

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

Number: **201736021**

Release Date: 9/8/2017

CC:PA:01

POSTS-118292-17

UILC: 9103.01-00, 6038.00-00, 6038A.00-00, 6038B.02-00, 6046.00-00, 6048.00-00, 6677.00-00, 6679.00-00

date: August 01, 2017

to: Jeffrey Johnson  
Senior Revenue Agent  
Cross Border Activities  
(Large Business & International)

from: Elizabeth Chirich  
Branch Chief, Branch 1  
CC:PA:1  
(Procedure & Administration)

---

subject: POA For Civil Penalties

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

ISSUES

1. If line 3 of a Form 2848, Power of Attorney and Declaration of Representative, lists an income tax return to which an International Information Return (IIR) must be attached, such as a Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations<sup>1</sup>, does the Form 2848 also cover the civil penalty associated with that IRR, thus allowing the Internal Revenue Service (Service) to discuss the IIR penalty with the designated representative?

2. If line 3 of a Form 2848 lists an income tax return to which an IIR is not required to be attached, such as Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts<sup>2</sup>, does the Form 2848 cover the civil

---

<sup>1</sup> "Attach Form 5471 to your income tax return..." Instructions to Form 5471, p. 1.

<sup>2</sup> "Send Form 3520 to the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409." Instructions to Form 3520, p. 2.

penalty associated with that IIR, thus allowing the Service to discuss the IIR penalty with the designated representative?

3. If a representative designated on a Form 2848 prepared a Form 1120, *U.S. Corporation Income Tax Return*, and a Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*, and the taxpayer subsequently submits a Form 2848 designating a different representative and listing Form 5471 and not Form 1120, may the Service discuss with the second representative the penalties associated with both Forms 1120 and 5471 or only those penalties associated with Form 5471?

### SUMMARY CONCLUSION

1. No. Forms 2848 that list only a specific return cover representation for penalties, payments, and interest related to only to that specific tax return, and not to other returns, regardless of whether the other returns are attached to the return specified in the Form 2848.

2. No. Forms 2848 that only list a specific return cover representation for penalties, payments, and interest related only to that specific tax return, and not to other returns that may be filed separately.

3. The Service may discuss with the second representative only those penalties associated with Form 5471.

### BACKGROUND

Many international information returns are filed with the Service, such as Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*; Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*; Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*; and Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*.

In some cases, the IIR should be filed attached to an income tax return. Examples include the Form 5471, which must be filed with the filer's income tax return ("Attach Form 5471 to your income tax return...").<sup>3</sup> In other cases, the IIR should not be filed with the filer's income tax return, but should be filed elsewhere. Examples include the Form 3520 ("Send Form 3520 to the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409.")<sup>4</sup>

When an IIR is incomplete when filed, is filed late, or not filed at all, a civil penalty under I.R.C. §§ 6038, 6038A, 6038B, 6046, 6048, 6677, or 6679 may apply. The taxpayer

---

<sup>3</sup> Instructions to Form 5471, page 1.

<sup>4</sup> Instructions to Form 3520, page 2).

may have already designated a representative on Form 2848, Power of Attorney and Declaration of Representative, for a certain tax return, but not specifically with respect to the IIR that has given rise to penalties. Because a civil penalty may become at issue, the taxpayer may want an already designated representative to discuss the applicable penalty with the Service. Or an examiner may, during an audit of a taxpayer who has designated a representative for a specified tax return and a specific year, may discover that the taxpayer may be liable for a penalty related to an IIR for the same tax year as the one in the Form 2848. Questions have thus arisen as to whether Forms 2848 that the taxpayer previously executed extend also to the penalties related to the IIRs under the three scenarios described above under “Issues”.

### LAW AND ANALYSIS

Form 2848, Power of Attorney and Declaration of Representative, which a taxpayer uses to designate an eligible person to represent the taxpayer before the Service,<sup>5</sup> informs the Service of the scope of authority between the taxpayer and the representative. See *United States v. Pappas*, 806 F. Supp. 1 (D.N.H. 1992). By signing the Form 2848, the taxpayer authorizes the eligible representative to receive confidential tax information and to perform the acts specified on the form, for the types of tax, tax forms, tax periods, and tax matters specified by the taxpayer on the form.

A Form 2848 must include, among other information, a description of the matters for which representation is authorized, (including, if applicable, the type of tax involved, the federal tax form number, the specific year(s) or period(s) involved, and, in estate matters, the decedent’s date of death), and a clear representation of the taxpayer’s intention concerning the scope of authority granted to the recognized representative.<sup>6</sup>

**ISSUE 1:** A Form 2848 that identifies an income tax return, such as Form 1120 or Form 1040, to which an International Information Return (IIR) would be attached does not also cover the civil penalty associated with that IIR. Forms 2848 that only list a specific tax return will cover representation for penalties, payments and interest related only to that specific tax return, not to other returns, regardless of whether the IIR was attached to the tax return specified in the Form 2848 when that return was filed.

Historically, taxpayers who wished to authorize a representative to represent them with respect to penalties unrelated to a tax return merely had to list “civil penalties” on line 3 of the Form 2848 as a matter for which they were granting authority. The 2012 Instructions to Form 2848 provided that neither the tax form number nor the specific penalty had to be entered as the “Description of Matter” on line 3 of Form 2848.<sup>7</sup>

---

<sup>5</sup> Statement of Procedural Rules § 601.503(b).

<sup>6</sup> Statement of Procedural Rules § 601.503(a)(5) and (6).

<sup>7</sup> Instructions for Form 2848 (Rev. 3-2012).

In 2014, however, the Service revised both the Instructions to Form 2848 and the format of lines 3 and 5 on the form itself, which are the lines on which the taxpayer specifies which specific acts it is authorizing the representative to perform. Under current instructions<sup>8</sup>, a person who is designated on the Form 2848 with respect to a tax return may represent the taxpayer only regarding the tax, civil penalties, payments and interest related to that specific tax return listed on the Form 2848 unless otherwise provided otherwise on line 5b.

In the scenario presented, Form 1120 is the specific tax return listed on line 3 of Form 2848. Form 5471 is not listed or otherwise mentioned. Although an argument could be fashioned that penalties arising in connection with the Form 5471 are related to the Form 1120 because the Form 5471 must be attached to a Form 1120 in order to file the Form 5471, the reality is that many IIRs may be attached to or related to a Form 1120. Without a specific description of the penalty involved, it would be difficult for the Service to determine exactly the scope of the taxpayer's authorization. We thus believe the intent of the 2014 revisions is to require the *specific* penalty to be listed on Form 2848 for representation to be authorized with respect to those penalties unrelated to the ones related to the Form 1120 itself: the instructions require the taxpayer to "describe the specific penalty ... for which [he is] authorizing representation in the 'Description of Matter'." Instructions for Form 2848, p. 4 (Rev. 12-2015)(emphasis added). This requirement of specificity is in keeping with the requirements of Section 601.503(a)(6) of the Statement of Procedural Rules, which requires "a clear expression of the taxpayer's intention concerning the scope of the authority granted to the recognized representative." Furthermore, precise specificity is important because Forms 2848 for civil penalty issues are recorded on the Central Authorization File (CAF),<sup>9</sup> and this information assists the CAF Unit in processing these forms.

Accordingly, we conclude that the Service is not allowed to discuss the civil penalty for failure to file the Form 5471 with the representative designated on the Form 2848 if line 3 lists only "Income, Form 1120," and the calendar year.

**ISSUE 2:** A Form 2848 that identifies an income tax return to which an IIR is not required to be attached when the Form 1040 is filed, does not give cover authorization to discuss penalties associated with the IIR. For example, on Form 2848, line 3, Acts Authorized, a taxpayer lists "Income, Form 1040," and the calendar year. During the examination of the taxpayer's Form 1040, the Service is considering whether to assert the civil penalty under I.R.C. § 6677 for failure to file Form 3520, and IIR. The

---

<sup>8</sup> **"Civil penalty representation (including the trust fund recovery penalty) and representation for certain health-care related payments.** Unless you specifically provide otherwise on line 5b, your authorization of tax matters on line 3 includes representation for *penalties*, payments, and interest *related to a specific tax return*. However, if the *penalty* or payment *is not related to a specific tax return*, you must enter 'Civil Penalty,' "[...] or otherwise describe the specific penalty or payment for which you are authorizing representation in the 'Description of Matter' column on line 3." Instructions for Form 2848, p. 4 (Rev. 12-2015)(emphasis added).

<sup>9</sup> Civil Penalty Authorizations, I.R.M. 21.3.7.8.2 (03-31-2016).

designated representative is not authorized to discuss, and the Service may not discuss with the representative, the civil penalty associated with the Form 3520. The analysis under Issue 1, above, applies for the same reasons.

ISSUE 3: A representative who prepared for a taxpayer both the Form 1120 and the Form 5471 for a taxable year is designated on a Form 2848 to represent that taxpayer for those two forms for that taxable year. The taxpayer's subsequently submitted Form 2848 naming a different representative and listing only the Form 5471—and not Form 1120—gives the second representative the authorization to discuss only those penalties associated with Form 5471. The Service, therefore, may not discuss with the second representative issues involving the taxpayer's Form 1120 or penalties associated with the taxpayer's Form 1120. The same analysis discussed above applies here.

### CONCLUSION

Although we conclude penalty representation must be specifically authorized for IIR returns whether or not they are filed with the parent return, we recognize that the current form instructions are not a paragon of clarity on this issue. It might be useful to amend the form instructions to specifically provide whether penalties associated with forms that are or should be attached to a certain "parent" tax return are within the scope of representation if line 3 of the Form 2848 lists only the parent form.

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) 317-5417 if you have any further questions.