DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE WASHINGTON, D.C. 20224

CC:F&M:GLS:EGG
GLS Case 118323-98
GLS-1722-98

)UM FOR LEE MONKS, NATIONAL TAXPAYER ADVOCATE
Attn: Sharese Stevens

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[redacted]

This is in response to your request for an opinion on whether a fiduciary has to be an attorney, CPA, enrolled agent, enrolled actuary, or someone temporarily appointed by the Director of Practice in order to practice before the Internal Revenue Service.

Basically, as discussed below, practice before the Service is limited to certain groups of individuals, including attorneys, CPAs, and enrolled agents, described in the regulations. Practice involves a representational relationship. Fiduciaries are not one of the groups of individuals allowed to practice under the regulations. However, we are aware of no requirement that a fiduciary must be an attorney, CPA, enrolled actuary, or someone temporarily appointed by the Director of Practice in order to qualify as a fiduciary before the Internal Revenue Service. A properly appointed fiduciary may be able to engage in certain activities as if they were the taxpayer rather than as a representative of the taxpayer.

Only certain groups of individuals specified in regulations can represent taxpayers before the Internal Revenue Service. The basic

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regulations governing practice before the Internal Revenue Service are set forth in Treasury Department Circular 230 (31 C.F.R. Part 10). Section 10.1(e) of Circular 230 defines "practice before the Internal Revenue Service" to consist of "all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service"-- a representational relationship. Circular 230, § 10.2(e). Practice before the Service is limited to (a) attorneys, (b) certified public accountants, (c) enrolled agents, (d) enrolled actuaries, (e) individuals qualifying under sections 10.5(c) or 10.7 of Circular 230; (f) government officers and employees of the United States and District of Columbia provided their practice would not violate 18 U.S.C. §§ 203 (barring Government employees from receiving compensation for their work from sources other than the Government) or 205 (barring Government employees from handling claims against the Government); and (g) state officers and employees.[1] Circular 230, § 10.3. No express provision is made for fiduciaries to practice before the Internal Revenue Service in Circular 230, as representatives of taxpayers in a manner similar to attorneys, CPAs, enrolled agents and others

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[1] Section 10.5(c) of Circular 230 allows the Director of Practice to grant temporary recognition to those who have submitted a properly executed application for enrollment to practice. Section 10.7 of Circular 230 provides that Individuals may appear on their own behalf and allows limited practice, subject to certain limitations, for individuals to represent members of their immediate family; regular full-time employees to represent their employer; a general partner or regular full-time employee of a partnership to represent the partnership; a bona fide officer or regular full-time employee of a corporation(including a parent, subsidiary, or other affiliated corporation), association, or organized group to represent the corporation, association, or organized group; a trustee, receiver, guardian, personal representative, administrator, executor, or regular full-time employee of a trust, receivership, guardianship, or estate, to represent the trust, receivership, guardianship, or estate; an officer or regular employee of a governmental unit, agency, or authority to represent the governmental unit, agency, or authority in the course of his or her official duties; an individual to represent any individual or entity before personnel of the Internal Revenue Service who are outside of the United States; and an individual who prepares and signs a taxpayer's return as the preparer, or who prepares a return but is not required to sign the return, to represent the taxpayer before officer and employees of the Examination Division of the internal Revenue Service with respect to that tax liability of the taxpayer for the taxable year or period covered by that return. Circular 230, § 10.7. Provision is also made for the Director of Practice to allow individuals not otherwise eligible to practice to represent another person in a particular matter subject to such conditions as the Director deems appropriate. Circular 230, § 10.7(d).

described as having the authority to represent taxpayers under section 10.3 of Circular 230.

Additional rules concerning practice before the Service are set forth in the Conference and Practice Requirements at 26 C.F.R. §§ 601.501-509. Basically, section 601.501(b)(10) of the Requirements defines "practice before the Internal Revenue Service" the same as section 10.2(e) of Circular 230. Individuals engaged in the representation of others are described as "recognized representatives" and only "recognized representatives" can practice before the Internal Revenue Service. 26 C.F.R. §§ 601.501(a) and 501(b)(12). To be a recognized representative, an individual must meet the requirements of 26 C.F.R. § 601.502. 26 C.F.R. § 601.501(b)(12). Under section 601.502 a recognized representative must be an individual who is appointed as an attorney in fact under a power of attorney and be a member of one of the categories described in 26 C.F.R. § 601.502(b). Basically, the categories described in section 601.502(b) parallel those described in sections 10.5(c), 10.7(a)(1)-(6), 10.7(a)(7), and 10.7(b) of Circular 230. Again, no express provision is made for fiduciaries to practice before the Internal Revenue Service in a manner similar to attorneys, CPAs, enrolled agents and others listed as authorized to practice under 26 C.F.R. § 601.502(c).

Section 601.503(d) of the Conference and Practice Requirements does discuss fiduciaries. It states that, "[i]n general, when a fiduciary is involved in a tax matter, a power of attorney is not required" and that "[i]nstead Form 56, 'Notice Concerning Fiduciary Relationship,' should be filed." Types of taxpayers for which fiduciaries act include dissolved corporations and, according to the regulations, in such circumstances the Form 56 should be filed by the appointed liquidating trustee(s) or, if no trustees have been appointed, by the stockholder(s) holding a majority of the voting stock of the corporation as of the date of dissolution. 26 C.F.R. § 601.503(d)(1). These regulations contain no requirement that a fiduciary filing Form 56 be an attorney, CPA, enrolled agent, enrolled actuary, someone temporarily authorized by the Director of Practice, or other individual authorized to practice because they are described in section 10.3 of Circular 230 or 26 C.F.R. § 601.502(b). This is completely different from the requirements to act as a representative which, as discussed previously, require that a representative be appointed as an attorney in fact under a power of attorney and be a member of one of the categories described in 26 C.F.R. § 601.502(b) such as an attorney, C.P.A., or enrolled agent.

Finally, it appears to us that there are fundamental differences between acting in a representational capacity for another and serving as a fiduciary. Representation involves the "presentation to the Internal Revenue Service or any

of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service." Circular 230, § 10.2(e). Those who qualify as fiduciaries under Service requirements at 26 C.F.R. § 601.503(d)(1) can apparently act on behalf of another. However, they act in place of another person or entity, they do not act in a representational capacity on behalf a taxpayer. They stand in the shoes of the taxpayer. Section 6903 of the Internal Revenue Code provides that a fiduciary has the right to "assume the powers, rights, duties, and privileges" of the taxpayer. Section 7701(a)(6) of the Internal Revenue Code defines the term "fiduciary" in terms of "acting . . . for any person."

If you have any questions, please call James Corbitt of this office at (202) 401-4000.