

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:PA:APJP:2:POSTS-135745-03
BETombul

date: December 2, 2003

to: Kristen Bailey
Case Resolution Alternatives Program Manager
SB/SE S:C:CP:P:CRA
Attn: Jon Munroe

from: ASHTON P. TRICE *Ashton P. Trice*
Acting Chief, Branch 2
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CC:PA:APJP:B02

subject: **Employee Suggestion for Form 433-A**

This memorandum is in response to your request that we review an employee suggestion, number 0252-5273-100, from [REDACTED] a revenue officer working in the IRS office in Edison, New Jersey. [REDACTED] suggested that the statement, "This document may only be signed by the taxpayer," be added after the penalties of perjury statement and before the taxpayer's signature on Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and Form 433-B, Collection Information Statement for Businesses. [REDACTED] indicated that this language would prevent recognized representatives from insisting on signing the forms on behalf of the taxpayer. [REDACTED] also indicated that requiring the taxpayer to sign the form personally would make the form admissible as evidence in a criminal trial if it is later established that the taxpayer lied about his or her assets and or liabilities on the form. b6

Issue:

Whether the Service can prohibit a taxpayer's recognized representative from signing Form 433-A or 433-B on behalf of the taxpayer?

PMTA: 00642

Conclusion:

Yes. The Secretary may prescribe that the Taxpayer sign Forms 433-A and 433-B personally and that the signature of a representative will not suffice.

Law and Analysis:

Section 601.501 of the Administrative Practice and Procedure Regulations (the Statement of Procedural Rules) contains the rules regarding the representation of a taxpayer before the Internal Revenue Service under the authority of a power of attorney. Section 601.501(b)(9) defines a power of attorney as a document a taxpayer signs to appoint an individual as attorney-in-fact to perform certain specified act(s) or kinds of act(s) on behalf of the taxpayer. Section 601.503(b) provides that a properly completed Form 2848 satisfies the requirements for a power of attorney.

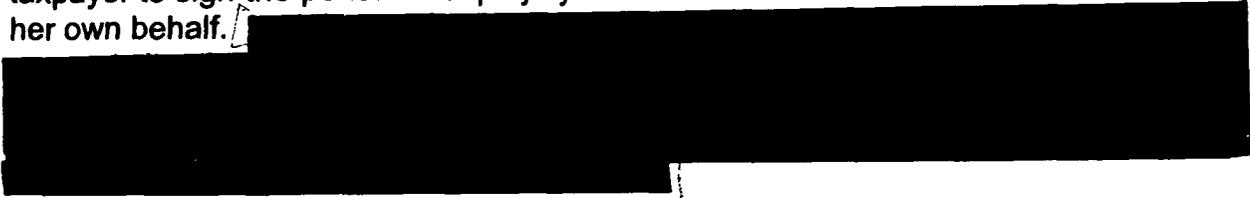
The Statement of Procedural Rules states that a person holding a general power of attorney may "perform any and all acts [the taxpayer] can perform" with respect to the tax period covered in the Form 2848. Treas. Reg. § 601.501(b)(9)(i); see also Form 2848, line 5. The Statement of Procedural Rules does not specify an exception to limit a recognized representative's ability to sign Form 433-A or 433-B on the taxpayer's behalf. Unlike true Treasury regulations, however, the Commissioner issues the Statement of Procedural Rules without need for the Secretary of the Treasury's approval. Thus, the rules provide guidelines regarding the governance of the Service, are directory and are not mandatory. See *Estate of Jones v. Commissioner*, 795 F. 2d 566 (6th Cir. 1986).

An explicit exception to the general rule regarding a representative's authority is in section 601.504(a)(6), which limits a recognized representative's ability to sign a taxpayer's "tax return" to those situations that are expressly permitted under the Internal Revenue Code and regulations, and specifically authorized in the power of attorney. Although a collection information statement is not a "tax return," it bears some similarity to a return in that both documents require the taxpayer to attest to facts of which the taxpayer has personal knowledge.

In fact, the attestation to facts on a collection information statement is analogous to several other situations where the Service requires a taxpayer to attest personally that a statement of facts is true, correct, and complete, and does not allow a representative to sign the attestation on behalf of the taxpayer. For instance, Rev. Proc. 2003-1, 2003-1 I.R.B. 1, Rev. Proc. 90-49, 1990-2 C.B. 620, and Rev. Proc. 94-41, 1994-1 C.B. 711, each deal with different types of requests filed with the Service and require that a taxpayer declare that the facts contained in the request are true, correct, and complete. The taxpayer personally must sign the declaration, and the signature of a representative is not acceptable. The common characteristic of these situations is that

they all involve the taxpayer submitting information of which the taxpayer has personal knowledge.

Because we could find no law that requires the Service to acknowledge the authority of a representative to sign a collection information statement, the facts within the statements are usually specific to the taxpayer's personal knowledge, and the Service has prohibited representative form signing attestations for taxpayers in analogous situations, we conclude that it would be within the Service's authority to require a taxpayer to sign the penalties of perjury statement in Form 433-A and 433-B on his or her own behalf.



A recognized representative, acting pursuant to a valid Form 2848 power of attorney, currently may sign Form 433-A or 433-B on the taxpayer's behalf because the IRS has not previously required that the taxpayer sign the Forms personally. If the Service determines that it will require a taxpayer to sign the Form 433-A or 433-B on his or her own behalf, the Service should prescribe a requirement that the taxpayer's individual signature is required, and that the signature of a representative will not suffice.

If you have any questions, please contact Bridget Tombul at (202) 622-7679.