

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

CC:PA:02:HMarx  
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UILC: 6103.03-00, 6061.00-00

date: July 21, 2015

to: Sheron Leigh  
Product Development Director  
(IRS Online Services)

from: Blaise G. Dusenberry  
Senior Technical Reviewer  
(Procedure & Administration)



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subject: Signature Requirement for Electronic Form 2848

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

ISSUES

Whether delivery of the taxpayer's signature is required for the Service to accept a Form 2848.

CONCLUSIONS

Yes. There is no authority for allowing a representative to submit a Form 2848 without the taxpayer's signature. Nor is such a procedure advisable as reliance on Forms 2848 without taxpayer signatures could facilitate identity theft and lead to unauthorized disclosures.

BACKGROUND

Procedure & Administration has previously advised that a valid electronic Form 2848, *Power of Attorney and Declaration of Representative* (Form 2848), requires an electronic signature by both the taxpayer and representative that meets certain electronic signature criteria. You have asked us to explain the basis for the requirement that both the taxpayer and the representative electronically sign the electronic Form 2848. In particular, you have asked whether there are any legal restrictions to allowing a representative to electronically enter all information except the taxpayer's signature. It is our understanding that, under this procedure, the representative would obtain the taxpayer's ink signature on a paper Form 2848, which the representative would

maintain in his or her office and would be required to produce to the Service upon request.

### LAW AND ANALYSIS

According to the General Services Administration's *Use of Electronic Signatures in Federal Organization Transactions* (January 2013) (GSA Guide), which "provides general guidance for federal organizations regarding the use of electronic signatures in connection with electronic records and electronic transactions," GSA Guide at \*1, "[i]f the applicable law or regulation requires a signature, then to conduct the transaction in electronic form requires an electronic signature." *Id.* at \*12. Section 6061 of the Internal Revenue Code provides that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.

Section 6103(a) provides the general rule that returns and return information shall be confidential, except as otherwise authorized by Title 26.

Section 6103(c) authorizes, subject to requirements and conditions prescribed by regulations, the disclosure of a taxpayer's returns and return information to a designee of the taxpayer. The subject regulations require the taxpayer's written consent to be signed and dated by the taxpayer. The signed and dated consent is valid only if received within 120 days following the date upon which the consent was signed and dated by the taxpayer. Treas. Reg. § 301.6103(c)-(1)(b)(2).

A procedure in which the representative does not deliver the Form 2848 signed by the taxpayer is inconsistent with the section 6103(c) regulations. Per Treas. Reg. § 301.6103(c)-1(b)(2), the Service must be able to verify the date of the taxpayer's signature before making the disclosure of return information. The Service would be unable to do so if the Form 2848 signed and dated by the taxpayer was not in the Service's possession. Moreover, without seeing the taxpayer's signature, the Service is unable to determine whether or not its disclosures to the purported representative are authorized and risks making unauthorized disclosures. Pursuant to section 601.504(c)(4) of the Statement of Procedural Rules, the Service will accept the original or a copy, including a copy by facsimile transmission, of a power of attorney. This rule recognizes that an original form is not required, but nonetheless contemplates that the entire form (including the taxpayer's signature) will be filed with the Service, such that the Service may conduct the verification described above.

Neither the statute, nor the regulations, anticipate a procedure in which the representative does not deliver to the Service the Form 2848 signed by the taxpayer. Instead, as discussed above, the applicable legal authorities assume that the Service is in possession of the Form 2848 signed by the taxpayer. A procedure in which the Service does not possess the signed form could facilitate identity theft and could subject the Service to liability for unauthorized disclosure.

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) 317-6844 if you have any further questions.

cc: Carol G. Walker  
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