

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

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to: Richard Morris  
(Director, Technical Analysis and Guidance)

from: Susan L. Hartford  
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subject: TAS Employees Interacting with Unenrolled Return Preparers

This memorandum responds to a request for assistance from a Local Taxpayer Advocate. In the course of assisting the Local Taxpayer Advocate, we discovered the lack of guidance on the scope of an unenrolled return preparer's ability to interact with Taxpayer Advocate Service (TAS) employees. We continue to receive questions from TAS employees about their interactions with unenrolled return preparers. Therefore, as we discussed with you on several occasions, we are issuing the attached advice. This advice may not be used or cited as precedent.

**BACKGROUND**

Treasury Department Circular No. 230 is a reprint of the regulations governing practice before the IRS (31 C.F.R. part 10). Section 10.3 of Circular 230 sets forth the categories of individuals who are allowed to practice before the IRS. Subject to certain limitations, an individual who is not a practitioner within the meaning of section 10.3 of Circular 230, may exercise the privilege of limited practice before the IRS. An unenrolled return preparer is one such individual. An unenrolled return preparer is an individual who prepares a third party's tax return as the preparer (regardless of whether the individual is required to sign the tax return), who is not otherwise authorized to practice before the IRS (*i.e.*, the individual is not an attorney, CPA, enrolled agent, or any other category of practitioner identified in section 10.3 of Circular 230). See IRM 1.1.20.3(5).

**ISSUES**

1. Whether an unenrolled return preparer can represent a taxpayer before the Taxpayer Advocate Service (TAS) in the following situations?

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- a) The taxpayer's 2008 return is before the Examination function and the unenrolled return preparer asks TAS for assistance with an issue relating to the examination of the taxpayer's return.
  - b) While assisting the unenrolled return preparer with an issue relating to the examination of the taxpayer's 2008 return, the unenrolled return preparer asks TAS for assistance putting the taxpayer into an installment agreement for the 2006 tax year.
  - c) The unenrolled return preparer asks TAS for assistance putting the taxpayer into currently not collectible (CNC) status.
2. Suppose an unenrolled return preparer submits Form 2848, *Power of Attorney and Declaration of Representative*, to a TAS employee for a tax year for which the unenrolled return preparer did not prepare the return, or a year that is not under examination. What should the TAS employee do with the Form 2848?
  3. Suppose an unenrolled return preparer did not prepare the return under examination. May the unenrolled return preparer receive copies of notices being sent to the taxpayer, and if so, how does the unenrolled return preparer make that happen?
  4. Suppose an unenrolled return preparer submits a Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*, to TAS on behalf of a taxpayer, but the Form 911 is not signed by the taxpayer. Should TAS open a case?
  5. Suppose a Form 2848 submitted by an unenrolled return preparer is incorrectly accepted by the Centralized Authorization File (CAF) Unit for a tax year for which the unenrolled return preparer did not prepare the return. The unenrolled return preparer has sought assistance from TAS on behalf of the taxpayer regarding an examination matter. The TAS employee working the case discovers that the unenrolled return preparer did not prepare the return that is under examination. What should the TAS employee do?
  6. Suppose the unenrolled return preparer has sought assistance from TAS on behalf of the taxpayer regarding an examination matter for the 2008 tax year. The taxpayer is also working directly with TAS to resolve a collection matter for the 2006 tax year. Line 7 of Form 2848 provides that notices and other written communications will be sent to the taxpayer and a copy to the unenrolled return preparer. Line 7b gives the taxpayer the option to specify that notices/written communications should not be sent to the unenrolled return preparer, but the taxpayer has not checked that box. Should TAS send all correspondence (including correspondence pertaining to the collection matter) to the unenrolled return preparer?

## CONCLUSIONS

1. An unenrolled return preparer generally cannot represent a taxpayer before TAS, as most TAS cases involve a collection matter. If, however, the unenrolled return preparer seeks TAS assistance on behalf of a taxpayer with an examination issue, the unenrolled return preparer may represent the taxpayer before TAS, provided the unenrolled return preparer prepared the return that is the subject of the examination and the taxpayer has submitted a valid power of attorney; Form 2848 can be used for this purpose, appointing the unenrolled return preparer as the taxpayer's representative. Thus, in situation 1.a., the unenrolled return preparer can represent the taxpayer before TAS. In contrast, an unenrolled return preparer is not authorized to represent the taxpayer in a collection matter and cannot represent the taxpayer before TAS in attempting to resolve the collection issues in situations 1.b. and 1.c.
2. TAS employees should accept a Form 2848 from an unenrolled return preparer only if: (1) the unenrolled return preparer prepared the return, (2) the return is under examination, and (3) TAS assistance is being requested for an issue related to the examination of the return. TAS employees should not accept a Form 2848 appointing an unenrolled return preparer as a representative if each of these three requirements is not met. If a TAS employee receives a Form 2848 when these requirements have not been met, the employee should advise the taxpayer and the unenrolled return preparer that the unenrolled return preparer cannot represent the taxpayer and explain the representation requirements to them.
3. Because the unenrolled return preparer did not prepare the return under examination, the unenrolled return preparer cannot represent the taxpayer before the IRS. Accordingly, the taxpayer cannot appoint the unenrolled return preparer as the taxpayer's representative on Form 2848. The taxpayer, however, may designate the unenrolled return preparer as a third party designee, authorizing the unenrolled return preparer to receive or inspect return or return information. As a third party designee, the unenrolled return preparer generally will be entitled to receive copies of the notices that the IRS provides to the taxpayer. A Form 8821, *Tax Information Authorization*, can be used by the taxpayer to designate the unenrolled return preparer as a third party designee.
4. It depends on the nature of the request for assistance and whether a Form 2848 or a Form 8821 accompanies the Form 911.
5. The TAS employee must immediately discontinue working with the unenrolled return preparer. The TAS employee should notify the CAF Unit of the issue and report any unauthorized disclosure using the procedures developed by the Computer Security Incident Response Center office.
6. TAS should send copies of correspondence relating to the examination matter to the unenrolled return preparer, as that is the tax matter for which the unenrolled return

preparer has the authority to represent the taxpayer. Because the unenrolled return preparer does not represent the taxpayer in connection with the collection matter, TAS should not send copies of correspondence relating to the collection matter to the unenrolled return preparer.

## LAW AND ANALYSIS

### Issue 1

An unenrolled return preparer can represent a taxpayer in limited circumstances. In this regard, Revenue Procedure 81-38, 1981-2 C.B. 592 provides “some of the circumstances and conditions under which an individual preparer of a tax return may exercise, without enrollment, the privilege of limited practice as a taxpayer’s representative before the Internal Revenue Service.” Pursuant to the revenue procedure, an unenrolled return preparer may act as the taxpayer’s representative if accompanied by the taxpayer, or by filing a Form 2848, *Power of Attorney and Declaration of Representative*, signed by the taxpayer. The revenue procedure only covers practice before examining officers of the Examination function.

After the IRS reorganized in response to the IRS Restructuring and Reform Act of 1998, the IRS modified the scope of an unenrolled return preparer’s authority to represent a taxpayer to reflect the IRS’s new organizational structure. Although an unenrolled return preparer’s authority to represent a taxpayer continues to be restricted to examination activities, an unenrolled return preparer may now represent taxpayers before “revenue agents, customer service representatives or similar officers and employees of the Internal Revenue Service.” Section 10.7(c)(1)(viii) of Circular 230. The reference to “customer service representatives or similar officers and employees” includes TAS employees. Thus, a taxpayer may utilize a Form 2848 to appoint an unenrolled return preparer to represent the taxpayer before TAS, provided the IRS is examining a return that the unenrolled return preparer prepared and the representation before TAS is in connection with that examination. The unenrolled return preparer, however, is prohibited from signing many documents on behalf of the taxpayer. See Instructions to Form 2848.

### Issue 2

In order to represent a taxpayer before TAS on an examination issue, an unenrolled return preparer must satisfy two requirements: (1) the unenrolled return preparer must have prepared the return, and (2) the return must be under examination. Upon receipt of a Form 2848 that does not meet both of these requirements, a TAS employee should advise the taxpayer and the unenrolled return preparer that the unenrolled return preparer cannot represent the taxpayer and explain the representation requirements to them. See IRM 21.3.7.5.7(6). The taxpayer, however, may designate the unenrolled return preparer to receive or inspect return or return information. If the taxpayer wants TAS to provide the unenrolled return preparer with the taxpayer’s return or return information, the taxpayer should complete Form 8821, *Tax Information Authorization*,

designating the unenrolled return preparer as the taxpayer's third party designee. See IRM 21.3.10.2(7). The TAS employee should make certain that the taxpayer and the unenrolled return preparer understand that the unenrolled return preparer has no authority to represent the taxpayer, and that the Form 8821 merely allows the taxpayer to designate that the unenrolled return preparer inspect and receive confidential information from TAS about the taxpayer's tax year(s) or period(s) listed on Form 8821. A sample letter is included in IRM Exhibit 21.3.7-7 that the TAS employee may use as a model when sending a letter to the taxpayer, explaining why TAS cannot accept the Form 2848 from the unenrolled return preparer.

### Issue 3

Form 8821 authorizes an unenrolled return preparer to inspect or receive a taxpayer's confidential information in any office of the IRS (including TAS) for the type of tax and tax periods reflected on Form 8821. Form 8821 does not authorize an unenrolled return preparer to represent the taxpayer before the IRS. If an unenrolled return preparer wants to represent a taxpayer before the IRS, the taxpayer and the unenrolled return preparer must execute Form 2848.

A taxpayer can submit a Form 8821 to TAS designating any person, including an unenrolled return preparer, to receive the taxpayer's return information from TAS. Upon receipt of a completed Form 8821, TAS may provide the unenrolled return preparer who is the taxpayer's third party designee with copies of any notices or information TAS would provide to the taxpayer regarding the tax, tax period, and issues identified on the Form 8821. Similarly, the unenrolled return preparer may accompany the taxpayer to a meeting with TAS and TAS may discuss any issue covered by the Form 8821 with the taxpayer in the presence of the unenrolled return preparer, provided the taxpayer and the unenrolled return preparer understand that the unenrolled return preparer is not representing the taxpayer.

### Issue 4

If the issue for which TAS assistance is sought involves a collection matter, the unenrolled return preparer has no authority to represent the taxpayer and the taxpayer cannot use a Form 2848 to appoint the unenrolled return preparer as the taxpayer's representative. In such a situation, TAS should not open a case until after confirming that the taxpayer wants assistance from TAS, and then TAS should be dealing directly with the taxpayer, not the unenrolled return preparer. In contrast, if the issue for which TAS assistance is sought relates to an examination of the taxpayer's return and the unenrolled return preparer prepared that return, the taxpayer may use Form 2848 to appoint the unenrolled return preparer as the taxpayer's representative.

A taxpayer may always use Form 8821 to designate any individual, including an unenrolled return preparer, to receive information from TAS about the taxpayer's case, regardless of whether it is a collection or examination matter, or whether the unenrolled return preparer prepared the return for that tax year.

### Issue 5

Upon discovering that the unenrolled return preparer did not prepare the return that is under examination, the TAS employee should notify the CAF Unit of the issue and immediately discontinue working with the unenrolled return preparer. The TAS employee should advise the taxpayer and the unenrolled return preparer that the unenrolled return preparer cannot represent the taxpayer on this matter and explain why the unenrolled return preparer is not eligible to represent the taxpayer. If the TAS employee disclosed a return or return information to the unenrolled return preparer, the disclosure was not authorized. See IRM 21.1.3.2.2(4). Consequently, the TAS employee must report the unauthorized disclosure directly to his or her manager, and to the Computer Security Incident Response Center (CSIRC) office at <https://www.csirc.web.irs.gov/incident/> or by calling 1-866-216-4809. See IRM 21.1.3.2.2(7), IRM 11.3.1.6(3), and IRM 11.3.38.6.1(4).

### Issue 6

The unenrolled return preparer is the taxpayer's representative only with respect to the examination matter. Thus, TAS should be sending to the unenrolled return preparer copies of any correspondence it sends to the taxpayer regarding the examination matter. Any correspondence regarding the collection matter should be sent only to the taxpayer.

In providing this advice, we coordinated with CC:PA, and they concur with the conclusions set forth above.

The above advice should be incorporated into IRM 13.1.23. Because TAS employees continue to ask questions about unenrolled return preparers, we suggest you issue interim guidance about the proper scope of TAS interactions with unenrolled return preparers.

Please call (202) 622-7852 if you have any further questions.