Service.¹

Section 601.502(c) of the Statement of Procedural Rules provides:

“(C) Declaration of representative – A recognized representative must attach to the power of attorney a written declaration (e.g., Part II of Form 2848) stating the following –

- (1) I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
- (2) I am aware of the regulations contained in Treasury Department Circular No. 230 (31 C.F.R., part 10), concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others);

¹ Statement of Procedural Rules, 26 CFR §§ 601.502(b), 601.502(c), MICHAEL A. SALTZMAN, IRS PRACTICE AND PROCEDURE ¶ 1.09[4] (2d ed. 2012).

- (3) I am authorized to represent the taxpayer(s) identified in the power of attorney;
and
(4) I am an individual described in § 601.502(b).

If an individual is unable to make such declaration, he/she may not engage in representation of a taxpayer before the Internal Revenue Service or perform the acts described in §§ 601.504(a)(2) through (6).²

Part II of the Form 2848, Declaration of Representative, begins with the language:

Under penalties of perjury, by my signature, I declare that:

- I am not currently suspended or disbarred from practice before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; ...

The nature of the written declaration is for the signer to declare, under penalties of perjury, his status and that he is subject to the provisions of Circular 230. The declaration's purpose is defeated by having someone sign the declaration on behalf of another.

Moreover, there is no Internal Revenue Code provision or regulation that authorizes someone to sign the Declaration of Representation on behalf of another.³

Although the rules regarding powers of attorney are directory rather than mandatory in their legal effect, *Ryan v. Commissioner*, T.C. Memo. 1991-49, *11, the Procedural rules such as the one involved here are for the protection and administrative convenience of the IRS, and not the taxpayer.

Section 601.502(c) states the representative "must" provide the requested declaration. It is inconsistent with the purposes of Declaration of Representative and impermissible for one representative to sign the declaration on behalf of another. The Form 2848 should be rejected as to the representative who did not personally sign the Declaration of Representative and the Service should correct the Centralized Authorization File.

Please call _____ if you have any further questions.

² See also MICHAEL A. SALTZMAN, IRS PRACTICE AND PROCEDURE ¶ 1.09[4](b) (2d ed. 2012).

³ Cf. Treas. Reg. § 301.6103(c)-1(e)(4), which provides that a Form 8821 can be executed by any person who can obtain returns under I.R.C. § 6103 (e)(1) through (e)(5). An Attorney in fact is listed under I.R.C. § 6103(e)(6).