

Office of Chief Counsel
Internal Revenue Service
memorandum

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date: August 26, 2005

to: Cindy Pennington
Senior Program Manager, Payment Compliance
SE:W:CP:FPC:PC

from: Richard S. Goldstein
Special Counsel
(Procedure & Administration)

subject: Contacts with Taxpayers who are Represented

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

ISSUE

May Service personnel discuss substantive issues regarding a taxpayer's account directly with the taxpayer if the taxpayer is represented by an individual authorized to practice, i.e., attorney, certified public accountant or enrolled agent, and the taxpayer initiates the contact?

CONCLUSION

Service personnel should not have direct contact with a represented taxpayer concerning the substance of a tax matter, even where the taxpayer initiates the contact, unless the representative has consented to the contact. For example, a Customer Service Representative may not discuss terms of a proposed installment agreement, but may inform the taxpayer of the balance on the account or provide a transcript to the taxpayer.

LAW AND ANALYSIS

A taxpayer may authorize a recognized representative to represent the taxpayer in matters before the Service. See 26 CFR § 601.501(a). A recognized representative is an individual who is recognized to practice before the Service, including attorneys, certified public accountants and enrolled agents. See 26 CFR §§ 601.501(b)(12), 601.502. See also 31 CFR §§ 10.2, 10.3. The Service may not contact the taxpayer

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directly unless the recognized representative has given his consent to the contact or the recognized representative has unreasonably delayed or hindered an examination, collection or investigation by failing to furnish, after repeated request, nonprivileged information necessary to the examination, collection or investigation. See 26 CFR § 601.506(b); see also IRC § 7521(c)(relating to contacting the taxpayer directly when the representative is responsible for unreasonable delay or hindrance of an examination or investigation); IRM 4.11.55.2, By-Pass of a Representative.

Provisions of the Internal Revenue Manual relating to contact with a taxpayer, generally address situations in which Service personnel initiate contact with the taxpayer, but not taxpayer-initiated contacts.¹ The Service's policy is not, however, limited to Service initiated contacts. The prohibition of direct contact with a represented taxpayer furthers the representative-client relationship. By choosing not to participate in ex parte communications with a represented taxpayer, the Service respects the taxpayer's right to be represented and avoids the appearance of taking unfair advantage of a represented person.

Accordingly, Service personnel generally should not substantively discuss a represented taxpayer's tax matter directly with the taxpayer even when the taxpayer initiates the contact. A substantive discussion is one that could affect the outcome of the matter. For example, a Customer Service Representative may not renegotiate the terms of an installment agreement with the taxpayer.

If the taxpayer asks how to revoke an existing power of attorney or says that he no longer wants to be represented, the Service personnel can explain the procedures for revoking the power of attorney to the taxpayer. Service personnel also should inform the taxpayer of the effect of the revocation. Under no circumstances, however, should Service personnel encourage a taxpayer to revoke a power of attorney,

Service personnel also may provide basic information to the taxpayer, such as the balance on the taxpayer's account, the status of a refund or the name of the representative on file, instructions on how to revoke a power of attorney and may provide copies of transcripts to the taxpayer. Providing this basic information presents no threat of abuse of a taxpayer's rights.

There may be circumstances that arguably permit direct contact on a substantive matter with a represented taxpayer if the taxpayer consents. See generally, IRC § 6304. For the reasons stated above, Service personnel nevertheless generally should not have direct contact with taxpayers who are represented.

In addition, it should be kept in mind that a taxpayer may call with a substantive question pertaining to a matter other than one for which the taxpayer is represented. Service personnel should consult the Centralized Authorization File (CAF) Unit to determine if the taxpayer has a representative for the tax matter in question. If the

¹ See, e.g., IRM 4.10 3.2.1.1, 4.10 4.3.4.4, 4.11.55, 5.1.10.3.

taxpayer is not represented in the specific matter, Service personnel may (and should) provide assistance.

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) 622-4940 if you have any further questions.

cc: Division Counsel, Wage & Investment
attn: Joanne Minsky