

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:DOM:IT&A:1
DBAuclair FREV-242428-96

INCOME TAX AND ACCOUNTING

date: OCT - 8 1996
to: Chief, T:S:E
Attn: Aaron Welch
from: Acting Assistant to the Chief, CC:DOM:IT&A:1

subject: Money Tree, Inc.

This is response to your request for assistance in replying to a question from the Birmingham District Office. The district office requests guidance on whether a power of attorney gives Money Tree, Inc. ("Money Tree"), an Electronic Return Originator ("ERO"), the legal right to put its address in the section of Form 8453, U.S. Individual Income Tax Declaration for Electronic Filing, that is reserved for the taxpayer's name and address. For the reasons stated below, Money Tree may not place its address in the section of Form 8453 reserved for the taxpayer's name and address.

As we understand the facts, Money Tree wants to provide the following one-stop services: tax preparation, electronic filing, and loans to taxpayers. In providing these services, Money Tree acts as an ERO and also issues a refund anticipation loan (RAL). In addition, Money Tree requires taxpayers to execute a "Power of Attorney for Income Tax Refund Loan." This power of attorney authorizes Money Tree to: (1) receive a taxpayer's refund check at Money Tree's address; (2) sign the taxpayer's name on the refund check as an endorsement; (3) negotiate the refund check; (4) deposit or cash the refund check; and (5) apply the cash proceeds of the refund check to any indebtedness owed to Money Tree. Money Tree wishes to put its address in the section reserved for the taxpayer's address on Form 8453 in order to receive the taxpayer's refund check.

Revenue Procedure 95-49, 1995-2 C.B. 419, prescribes the rules for Electronic Filers, including an ERO, who participated in the 1996 Electronic Filing Program. This revenue procedure is being updated for the 1997 Electronic Filing Program; however, none of the changes to the revenue ruling affect the issues addressed in this memorandum.

Section 7.01(3) of Rev. Proc. 95-49 provides that an Electronic Filer, a financial institution, or any other entity associated with the electronic filing of a taxpayer's return must not put its address in the section reserved for the taxpayer's

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address on Form 8453 or any where in the electronic portion of the return. Section 13.07 of Rev. Proc. 95-49 provides that the Service reserves the right to suspend the electronic filing privileges of any Electronic Filer who violates any provision of the revenue procedure.

Based on the above provisions, which will remain unchanged in the updated revenue procedure for the 1997 filing season, Money Tree is prohibited from putting its address in the section reserved for the taxpayer's address on Form 8453. Further, violating this prohibition could result in Money Tree's suspension from the Electronic Filing Program. Money Trees's "Power of Attorney for Income Tax Refund Loan" does not alter this prohibition under Rev. Proc. 95-49.

A taxpayer could suffer adverse consequences if the address listed on Form 8453 is not the taxpayer's home address. The address on Form 8453 must be identical to the taxpayer's address in the electronic transmission. See section 7.01(2) of Rev. Proc. 95-49. The address in the electronic transmission, once processed, will be used to update the taxpayer's address of record. See Rev. Proc. 90-18, 1990-1 C.B. 491. The Service uses the taxpayer's address of record for various notices that are required to be sent to a taxpayer's "last known address" under the Code. This means that future communications from the Service to the taxpayer will be sent to the address on the return rather than the taxpayer's home address. Since this could result in the taxpayer not receiving important information, Rev. Proc. 95-49 requires that an ERO must advise a taxpayer who chooses to use an address other than his or her home address on the return that the address on the return will become the taxpayer's "last known address." See section 8.06 of Rev. Proc. 95-49.

Although it is clear that Money Tree is prohibited from putting its address in the section of Form 8453 reserved for the taxpayer's address, there are three additional issues raised by the facts that need to be addressed.

First, from the limited facts we have been given, it appears that Money Tree may be both the return preparer and the lender making the RAL. Section 10.07 of Rev. Proc. 95-49 provides that an Electronic Filer that is also the return preparer, and the financial institution or other lender that makes an RAL, may not be related taxpayers within the meaning of section 267 or section 707 of the Code. Therefore, Rev. Proc. 95-49 would prohibit Money Tree from being both the return preparer and the lender making the RAL.

Second, Money Tree's power of attorney authorizing it to negotiate the refund check may subject Money Tree to penalties. For instance, section 6695(f) of the Code imposes a \$500 penalty

on a return preparer who endorses or negotiates a refund check issued to a taxpayer other than the return preparer. If Money Tree is the return preparer and it negotiates the refund check it would be subject to this penalty.

Third, the Anti-Assignment Act, 31 U.S.C. section 3727, may apply to this case. The Anti-Assignment Act provides that any assignment of a claim for refund is null and void against the Service unless certain statutory requirements are satisfied. First, the Service must have determined the amount of overpayment, allowed the claim, and authorized payment. Second, the taxpayer must have freely made the assignment. Third, the taxpayer must have executed the assignment in the presence of at least two attesting witnesses before a notary public.

Under the Anti-Assignment Act, assignments of a claim for refund are not effective until the Service has allowed the claim. If a taxpayer requests that the Service send the refund to Money Tree before the Service determines the amount of overpayment, the Service would be statutorily prohibited by the Act from honoring this request. It appears that the situation described in the letter may involve such requests.

Accordingly, it is our legal conclusion that Money Tree is prohibited from putting its address in the section of Form 8453 reserved for the taxpayer's address. If you develop additional facts, or would like to explore other options in this or similar cases, our office is available to provide further assistance. In addition, if you have any questions regarding this memorandum please contact David Auclair at 622-4910.