



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

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR CC:SB:2:PHI:1

FROM: Procedure and Administration
Administrative Provisions and Judicial Practice, Branch 1

SUBJECT: 1040NR - Signature Authority

This Chief Counsel Advice responds to your memorandum dated January 18, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

- 1) Whether the preparer's address should be entered onto the master file when the address shown on the return is that of the preparer; and, if answered in the affirmative:
- 2) What, if any, are the disclosure implications if subsequent notices or correspondence are sent to the preparer's address for tax years other than the one specified on the Form 2848.
- 3) Whether the Service can issue statutory notices of deficiency using the preparer's address for either the year covered on Form 2848 or other years.
- 4) Whether the Service may send refunds to the preparer for years other than the year covered in Form 2848

CONCLUSIONS

- 1) When the address for the taxpayer shown on the return is that of the preparer the preparer's address is properly entered onto the master file.
- 2) Disclosures to a taxpayer's representative in connection with practice before the Service are governed by the power of attorney rules not by the section 6103(c) consent

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rules and implementing regulations. Where there is a valid power of attorney, the directive of the taxpayer regarding notices and other written communications, as indicated on line 7 of Form 2848, is to be respected only for the year(s) covered by the power of attorney. Where a Form 2848 is submitted for the limited purpose of authorizing an agent to sign the return pursuant to Treas. Reg. section 1.6012-1(a)(5) such communications should be sent to the taxpayer's last known address.

3) Where there is a valid power of attorney, the directive of the taxpayer regarding notices and other written communications, as indicated on line 7 of Form 2848, is to be respected only for the year(s) covered by the power of attorney. Statutory notices of deficiency for years other than those covered by the power of attorney should be sent to the taxpayer's last known address. Where a Form 2848 is submitted for the limited purpose of authorizing an agent to sign the return pursuant to Treas. Reg. section 1.6012-1(a)(5) statutory notices of deficiency should be sent to the taxpayer's last known address.

4) Where specifically authorized by a valid power of attorney, refund checks may be sent to a taxpayer's recognized representative for the year or years covered by the power of attorney.

FACTS

Scenario 1:

The Service received a large number of Forms 1040NR-EZ, prepared and filed by a return preparer. The forms were all prepared in the following manner:

- the taxpayer's name appears at the top of the return with the preparer's address underneath.
- The preparer signed the return, attaching a Form 2848, Power of Attorney.
- In accordance with Treas. Reg. § 1.6012-1(a)(5), the Form 2848 taxpayer authorized the preparer to sign the return due to the taxpayer's absence from the United States.
- Line 5 did not contain a statement limiting the agents actions to signing of the return.
- No address(es) other than the preparer's appeared on either the return or the Form 2848.
- Section 6 of Form 2848 providing authorization for sending refund checks to the taxpayer's representative was left blank.
- Section 7 of Form 2848, which provides that original notices and other communications will be sent to the taxpayer with a copy to the first designated representative unless another checkbox option is chosen, was also left blank.

Scenario 2:

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The Service received a large number Forms 1040-NR prepared and filed by a return preparer. The forms were all prepared in the following manner:

- the taxpayer's name appears at the top of the return with the preparer's address underneath.
- The preparer signed the return, attaching Forms 2848, Power of Attorney.
- In accordance with Treas. Reg. § 1.6012-1(a)(5), the Form 2848 authorized the preparer to sign the return due to the taxpayer's' absence from the United States.
- The return also listed the taxpayer's foreign address as the country of taxpayer's permanent residence.
- The address listed on the Form 2848 is the taxpayer's foreign address.
- Section 6 of Form 2848 indicated that refund checks were to be sent to the taxpayer's representative.
- Section 7 of Form 2848, which provides that original notices and other communications will be sent to the taxpayer with a copy to the first designated representative unless another checkbox option, is chosen was also left blank.

LAW AND ANALYSIS

Last Known Address

Section 6212(b) requires the Secretary to mail statutory notices of deficiency to taxpayers at their "last known address." This address is also used for sending other notices to taxpayers, such as a notice of intention to levy, and for refunds of overpayments. It is this address that is input into the appropriate computer master file as the taxpayer's last known address.

While the phrase "last known address" is not defined in either the Code, it has now been defined in Treas. Reg. section 301.6212-2. This definition has its origin in Abeles v. Commissioner, 91 T.C. 1019 (1988), acq. 1989-2 C.B. 1, AOD CC-1989-009 (July 31, 1989), wherein the Tax Court held that the address on the taxpayer's most recently filed and properly processed return is the taxpayer's last known address, unless the Service has been given clear and concise notification by the taxpayer of a different address. Thus, the phrase "last known address" does not necessarily mean the taxpayer's actual address, but instead means the last address that the taxpayer makes known to the Service. Indeed, in concluding that each of the joint filer's had a different "last known address," the court in Abeles found that taxpayer-wife's last known address was the address of her tax advisor.

In Rev. Proc. 90-18, 1990-1 C.B. 491, the Internal Revenue Service adopted the rule announced in Abeles, that the taxpayer's last known address is generally the address on the most recently filed and properly processed return absent clear and concise notification by the taxpayer of a different address. The revenue procedure defines "clear

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and concise written notification” as a statement signed by the taxpayer informing the Service that the taxpayer wishes the address of record changed to a new address; in addition to containing the taxpayer’s full name, signature, old address, and social security or employer identification number, it must be specific as to a change of address.

The express purpose of the revenue procedure is to explain how a taxpayer informs the Service of a change of address. Prior to the promulgation of the regulation, the Service on February 6, 2001, issued a notice informing the public of a licensing agreement between the Service and the United States Postal Service whereby the Service will be using the Postal Service’s National Change of Address database to update our Master File addresses on a weekly basis. Notice IR-2001-14 further instructs that in addition to providing written notification of a new address when filing a tax return or sending a Form 8822, “Change of Address,” the Service will also accept a verbal notification if an IRS employee has contacted a taxpayer about his or her account.¹ When informed that there is a change of address, the Service processes the return or notification and updates the taxpayer’s address on the appropriate computer master file (e.g. Individual Master File (IMF) or Business Master File (BMF)) with the new address.

In both the scenarios presented the preparer’s address is shown on line 2 of the return as the taxpayer’s address (indeed, in scenario 1 no address other than the preparer’s is provided on either the return or the Form 2848). Accordingly, as the preparer’s address is what appears on the most recently filed and processed return and the Service has received no notification of a wish to change the address of record to a new address, the address of the preparer is the taxpayer’s last known address. 21, 24 (1979).

Having determined that the preparers’ addresses were properly inputted into the master file as taxpayers’ last known address, we turn to the questions raised as to the appropriate action to be taken by the Service. As discussed below, that determination will depend upon whether the Forms 2848 are valid powers of attorney or are employed for the limited purpose of authorizing an agent to sign a return pursuant to Treas. Reg. section 1-6012(a)(5).

Power of Attorney

A Power of Attorney is a taxpayer’s written authorization to have another individual act on the taxpayer’s behalf in tax matters. Form 2848 is designed for taxpayers to use to grant such authority to a representative and for representatives to use in making the requisite declaration of representation. A Power of Attorney is valid if:

¹However, to prevent unauthorized change, the Service will not accept new addresses from taxpayer-initiated telephone calls.

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1. The representative listed on the line 2 of Form 2848 is an individual who is eligible to practice.

2. The form contains all the information required by the Conference and Practice Requirements as provided in 26 CFR §§ 601.503. This includes: taxpayer's name, address, social security number, name and address of representative, type of tax, tax form number, tax year(s) covered, clear and concise expression of the taxpayer's intention as to the scope of the authority being granted to the representative, and the signatures of the taxpayer and the representative.

In addition to a more general power of attorney, there is regulatory provision for granting another individual the limited authority to sign a return on the taxpayer's behalf. Where the taxpayer is unable to make the return by reason of continuous absence from the United States for a period of at least 60 days prior to the date prescribed for the making of the return, a return may be made by an agent. Treas. Reg. § 1.6012-1(a)(5). When the return is made by an agent it must be accompanied by a power of attorney authorizing the agent to represent the taxpayer in making, executing, or filing the return. A Form 2848 may be used for this limited delegation of authority, indeed the regulation expressly provides that a properly completed Form 2848 is sufficient to authorize an individual to sign an income tax return for the taxpayer.

1. Eligibility to Practice

As to the first criteria, that the individual be eligible to practice, it is important to be aware that there are two categories of practice before the Internal Revenue Service. Attorneys, certified public accountants, enrolled agents and enrolled actuaries may practice before the Service as a "recognized representative." An individual other than an attorney, certified public accountant, enrolled agent or enrolled actuary who prepares and signs a return as the preparer, referred to as an unenrolled preparer, is eligible to engage in limited practice.² An unenrolled return preparer may represent the taxpayer concerning the tax liability for the year or period covered by the return prepared. An unenrolled return preparer is limited to representing taxpayers at the Examination level. He or she is not authorized to represent taxpayers before Appeals, Collection or any other IRS function.

2. Information Contained

² Other unenrolled individuals are also recognized to practice, however, as not germane to facts presented we simply refer you to Pub. 947 (Rev. April 2002).

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Where a Form 2848 is adopted for the sole purpose of granting an agent the authority to sign a return it will not contain all the information necessary for a valid power of attorney, it will not be a valid power of attorney, even if the agent is eligible to practice or engage in limited practice. When Form 2848 used to grant more general powers of attorney it may also, on line 5, grant the representative the authority to sign the return as permitted by Treas. Reg. section 1.6012-1(a)(5). Because Forms 2848 can serve different purposes, the next inquiry is whether the Forms 2848 are valid powers of attorney or whether they were submitted solely to authorize the preparer to sign for them.

Section 1-6012(a)(5) says that a "properly completed" Form 2848 is sufficient to authorized an individual to sign an income tax return for the taxpayer. However, the Instructions for Form 2848 (Rev. December 1997) state that a taxpayer may authorize an "agent" to sign his or her return on a Form 2848 that is not "properly completed."

To authorize a representative (someone with eligibility to practice before the Service or engage in limited practice) to sign a return, all required elements must be present, including the representative's signature on the declaration. To authorize an agent to sign a return, the taxpayer is supposed to include the following on line 5 of the Form 2848: "This power of attorney is being filed pursuant to Regulations 1-6012(a)(5), by reason of [insert reason], which requires a power of attorney to be attached to a return if a return is signed by an agent. No other acts on behalf of the taxpayer are authorized." The agent does not sign the declaration.

If the preparer does not sign the Form 2848, it may be valid as authorization to sign the return, but it is not a valid power of attorney. In like fashion, if the Form 2848 contains the statement that "No other acts on behalf of the taxpayer are authorized," it is not a valid power of attorney. Accordingly, if a Form 2848 is used solely to appoint an agent to sign a return as permitted by Treas. Reg. section 1-6012-1(a)(5), it will not contain all the information needed for a valid power of attorney, and it will not be a valid power of attorney even if the agent is eligible to practice or engage in limited practice. If it is not a valid power of attorney the Service should ignore any directives indicated on lines 6 and 7 and send communications to the taxpayer's last known address.

Statutory Notices of Deficiency and Other Subsequent Notices and Correspondence

We have been advised that in scenario 1³: (1) the Forms 2848 contained the preparer's signature; (2) on line 5 the forms contained the statement "This power of attorney is being filed pursuant to Treas. Reg. section 1.6012-1(a)(5), by reason of [insert reason], which requires a power of attorney to be attached to a return if a return is signed by an

³ We assume the same facts for scenario 2, in the event this is not the case, please advise so that we may offer supplemental guidance.

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agent;" and (3) on line 5 the forms did not contain the statement "No other acts on behalf of the taxpayer are authorized." We conclude that these Forms 2848 constitute valid powers of attorney. Accordingly, it would be appropriate to follow the delegation of authority in line 7; however, in both these scenarios line 7 was left blank. Accordingly, as line 7 has been left blank, the "default" procedure specified on the Form 2848 controls. Form 2848 advises the taxpayer that when left blank "original notices and other written communications will be sent to you and a copy to the first representative listed."

Issuance of Refunds

Treas. Reg. section 601.506(c)(1) provides that a check drawn on the United States Treasury, for example, a refund check, "will be mailed to the recognized representative of a taxpayer provided that a power of attorney is filed containing specific authorization for this to be done." In applying this regulatory provision we have, as stated above, assumed that the preparers are recognized representatives and concluded that the Forms 2848 constitute valid powers of attorney.

In scenario 1, the taxpayers have not authorized the Service to send refund checks to the preparer (as section 6 was left blank); accordingly, refund checks should be sent to the taxpayer's last known address (which under these facts is the preparer's address). In scenario 2, line 6 specifies that the refund check be sent to the preparer. Accordingly, the refund check should be sent to the preparer for the year(s) covered by the power of attorney.

Please call branch 1 of Administrative Provisions and Judicial Practice at
if you have any further questions.

CURT G. WILSON
By: Pamela Wilson Fuller
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