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## Ethical Tax Problems in Tax Practice

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**ETHICAL TAX PROBLEMS IN TAX PRACTICE**

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## ETHICAL PROBLEMS IN TAX PRACTICE

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### I. Introduction

#### A. The Obligation of Tax Practitioners to Practice Ethically.

1. A tax practitioner who practices before the Internal Revenue Service must conduct his or her practice in accordance with professional rules and standards drawn from several different sources.
2. Both the American Institute of Certified Public Accountants (“AICPA”) and the American Bar Association (“ABA”) have promulgated model standards to assist practitioners in analyzing their obligations. For example, the AICPA has adopted the AICPA Standards for Tax Services (October 31, 2000, superseding the Statements on Responsibilities in Tax Practice). The ABA originally adopted the Code of Professional Responsibility but that code has now been superseded by the Model Rules of Professional Conduct. The Model Rules have been interpreted and amplified by Formal Opinions which are issued on occasion by the ABA Standing Committee on Ethics and Professional Responsibility. See, Formal Opinions 314, 346, and 85-352 which deal with ethical issues and problems that arise in tax practice.
3. State licensing boards often adopt the model standards and require professionals licensed in that state to adhere to them. Failure to do so can subject the professional to discipline.
4. There is no uniformity in state licensing requirements. Consequently, a professional authorized to practice in more than one jurisdiction can find himself or herself subject to different rules governing the same situation.
5. Compounding this professional morass is the fact that federal agencies and courts promulgate their own rules of conduct.
  - a. Practice before the Internal Revenue Service is governed by regulations establishing standards of professional conduct for those who engage in practice before it. These regulations are found in 31 CFR Part 10, commonly known as “Circular 230,” the name of the Treasury Department publication containing them.

- b. The United States Tax Court has adopted, by rule, the ABA Model Rules with regard to professional conduct in the Tax Court. See, Tax Court Rule 201 (a).

B. The Obligation of Tax Practitioners to Adhere to the Law.

1. In addition to the ethical standards referred to above, tax practitioners, like all citizens, are required to abide by the law. Specific legal requirements are imposed by statute that relate directly to the manner in which a tax professional conducts his or her practice.
2. The Internal Revenue Code contains preparer penalties which establish minimum standards for accuracy with respect to return positions taken on federal tax returns. See, I.R.C. §§6692-6694, 6701.
3. The Internal Revenue Code also contains criminal provisions which prohibit, among other acts, engaging in acts of tax evasion, participating in the preparation or submission of false documents to the Internal Revenue Service, and corruptly endeavoring to impede the due administration of the tax laws. See, e.g., I.R.C. §§7201, 7206(2), and 7212.
4. Other criminal laws prohibit a panoply of misconduct and have been used to prosecute practitioners engaged in allegedly unlawful acts. See, e.g., 18 U.S.C. §§2, 371, 1001, 1505 and 1621.

C. Internal Revenue Code §7525

1. P.L. 105-206 §3411(a) enacted new Code section 7525, effective for communications made on or after July 22, 1998. Section 7525 purports to create a federal practitioner privilege with respect to certain communications. Under this section:
  - a. The same common law protections applicable to communications between a client and an attorney shall apply to communications between a taxpayer and a “federally authorized tax practitioner” with respect to “tax advice.” I.R.C. §7525(a)(1).
  - b. A “federally authorized tax practitioner” is an individual authorized under federal law to practice before the Internal Revenue Service. I.R.C. §7525(a)(3)(A).
  - c. “Tax advice” is defined as advice given by an individual which is within the scope of the individual’s authority to practice. I.R.C. §7525(a)(3)(B).

2. Limitations and Exceptions

a. The “privilege” may be asserted only in non criminal tax matters before the Internal Revenue Service and non criminal tax proceedings brought for or against the United States in the federal courts. I.R.C. §7525(a)(2).

**Practice Pointer:** The universe of matters in which the “privilege” does not apply is larger than that in which it does. Practitioners should ensure that clients are aware that information communicated for purposes of obtaining tax advice may be subject to disclosure in various state court proceedings, such as divorce matters and business disputes, federal proceedings such as bankruptcy , or criminal matters before the Service or a court. It should also be understood that the “privilege” extends to communications only and not to the practitioner’s work product. United States v. Frederick, 182 F. 3d 496 (7<sup>th</sup> Cir. 1999).

b. The “privilege” does not apply to any written communication between a tax practitioner and any director, shareholder, officer, employee or agent of a corporation in connection with the promotion of the direct or indirect participation of that corporation in any tax shelter. I.R.C. §7525(b) “Tax shelter” for this purpose is defined in I.R.C. §6662(d)(2)(C)(iii).

D. Purpose of this Presentation.

1. The purpose of this presentation is to explore the applicable professional standards which govern tax practice by exploring hypothetical fact patterns presenting realistic dilemmas faced by tax practitioners in everyday practice.
2. The discussion will focus on the practitioner’s obligation to balance his or her duties to the client with his or her duties to the tax system.

II. THE DUTY TO THE CLIENT – CONFIDENTIALITY OF CLIENT COMMUNICATIONS

A. General Rule.

1. Most, if not all, tax practitioners have an obligation imposed by their professional codes of conduct and/or state law to maintain the confidentiality of client confidences.
2. In order to demonstrate the scope and intent of the confidentiality requirement, this outline will refer to the applicable provisions of the ABA Model Rules.

B. ABA Model Rule 1.6.

1. Model Rule 1.6 provides, in pertinent part, that a lawyer shall not reveal information relating to the representation of a client without the client's consent except where disclosure is reasonably necessary "to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm" or "to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge of civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in a proceeding concerning the lawyer's representation of the client."
2. This rule has been modified in some jurisdictions to permit a lawyer to disclose fraud under certain circumstances.
3. The confidentiality obligation imposed by Model Rule 1.6 is not the same as attorney-client privilege, an evidentiary rule which protects against the disclosure of confidential communications between a client and its lawyer in certain circumstances.

C. The Impact of Client Fraud on the Duty of Confidentiality.

1. The duty to maintain the confidentiality of client information often flies in the face of a practitioner's concern about a client's fraud. This ethical dilemma has been addressed in ABA Formal Opinion 314.
2. Opinion 314 provides guidance to tax practitioners who practice before the Service. According to Opinion 314:
  - a. A lawyer may not mislead the Service deliberately either by misstatements or by permitting the client to mislead the Service.
  - b. However, a lawyer representing a client before the Service may stress the strong points of a client's case and is not obligated to disclose the weak points in the case.
  - c. If, during the course of the proceedings before the Service, the client makes misstatements to the Service, the lawyer must counsel the client to correct the misstatements. If the client refuses to do so, the lawyer may have a duty to withdraw if "the lawyer believes that the Service relies on him as corroborating statements of his clients which he

knows to be false...unless it is obvious that the very act of disassociation” effectively would disclose the confidential communications. The lawyer, however, may not disclose the misstatement without the client’s permission.

- d. Other ABA Formal Opinions also provide guidance although they do not deal with tax practice directly. See, e.g., ABA Opinion 92-366 (dealing with a lawyer’s obligations with respect to the ongoing fraud of a client), and ABA Opinion 93-375 (dealing with the obligations of a lawyer representing a client in a regulatory agency examination).

### III. THE DUTY TO CLIENT – AVOIDING CONFLICTS OF INTEREST

#### A. General Rule.

1. Under the ABA Model Rules, a client is entitled to a practitioner’s loyalty.
  - a. Model Rule 1.7(a) provides, in pertinent part, that “a lawyer shall not represent a client if the representation will be directly adverse to another client, unless (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation.”
  - b. Mode Rule 1.7(b) provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless the lawyer believes that the representation will not be adversely affected and the client consents after consultation.
  - c. Model Rule 1.9(a) prohibits a lawyer from representing another client in a matter that is the same as, or is substantially related to, a matter for a former client where the present client’s interests are materially adverse to the former client’s interests unless the former client consents after consultation.
2. Section 10.29 of Circular 230 also prohibits a practitioner who is authorized to practice before the Service from representing conflicting interests except with the express consent of all interested persons after full disclosure.
3. The Tax Court has adopted a special rule designed to emphasize a tax practitioner’s obligation of loyalty under the Model Rules and to prevent a

possible or actual conflict of interest from adversely affecting the Tax Court litigation. See, Tax Court Rule 24(g)

#### IV. CIRCULAR 230 – PRACTICE BEFORE THE SERVICE

##### A. Obligations Imposed on Practitioners by Circular 230.

1. The Treasury Department is authorized to issue regulations governing practice before the Internal Revenue Service, 31 U.S.C. §330. The regulations are published in the Code of Federal Regulations at 31 CFR, Subtitle A, Part 10, and are summarized in IRS Publication 947, attached hereto as Appendix B. Substantial revisions to Circular 230, particularly affecting the obligations imposed on practitioners with request to tax shelters, were proposed in January, 2001, and published in the Federal Register of January 12, 2001. (REG – 111835-99), but are still subject to comment and final revision.
2. The main body of regulations applicable to practitioners is also published in Treasury Department Circular No. 230 (“Circular 230”). Circular 230 sets forth rules governing a practitioner’s authority to practice before the Internal Revenue Service, a practitioner’s duties and responsibilities relating to IRS practice, and disciplinary proceedings and procedure.
  - a. Practice before the Service refers to matters involving the presentation to the Service or any of its officers or employees relating to a client’s rights, privileges or liabilities under the laws or regulations administered by the Service. It includes the preparation and filing of documents, correspondence with and communications to the Service, and the representation of clients at conferences, hearings and meetings.
  - b. Circular 230 governs practitioners who are eligible to practice before the Service. They include:
    - (1) Attorneys – Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.
    - (2) CPAs – Any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth or the District of Columbia.
    - (3) Enrolled Agents – Any person who is enrolled by the Treasury Department to practice before the Internal Revenue Service.



- (4) Enrolled Actuaries – Any individual who is enrolled as an actuary pursuant to 29 U.S.C. §1242.
3. Among the duties imposed by Circular 230 on an attorney, CPA, enrolled agent, or enrolled actuary authorized to practice before the IRS (hereinafter referred to as “practitioner”) are the following:
  - a. No practitioner “shall neglect or refuse promptly to submit records or information in any manner before the [IRS], upon proper and lawful request by a duly authorized officer or employee of the [IRS] ... unless he believes, in good faith and on reasonable grounds, that the record or information is privileged or that the request for, or effort to obtain, such record or information is of doubtful legality.” Circular 230, §10.20.
  - b. No practitioner “shall interfere, or attempt to interfere, with any proper and lawful effort by the [IRS] or its officers or employees to obtain any such record or information, unless he believes in good faith and on reasonable grounds that such record or information is privileged or that the request for, or effort to obtain, such record or information is doubtful legality.” Id.
  - c. Each practitioner, retained to represent a client in an IRS matter, who “knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client is required by the revenue laws of the United States to execute, shall advise the client promptly of the fact of such noncompliance, error, or omission.” Id. at §10.21.
  - d. Each practitioner is required to exercise “due diligence” in preparing or assisting in the preparation of returns and other documents in IRS matters, in determining the correctness of oral and written representations made by him to the Department of the Treasury and in determining the correctness of oral and written representations made by him to clients regarding IRS matters. Id. at §10.22.
  - e. A practitioner “may not sign a return as a preparer if the practitioner determines that the return contains a position that does not have a realistic possibility of being sustained on its merits ... unless the position is not frivolous and is adequately disclosed to the Service.” Id. at §10.34(a)(1).

- f. A practitioner “may not advise a client to take a position on a return, or prepare the portion of a return on which a position is taken unless—
    - (i) The practitioner determines that the position satisfies the realistic possibility standard; or
    - (ii) The position is not frivolous and the practitioner advised the client of any opportunity to avoid the accuracy-related penalty in section 6662 of the Internal Revenue Code of 1986 by adequately disclosing the position and of the requirements for adequate disclosure.” Id.
4. Failure to adhere to the duties listed above can subject a practitioner to disciplinary action by the Director of Practice, who has authority to suspend or disbar a practitioner who is shown to be incompetent or disreputable, who refuses to comply with any regulation governing practice, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Id. at §10.50.
  5. “Disreputable conduct” includes, but is not limited to:
    - a. Conviction of a criminal offense under the federal tax law or of any offense involving dishonesty or breach of trust;
    - b. Giving false or misleading information, or participating in any way in supplying false or misleading information to the Treasury Department or to any tribunal authorized to act on tax matters, in connection with any matter pending, or likely to be pending, before them, knowing such information to be false or misleading;
    - c. Disbarment by any state , federal court or federal agency, body or board. Id. at §10.51.
    - d. Willfully failing to file one’s own tax returns. Id. at 10.51. Owrutsky v. Brady, 925 F. 2d 1457 (4<sup>th</sup> Cir. 1991); Poole v. United State, 84-2 USTC ¶9612 (D.C. D.C. 1984).

V. THE TAXPAYER’S OBLIGATIONS REGARDING RETURN ACCURACY

A. The Accuracy-Related Penalty.

1. Section 6662 imposes an accuracy-related penalty in the amount of 20% of an underpayment of tax attributable to one or more of the following:

- a. Negligence – If a taxpayer asserts a tax return position which lacks a reasonable basis or the taxpayer does not make a reasonable attempt to comply with the tax law or the taxpayer does not keep adequate books and records to substantiate items on a return, negligence may be found. Reg. §1.6662-3(b).
- b. Disregard of rules and regulations – “Disregard” includes any careless, reckless or intentional disregard of the Code, regulations, revenue rulings, or notices. Reg. §1.6662-3(b)(2). However, a taxpayer may take a position contrary to a ruling or notice if the position has a “realistic possibility of being sustained on its merits.”
- c. Substantial understatement of income tax – A substantial understatement of income tax occurs when an income tax underpayment exceeds the greater of 10% of the tax due or \$5,000 (\$10,000 for corporations) and the position resulting in the underpayment is not supported by “substantial authority.” I.R.C. §6662(d); Reg. §1.6662-4(d)(2).
  - (1) Substantial authority for a position exists if an analysis supporting the position takes into account the relevant facts and circumstances and relevant authority and concludes that the weight of authority supporting the position is substantial. Reg. §1.6662-4(d)(3)(i); Notice 90-20, 1990-10 IRB at 18.
  - (2) The substantial authority standard is “an objective standard involving an analysis of the law and an application of the law to relevant facts.”
  - (3) It is less stringent than the “more likely than not” standard but more stringent than the “reasonable basis” standard.
  - (4) A return position that is arguable but not likely to prevail in court does not satisfy the substantial authority standard but does satisfy the reasonable basis standard. Reg. §1.6662-4(d)(2).
  - (5) Reg. §1.6662-4(d)(3)(ii) provides that “there may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.”

**Practice Pointer:** Determining the existence of substantial authority is never easy and becomes even more difficult in factual disputes. E.g.,

Osteen v. Commissioner, 62 F.3d 356 (11<sup>th</sup> Cir. 1995) in which the Eleventh Circuit reversed the Tax Court's determination that the accuracy penalty applied holding that substantial authority exists if a lower court decision in favor of the taxpayers would have been affirmed as not clearly erroneous. See also, Estate of Kluener v. Comm'r, 154 F 3d 630 (6<sup>th</sup> Cir., 1998), holding that "substantial authority" includes both legal and factual authority.

d. Valuation misstatements – If there is a valuation misstatement within the meaning of Section 6662, the accuracy related penalty will apply. I.R.C. §6662(e), (f) and (g). The penalty is doubled if the valuation misstatement is "gross," i.e., off by 400%. I.R.C. §6662(h).

2. In some instances, the taxpayer may avoid some parts of the accuracy-related penalty by adequate disclosure. However, disclosure is not effective unless there exists a reasonable basis for the position. Reg. §1.6662-1.

a. I.R.C. §6662(d)(2)(B) provides that the amount of the understatement (for purposes of the substantial understatement prong of the accuracy related penalty) must be reduced by that portion of the understatement that is attributable to any item as to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in the statement attached to the return. See also, Reg. §1.6662-4(e)(1).

**NOTE:**

Disclosure does not avoid the penalty if the item or position is frivolous, attributable to a tax shelter, not properly substantiated, or as to which the taxpayer failed to keep adequate books and records. Reg. §1.6662-4(e)(2).

b. **Adequate disclosure does not avoid the negligence prong of the accuracy-related penalty for returns due after December 31, 1993.** Reg. §§1.6662-1 and 1.6662-7(b).

c. Adequate disclosure does not avoid the valuation misstatement prong of the accuracy-related penalty. Reg. §1.6662-5(a).

d. Adequate disclosure continues to avoid the "disregard of rules and regulations" prong of the accuracy-related penalty

even after the 1993 Act as long as the reasonable basis requirement is met. Reg. §1.6662-3(c)(1).

e. Disclosure is adequate for purposes of the substantial understatement prong of the accuracy-related penalty (and for the negligence penalty prior to amendment by the 1993 Act) if made in accordance with Reg. §1.6662-3(c)(2).

(1) Reg. §1.6662-4(f)(1) provides that disclosure is adequate if –

(a) it is made on a properly completed form attached to the return or to a qualified amended return as defined by Re. §1.6664-(c)(3);

(b) in the case of an item or position other than one that is contrary to a regulation, it is made on Form 8275 (Disclosure Statement);

(c) in the case of an item or position that is contrary to a regulation, it is made on Form 8275-R (regulation Disclosure Statement).

(2) Reg. §1.6662-4(f)(3) requires that disclosure with respect to a recurring item must be made for each taxable year in which the item is taken into account.

(3) Reg. §1.6662-4(f)(4) sets forth special disclosure rules involving carrybacks and carryovers.

(4) Reg. §1.6662-5(f)(5) sets forth special rules involving pass-through entities.

f. Disclosure is also adequate for purposes of the substantial understatement prong, but not the negligence prong, if it is made on a return or qualified amended return in accordance with applicable forms and instructions to the extent specified by the Commissioner in an annual revenue procedure or other means. Reg. §1.6662-4(f)(2).

3. The accuracy-related penalty may also be avoided if the taxpayer establishes that there was a reasonable cause for the underpayment and the taxpayer acted in good faith. IRC §6664(c); Reg. §1.6664-4.

- a. The determination of reasonable cause and good faith is made on the basis of all of the facts and circumstances. The most important factor is the extent of the taxpayer's effort to assess its proper tax liability. Reg. §1.6664-4(b).
- b. Reasonable reliance in good faith on advice provided by a professional may suffice if that advice is based on all pertinent facts and circumstances and is not based on unreasonable assumptions. Reg. §1.6664-4(b), (c).
- c. A special rule applies to tax shelter positions taken by corporate taxpayers. In order to satisfy the reasonable cause/good faith exception, a corporate taxpayer must establish that there was substantial authority for the position and that the taxpayer reasonably believed that there was a greater than 50% likelihood that the position would be sustained if challenged by the Service. The taxpayer's belief can be based on either the taxpayer's own belief or the opinion of a professional tax advisor. Reg. §1.6664-4(e).
- d. The substantial and gross valuation prongs of the accuracy-related penalty can also be avoided if the reasonable cause/good faith exception is satisfied. Reg. §6662-5(a). However, the mere fact that there is an appraisal does not satisfy the test. Rather, the Service will examine the methodology and assumptions of the appraisal, the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or the relevant activity. Reg. 1.6664-4(b).

**Note:** Special rule applies to charitable deduction property. Reg. §1.6664-4(g); Reg. §1.170A-13(c)(3), (5).

- e. Special rules have also been enacted with respect to the transfer-pricing valuation provisions of Section 6662(e). Reg. §§1.6662-6 and 1.6664-4T.

**B. Other Statutory Restrictions.**

- 1. Both the Internal Revenue Code and other provisions of the United States Code prohibit the willful preparation and filing of false federal tax returns and other documents submitted to federal agencies. IRC §7206(2); 18 U.S.C. §287.

## VI. THE TAX PRACTITIONER'S OBLIGATIONS REGARDING RETURN ACCURACY

### A. The RPOS (Reasonable Possibility of Success) Standard.

1. Preparer Penalties. Section 6694(a) authorizes the imposition of a \$250 penalty on any preparer who prepares for compensation an income tax return which understates a taxpayer's federal income tax liability and the understatement is attributable to a position that does not have a realistic possibility of being sustained on the merits if litigated.
  - a. The RPOS standard is satisfied if a position has a one-in-three chance of success if litigated. Reg. §1.66694-2(b) provides that, in order to meet the standard, a reasonable and well-informed person, knowledgeable in the tax law would conclude, upon analysis, that the position has approximately a one in three or greater likelihood of being sustained on its merits.
  - b. The Section 6694(a) penalty does not apply if the position was adequately disclosed on the return and is not frivolous. Reg. §1.6694-2(c).
  - c. The penalty also does not apply if the preparer establishes that the understatement was due to reasonable cause. Reg. §1.6694-2(d).
  - d. Section 6694(b) authorizes the imposition of a \$1,000 penalty if a preparer willfully attempts to understate a taxpayer's tax liability or recklessly or intentionally disregards rules and regulations.
    - (1) Disclosure does not avoid the penalty if the preparer willfully attempted to understate liability. However, disclosure will avoid the disregard prong if the taxpayer is engaged in a good faith challenge to the validity of the regulation. Reg. §1.6694-3(e).
    - (2) Although neither the statute nor the applicable regulations provide for an exception to the Section 6694(b) penalty for reasonable cause, common sense indicates that, if a practitioner had reasonable cause for the return position, the penalty should not apply.
2. Circular 230. Circular 230 has adopted the RPOS standard. It defines the standard in the same way that the preparer penalty regulations do. Circular 230, Sec. 10.34(a)(4).

- a. Circular 230 differentiates between a signing preparer and a non-signing preparer.
  - b. A preparer may not sign a return that contains a position which does not satisfy the RPOS standard unless the position is not frivolous **and** is adequately disclosed on the return. §10.34(a)(1).
  - c. A non-signing preparer may not advise a taxpayer to take a position on a tax return or prepare any part of a return unless the position satisfies the RPOS standard or the position is not frivolous and the preparer advises the taxpayer of the opportunity to avoid the penalty by adequate disclosure. §10.34(a)(1).
  - d. A practitioner advising a client to take a position on a return, or preparing or signing the return as preparer, must inform the client of the penalties “reasonably likely” to apply to the position, and of how to avoid the penalty by disclosure. §10.34(a)(2).
3. Professional Ethical Standards. ABA Formal Opinion 85-352 and AICPA Statement No. 1 adopt the RPOS standard as the standard for return accuracy with respect to their members.

**B. The Aiding and Abetting Penalty.**

1. Section 6701 imposes a penalty on any person who assists in the preparation or presentation of any document knowing (or having reason to believe) that the document will be used for tax purposes and who knows that the document, if used, will result in the understatement of the tax liability of another person.
2. The penalty is \$1,000 (\$10,000 if the document involves the tax liability of a corporation).



# **APPENDIX A**

## APPENDIX A

### DISCUSSION HYPOTHETICALS

1. You represent the sole proprietor of a business under audit by the Internal Revenue Service. The audit has been progressing smoothly and you have been able to respond in a reasonable way to requests for information from the revenue agent conducting the audit. However, in response to the most recent information document request, you have discovered that the client sold a few items as casual sales, the proceeds from which do not appear to have been deposited in the corporate bank account or reported as income for federal or state income tax purposes.
  - a. What, if any, obligation do you have to your client with regard to your discovery?
  - b. What, if any, obligation do you have to disclose the omission to the agent?
  - c. What do you respond to the client when the client asks you if she has an obligation to disclose the omission to the Service?
  - d. Can you continue to represent the client in the audit if the client decides not to disclose the omission to the Service?
  - e. Does it make a difference if the client tells you that the omission was merely an oversight and was not intentional?
  
2. You are representing a corporate client in an administrative appeal before the IRS Appeals Office following a hotly contested audit. One of the issues involved is a very large, "bet the business" issue that the sole shareholder and chief executive officer would like to put to bed as quickly as possible. After filing your protest, the appeals conference is held. The CEO insists on attending the conference. During the conference, the Appeals Officer, with whom you have always had an extremely cordial and professional relationship, summarizes the facts regarding the issue erroneously. The error is a material one and results in the Appeals Officer offering to concede the issue in favor of your client. The CEO perpetuates the problem by confirming that the Appeals Officer's summary of the facts is correct. You do not correct the factual summary at the Appeals Conference. However, you raise it with the CEO when you leave the conference and he acknowledges that he knew the Appeals Officer had made a mistake but "that was his problem." The CEO refuses to authorize you to correct the factual summary.
  - a. Can you continue to represent the taxpayer in this matter? Should you?

- b. Does it make a difference if the factual summary by the Appeals Officer was based on erroneous facts set forth in the protest which you prepared?
  - c. Suppose the mistake in favor of your client is based on erroneous or incomplete legal analysis by the Appeals Officer?
3. You have represented Mr. and Mrs. Jones for many years. Approximately one year ago, you were contacted by Mr. Jones, who asked you to represent him and his wife in connection with an IRS audit. The audit is long and arduous. The Revenue Agent's Report raises a number of issues including alleged unreported income with respect to Mr. Jones' professional practice and the fraud penalty. You contact Mr. Jones to arrange a meeting to discuss the RAR and you are surprised to learn that he is separated from his wife and that he and Mrs. Jones expect to get a divorce although no divorce proceeding has yet been filed. When you suggest that Mrs. Jones attend the meeting to plan the administrative appeal, you are told by Mr. Jones that it is not necessary for Mrs. Jones to be present since he has full authority to handle the tax matters and he has agreed to pay any deficiencies which result.
- a. Can or should you continue to represent both Mr. and Mrs. Jones? Under what circumstances?
  - b. Does it make a difference that Mrs. Jones signed the power of attorney and knew about the audit when it first started?
  - c. Does it make a difference whether Mrs. Jones has already received a copy of the RAR (it is her address which appears on the report)?
4. The Service has recently promulgated a final regulation that would preclude your client from taking a certain return position. Both you and your client believe that the regulation may be held invalid if the issue is litigated.
- a. What penalty risks do your client and your firm assume if the position is taken on the return?
  - b. To what extent will disclosure protect or mitigate against any potential penalties?
  - c. Is the analysis different if the only authority on the issue is a revenue ruling?
5. Your client desires to take a position on its tax return that you do not believe is supported by substantial authority. You have prepared the return with the

position on the return and have attached a completed Form 8275 fully disclosing the position. The client states that it will not include the Form 8275 in the filed return but otherwise will file the return as you have prepared it?

- a. What action do you take, if any?
  - b. What penalty risks exist if the client does as it has indicated?
6. You represent an estate with respect to an IRS audit of its federal estate tax return. The estate tax return showed that the decedent owned several pieces of antique furniture which were valued on the return at \$200,000. The personal representative informs you after the audit has gone on for some time that he has “discovered” additional pieces which were not included on the return. The value of the additional pieces is \$100,000. However, if the antiques are sold as a package, the total value would probably exceed \$350,000.
- a. Are you obliged to disclose the additional antiques to the agent?
  - b. If you are required or permitted to disclose, what position can you take regarding valuation?
  - c. Does the fact that you were the preparer of the return affect your answers?
  - d. Assume that you determine that the additional pieces must be disclosed. If the personal representative refuses to make the disclosure, can you continue to represent the estate?
  - e. If you decide that you should not continue to represent the estate, what if anything, are you permitted or required to tell successor counsel?
7. Your client is the sole shareholder of a corporation. In 2000, the corporation receives an IRS summons for all of its records for 1997, including all invoices for the year 1997 and all cash disbursements records. The client delivers the records to your office. All of the invoices delivered by the client are dated 1997. However, your client advises you that several of the invoices (8 or 9) are completely false and were created in 1997. Several others were created substantially after 1997 (in fact, after the summons was received) to cover up the destruction of certain other invoices prior to the beginning of the audit.
- a. What must and should be produced?
  - b. What cannot be produced?
  - c. Should any explanation or statement be given with the production?

8. You represented Generex Corporation in connection with an IRS examination of its corporate income tax returns for FYE 1994, 1995, and 1996. Responses to document requests were handled by the Corporation in-house. Following completion of the audit and an unsuccessful attempt to settle the disputed adjustments with Appeals, you file a petition on the corporation's behalf. In the course of responding to the government's discovery requests and preparing the case for trial, you discover that some of the financial information submitted to the revenue agent contained false and misleading information. Government counsel has sent you proposed stipulations that include requests to stipulate to the false documents.
  - a. Do you have an obligation to make a disclosure regarding the false documents?
  - b. Can you continue to represent the corporation?
  - c. What are your ethical responsibilities to the Tax Court with respect to the documents?
9. A hotly contested corporate dispute proceeds to trial in the Tax Court. You had carefully prepared the corporation's president to testify concerning a very sensitive issue in the case. When the president finally takes the stand, he gives misleading and inaccurate testimony regarding the critical issue.
  - a. What obligation do you have to government counsel and/or to the Tax Court regarding the testimony?
  - b. What obligation do you have to the corporation and/or its president?
10. You have represented a businessman for many years. In 1994, at the client's request, you represented him in negotiating and structuring a very tax-aggressive business deal. You also advised him regarding how the transaction should be reported on his Federal income tax return for 1994 although you did not sign the return as preparer. The Service has selected your client's 1994 return for audit and your client has asked you to represent him.
  - a. What do you consider as you make the decision regarding the representation?
  - b. Can you represent him in the event that he decides to litigate issues regarding the transaction in the Tax Court? Should you?

# **APPENDIX B**

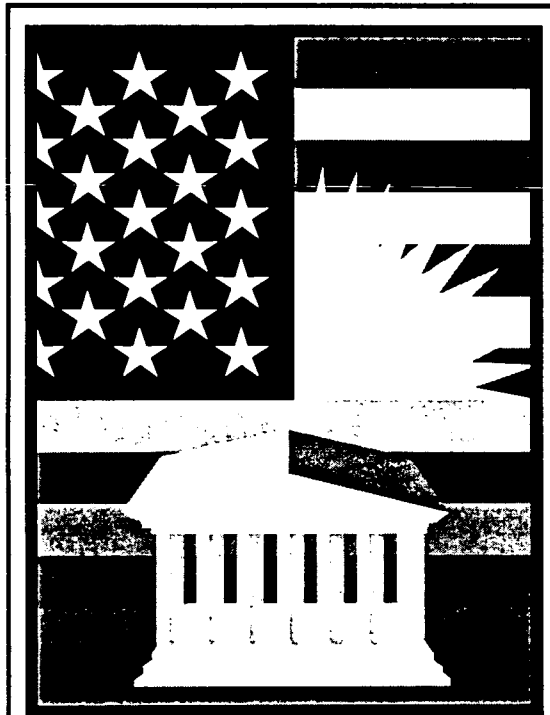


Department of the Treasury  
Internal Revenue Service

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# Practice Before the IRS and Power of Attorney



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## Important Change

**Confidentiality privilege expanded.** The confidentiality protection for communications between a taxpayer and an attorney (privileged communications) has been expanded to apply to communications involving tax advice between a taxpayer and any federally authorized tax practitioners. Federally authorized tax practitioners include attorneys, certified public accountants, enrolled agents, enrolled actuaries, and certain other individuals allowed to practice before the Internal Revenue Service (IRS). This new provision is effective for communications occurring after July 21, 1998. For more information, see *Confidentiality privilege*, later under *What Are the Rules of Practice*.

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## Important Reminders

**Form 8821.** Form 8821, *Tax Information Authorization*, can be used only to authorize disclosure of tax information to a third party. See *When Is a Power of Attorney Not Required*, later. To appoint a representative, use Form 2848, *Power of Attorney and Declaration of Representative*.

**Non-IRS powers of attorney.** A general, durable, or even a limited power of attorney will be accepted by the IRS if it satisfies the same requirements as does Form 2848. If the non-IRS power of attorney does not contain all the required information, the attorney-in-fact (the representative) appointed by the non-IRS power of attorney may be able to add the missing information by attaching a Form 2848. See *Non-IRS powers of attorney*, under *When Is a Power of Attorney Required*, later.

**Facsimile copies.** The IRS will accept a copy of a power of attorney that is submitted by facsimile transmission (FAX) if the appropriate IRS office is equipped to receive it.

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## Introduction

This publication discusses who can represent a taxpayer before the IRS and what forms or documents are used to authorize a person to represent a taxpayer. Usually, attorneys, certified public accountants (CPAs), enrolled agents, and enrolled actuaries can represent taxpayers before the IRS. Under special circumstances, others, including unenrolled return preparers, can represent taxpayers before the IRS. For details regarding taxpayer representation, see *Who Can Practice Before the IRS*, later. The publication also contains a glossary that defines certain professional titles as well as various terms.

Also covered is the use of Form 8821 to authorize an individual or certain entities to receive and inspect a taxpayer's confidential tax information.

### Useful Items

You may want to see:

#### Publication

- 1** Your Rights as a Taxpayer
- 470** Limited Practice Without Enrollment

#### Form (and Instructions)

- 2848** Power of Attorney and Declaration of Representative
- 8821** Tax Information Authorization

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## Practice Before the IRS

The *Director of Practice* is responsible for administering and enforcing the regulations governing practice before the IRS. These regulations are published in pamphlet form as Treasury Department Circular 230. The director's responsibility includes making determinations on applications for enrollment to practice and conducting disciplinary proceedings relating to those allowed to practice.

### What Is Practice Before the IRS

A person is practicing before the IRS if he or she:

- Communicates with the IRS for a taxpayer regarding the taxpayer's rights, privileges, or liabilities under laws and regulations administered by the IRS,
- Represents a taxpayer at conferences, hearings, or meetings with the IRS, or
- Prepares and files necessary documents with the IRS for a taxpayer.

Just preparing a tax return, furnishing information at the request of the IRS, or appearing as a witness for the taxpayer is not practice before the IRS. These acts can be performed by anyone.

### Who Can Practice Before the IRS

Any of the following individuals can practice before the IRS. However, any individual who is recognized to practice (a *recognized representative*) must file a written declaration with the IRS that he or she is qualified and authorized to represent you. Part II of Form 2848 is a declaration that can be used for this purpose.

**Attorneys.** Any attorney who is not currently under suspension or disbarment from practice before the IRS and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or of the District of Columbia may practice before the IRS.

**Certified public accountants (CPAs).** Any CPA who is not currently under suspension or disbarment from practice before the IRS and who is duly qualified to practice as a CPA in any state, possession, territory, commonwealth, or in the District of Columbia may practice before the IRS.

**Enrolled agents.** Any enrolled agent may practice before the IRS.

**Enrolled actuaries.** Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries may practice before the IRS. The practice of enrolled actuaries is limited to certain Internal Revenue Code sections that relate to their area of expertise, principally those sections governing employee retirement plans.



**Unenrolled return preparers.** Any individual other than an attorney, CPA, enrolled agent, or enrolled actuary who prepares a return and signs it as the return preparer is an unenrolled return preparer. Also, any individual who prepares a return and is not required to sign it as the preparer is considered to be an unenrolled preparer.

**Limited practice.** An unenrolled return preparer may represent the taxpayer only concerning the tax liability for the year or period covered by the return that he or she prepared. Also, an unenrolled return preparer is permitted to represent taxpayers only before the Examination Division of the IRS and is *not* permitted to represent taxpayers before the Appeals, Collection, or any other division of the IRS.

Unenrolled return preparers **cannot** perform the following activities for another taxpayer.

- Sign claims for refund.
- Receive refund checks.
- Sign consents to extend the statutory period for assessment or collection of tax.
- Sign closing agreements regarding a tax liability.
- Sign waivers of restriction on assessment or collection of a tax deficiency.

For more information on these limits, get Publication 470. This publication is actually a separate printing of Revenue Procedure 81-38.

**Practice denied.** The Director, after giving notice and an opportunity for a conference, can deny eligibility for limited practice before the IRS to any unenrolled preparer or other unenrolled individual (discussed next) who has engaged in disreputable conduct. This conduct includes, but is not limited to, the list of items under *Disreputable Conduct* shown later under *What Are the Rules of Practice*.

**Other unenrolled individuals.** Because of their special relationship with a taxpayer, the following unenrolled individuals can represent the specified taxpayers before the IRS, provided they present satisfactory identification and, except in the case of an individual described in (1) below, proof of authority to represent.

- 1) **An individual.** An individual can represent himself or herself before the IRS and does not have to file a written declaration of qualification and authority.
- 2) **A family member.** An individual family member can represent members of his or her immediate family. Family members include a spouse, child, parent, brother, or sister of the individual.
- 3) **An officer.** A bona fide officer of a corporation (including parents, subsidiaries, or affiliated corporations), association, organized group, or, in the course of his or her official duties, an officer of a governmental unit, agency, or authority can represent the organization he or she is an officer of before the IRS.

4) **A partner.** A general partner can represent the partnership before the IRS.

5) **An employee.** A regular full-time employee can represent his or her employer. An employer can be, but is not limited to, an individual, partnership, corporation (including parents, subsidiaries, or affiliated corporations), association, trust, receivership, guardianship, estate, organized group, governmental unit, agency, or authority.

6) **A fiduciary.** A trustee, receiver, guardian, personal representative, administrator or executor can represent the trust, receivership, guardianship, or estate. See *Fiduciary* under *When Is a Power of Attorney Not Required*, later.

## Representation Outside the United States

An unenrolled individual can represent any individual or entity before IRS personnel who are outside the United States.

## Authorization for Special Appearances

The Director of Practice can authorize an individual who is not otherwise eligible to practice before the IRS to represent another person for a particular matter. The prospective representative must request this authorization in writing from the Director of Practice. However, it is granted only when extremely compelling circumstances exist. If granted, the Director of Practice will issue a letter that details the conditions related to the appearance and the particular tax matter for which the authorization is granted.

The authorization letter from the Director of Practice should not be confused with a letter from an IRS service center advising an individual that he or she has been assigned a Centralized Authorization File (CAF) number (an identifying number that the IRS assigns representatives). The issuance of a CAF number does not indicate that a person is either recognized or authorized to practice before the IRS. It merely confirms that a centralized file for authorizations has been established for the representative under that number.

## Who Cannot Practice

In general, individuals cannot practice before the IRS either because they are not eligible to practice, or because they have lost the privilege as a result of certain actions. The following individuals generally cannot practice before the IRS.

- 1) Individuals convicted of any criminal offense under the revenue laws of the U.S.
- 2) Individuals convicted of any offense involving dishonesty or breach of trust.
- 3) Individuals under disbarment or suspension from practicing as attorneys, CPAs, public accountants, or actuaries in any state, possession, territory,

commonwealth, or in the District of Columbia, any federal court, or any body or board of any federal agency.

- 4) Individuals who are disbarred or suspended from practice before the IRS because they:
  - a) Refuse or have refused to comply with the regulations governing practice before the IRS.
  - b) Willfully and knowingly mislead or threaten a taxpayer with intent to defraud.
  - c) Have engaged in conduct or practices that are disreputable (see *Disreputable Conduct*, later).
- 5) Individuals whose applications for enrollment to practice before the IRS have been denied.
- 6) Officers or employees of the U.S. Government or of the District of Columbia.
- 7) Officers or employees of state governments with authority to act on state tax matters, if their employment may disclose facts or information on Federal tax matters.
- 8) Any member of Congress or Resident Commissioner (elect or serving) in connection with any matter for which he or she directly or indirectly receives, agrees to receive, or seeks any compensation.

**Corporations, associations, partnerships, and other persons that are not individuals.** These organizations (or persons) are not eligible to practice before the IRS.

## How Does an Individual Become Enrolled

The Director of Practice can grant enrollment to practice before the IRS to an applicant who demonstrates special competence in tax matters by passing a written examination administered by the IRS. Enrollment also can be granted to an applicant who qualifies because of past service and technical experience in the IRS. In either case certain application forms, discussed next, must be filed. An applicant must not have engaged in any conduct that would justify suspension or disbarment by the IRS.

**Form 2587.** Applicants can apply to take the special enrollment examination by filing Form 2587, *Application for Special Enrollment Examination*. Parts 4 and 5 of the form should be mailed with the examination fee to the address shown on the form. The amount of the fee is also shown on Form 2587. The form is revised annually and is available in mid-June each year. The form must be returned to the IRS by July 31. To obtain Form 2587, see *How To Get More Information*, later.

**Form 23.** Applicants can apply for enrollment by filing Form 23, *Application for Enrollment to Practice Before the Internal Revenue Service*, with the Director of Practice. The application must include a check or money order in the amount of the fee shown on Form 23. To obtain Form 23, see *How To Get More Information*, later.

**Period of enrollment.** An enrollment card will be issued to each individual whose application is approved. The individual is enrolled until the expiration date shown on the enrollment card. To continue practicing beyond the expiration date, the individual must request renewal of the enrollment.

**Form 8554.** Applicants for renewal of enrollment must file Form 8554, *Application for Renewal of Enrollment to Practice Before the Internal Revenue Service*. To qualify for renewal, applicants generally must complete 72 hours of continuing professional education during each 3-year enrollment cycle. See Form 8554 for more information. To obtain Form 8554, see *How To Get More Information*, later.

## What Are the Rules of Practice

An attorney, CPA, enrolled agent, or enrolled actuary authorized to practice before the IRS (referred to hereafter as a **practitioner**) has the duty to perform certain acts and is restricted from performing other acts. In addition, a practitioner cannot engage in **disreputable conduct** (discussed later). Any practitioner who does not comply with the rules of practice or engages in disreputable conduct is subject to disciplinary action. Also, unenrolled preparers must comply with most of these rules of practice and conduct to exercise the privilege of limited practice before the IRS. See Publication 470 for a discussion of the special rules for limited practice by unenrolled preparers.

### Duties

Practitioners must promptly submit **records or information** requested by officers or employees of the IRS. When the Director of Practice requests information concerning possible violations of the regulations by other parties, the practitioner must provide it and be prepared to testify in disbarment or suspension proceedings. A practitioner can be excepted from these rules if he or she believes in good faith and on reasonable grounds that the information requested is privileged or that the request is of doubtful legality.

**Confidentiality privilege.** The confidentiality protection for certain communications between a taxpayer and an attorney (privileged communications) has been expanded to apply to similar communications between a taxpayer and any federally authorized tax practitioner. This new provision is effective for communications occurring after July 21, 1998.



*This confidentiality privilege cannot be used in any administrative proceeding with an agency other than the IRS.*

**Communications that are protected.** The protection of this privilege applies only to tax advice given to the taxpayer by any individual who is a federally authorized tax practitioner. Tax advice is advice in regard to a matter that is within the scope of the practitioner's authority to practice. The confidentiality protection applies to communications that would be privileged if between the taxpayer and an attorney and that relate to noncriminal:

- Tax matters before the IRS, or
- Tax proceedings brought in federal court by or against the United States.

**Communications regarding corporate tax shelters.** This protection of tax advice communications does not apply to certain written communications between a federally authorized tax practitioner and a director, shareholder, officer, employee, agent, or representative of a corporation. It does not apply if the communication involves the promotion of the direct or indirect participation of the corporation in any tax shelter.

**Duty to advise.** A practitioner who knows that his or her client has not complied with the revenue laws or has made an error in or omission from any return, document, affidavit, or other required paper has the responsibility to advise the client promptly of the non-compliance, error, or omission.

**Due diligence.** A practitioner must exercise due diligence when performing the following duties.

- Preparing or assisting in the preparation, approving, and filing of returns, documents, affidavits, and other papers relating to IRS matters.
- Determining the correctness of oral or written representations made by him or her to the Department of the Treasury.
- Determining the correctness of oral or written representations made by him or her to clients with reference to any matter administered by the IRS.

## Restrictions

Practitioners are restricted from engaging in certain practices. The following paragraphs discuss some of those restricted practices.

**Delays.** A practitioner must not unreasonably delay the prompt disposition of any matter before the IRS.

**Assistance from disbarred or suspended persons and former IRS employees.** A practitioner must not knowingly directly or indirectly do the following.

- Employ or accept assistance from any person who is under disbarment or suspension from practice before the IRS.

- Accept employment as associate, correspondent, or subagent from, or share fees with, any person under disbarment or suspension from practice before the IRS.
- Accept assistance from any former government employee where provisions of these regulations or any federal law would be violated.

**Performance as a notary.** If the practitioner is a notary public and is employed as counsel, attorney, or agent in a matter before the IRS, or has a material interest in the matter, he or she must not engage in any notary activities relative to that matter.

**Practice by partners of current and former government employees.** A partner of an officer or employee of the executive branch of the U.S. Government, or of an independent agency of the U.S. or of the District of Columbia, cannot represent anyone in a matter before the IRS in which the officer or employee has (or had) a personal or substantial interest as a government employee. Although not discussed here, there are similar and additional restrictions on former government employees.

**Negotiations of taxpayer refund checks.** Practitioners who are income tax return preparers must not endorse or otherwise negotiate (cash) any refund check issued to the taxpayer.

## Disreputable Conduct

Disreputable conduct by a practitioner includes such things as:

- Committing any criminal offense under the revenue laws, or committing any offense involving dishonesty or breach of trust,
- Knowingly giving, or participating in the giving of, false or misleading information in connection with federal tax matters,
- Soliciting employment by prohibited means as discussed in section 10.30 of T.D. Circular 230,
- Willful failure to file a tax return, evading or attempting to evade any federal tax or payment, or participating in such actions,
- Misappropriating, or failing to properly and promptly remit, funds received from clients for payment of taxes,
- Directly or indirectly attempting to influence the official action of IRS employees by the use of threats, false accusations, duress, or coercion, or by offering gifts, favors, or any special inducements,
- Being disbarred or suspended by the District of Columbia or any state, possession, territory, commonwealth, or any federal court, or any body or board of any federal agency,
- Knowingly aiding and abetting another person to practice before the IRS during a period of suspension, disbarment, or ineligibility (maintaining a partnership so that a suspended or disbarred person

can continue to practice before the IRS is presumed to be a violation of this provision),

- Contemptuous conduct in connection with practice before the IRS, including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter, and
- Giving a false opinion knowingly, recklessly, or through gross incompetence; or following a pattern of providing incompetent opinions in questions arising under the federal tax laws.

## Reprimands, Disbarments, and Suspensions

The Director of Practice may reprimand or institute proceedings to suspend or disbar any attorney, CPA, or enrolled agent who the Director of Practice has reason to believe violated the rules of practice. Except in certain unusual circumstances, the Director will not institute a proceeding for suspension or disbarment against a practitioner until the facts (or conduct) which may warrant such action have been given in writing to that practitioner. Also, before proceedings are instituted, the Director will generally give the practitioner the opportunity to demonstrate or achieve compliance with the rules.

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## Authorizing a Representative

You may either represent yourself, or you may grant an individual **power of attorney** (legal authority) to represent you before the IRS. Your representative must be a person allowed to practice before the IRS. See *Who Can Practice Before the IRS*, earlier.

## What Is a Power of Attorney

A power of attorney is your written authorization for an individual to act for you in tax matters. If the authorization is not limited, the individual can generally perform all acts that you can perform. The authority granted to an unenrolled preparer cannot exceed that allowed under the special rules of limited practice described in Publication 470.

**Acts performed.** Any representative, other than an unenrolled preparer, can usually perform the following acts.

- 1) Represent you before any office of the IRS.
- 2) Record the interview.
- 3) Sign an offer or a waiver of restriction on assessment or collection of a tax deficiency, or a waiver of notice of disallowance of claim for credit or refund.

- 4) Sign a consent to extend the statutory time period for assessment or collection of a tax.
- 5) Sign a closing agreement.
- 6) Receive, **but not endorse or cash**, a refund check drawn on the U.S. Treasury. You must specifically initial Form 2848 (see *Form Required*, later) showing the name of the individual designated to receive the refund check.

**Signing your return.** The representative named under a power of attorney is **not permitted** to sign your personal income tax return **unless**:

- 1) The signature is permitted under the Internal Revenue Code and the related regulations (see section 1.6012-1(a)(5) of the Income Tax Regulations), and
- 2) You authorize this in your power of attorney.

For example, the regulation permits a representative to sign your return if you are unable to make the return for any of the following reasons.

- Disease or injury.
- Continuous absence from the United States (including Puerto Rico) for a period of at least 60 days prior to the date required by law for filing the return.
- Other good cause if specific permission is requested of and granted by the district director.

For more information, see the Form 2848 instructions.

**Endorsing or cashing your refund check.** If you want your representative to receive a refund check on your behalf, you must specifically authorize this in your power of attorney as discussed earlier in item 6 under *Acts performed*. However, if your representative is an income tax return preparer, he or she cannot be authorized to endorse or otherwise cash your check related to income taxes. If you want someone else to endorse or cash that check, follow the rules in Treasury Department Circular No. 21, as amended, 31 CFR part 240.

**Limitation on substitution or delegation.** The appointed representative can substitute a representative or delegate authority to a new representative **only if** the act is specifically authorized under the power of attorney.

**Incapacity or incompetency.** A power of attorney is generally **terminated** if you become incapacitated or incompetent.

The power of attorney can continue, however, in the case of your incapacity or incompetency if you authorize this on the Form 2848, or if your non-IRS durable power of attorney meets all the requirements for acceptance by the IRS. See *Non-IRS powers of attorney*, later.

## When Is a Power of Attorney Required

Submit a power of attorney when you want to authorize an individual to represent you before the IRS, whether or not the representative performs any of the other acts cited above under *What is a Power of Attorney*.

A power of attorney is most often required when you want to authorize another individual to perform at least one of the following acts on your behalf:

- 1) Represent you at a conference with the IRS.
- 2) Prepare and file a written response to the IRS.

## Form Required

Use Form 2848 to appoint a representative to act on your behalf before the IRS. You can file this form *only if* you want to name a person(s) to represent you and that person is a person recognized to practice before the IRS. Persons recognized to practice before the IRS are listed under *Part II, Declaration of Representative*, of Form 2848. Your representative must complete that part of the form.

**Unenrolled return preparers.** Use Form 2848 to appoint an unenrolled return preparer as your representative.

The authority of the preparer is limited as described in Revenue Procedure 81-38 (Publication 470). The preparer can represent you only before revenue agents and examining officers of the Examination Division of the IRS. Also, the preparer can represent you concerning your tax liability only for the period covered by a return prepared by the preparer. For more information about the limitations on enrolled return preparers, see *Limited practice*, under *Unenrolled return preparers*, earlier.

**Non-IRS powers of attorney.** The IRS will accept a non-IRS power of attorney, but a completed "transmittal" Form 2848 must be attached in order for the power of attorney to be entered into the Centralized Authorization File (CAF). For more information, see *Processing a non-IRS power of attorney*, later. If you want to use a power of attorney document other than Form 2848, it must contain the following information.

- Your name and mailing address.
- Your social security number and/or employer identification number.
- Your employee plan number, if applicable.
- The name and mailing address of your representative.
- The types of tax involved.
- The federal tax form number.
- The specific year(s) or period(s) involved.
- For estate tax matters, the decedent's date of death.
- A clear expression of your intention concerning the scope of authority granted to your representative.
- Your signature and date.

You also must attach to the non-IRS power of attorney a signed and dated statement made by your representative. This statement, which is referred to as the "Declaration of Representative," is contained in Part II of Form 2848. The statement should read:

- 1) I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- 2) I am aware of the regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10) concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- 3) I am authorized to represent the taxpayer(s) identified in the power of attorney; and
- 4) I am authorized to practice before the Internal Revenue Service as an individual described in 26 CFR 601.502(a). See *Who Can Practice Before the IRS*, earlier.

**Required information missing.** If your non-IRS power of attorney does not contain all the required information discussed above, you may want to sign and submit a Form 2848 or a new non-IRS power of attorney that contains the necessary information. Or, if you cannot sign an acceptable replacement document, your attorney-in-fact may be able to perfect (make acceptable to the IRS) your non-IRS power of attorney by using the following procedure.

**Procedure for perfecting a non-IRS power of attorney.** Under this procedure, the attorney-in-fact named in your non-IRS power of attorney can sign a Form 2848 on your behalf under the following conditions:

- 1) The original non-IRS power of attorney grants authority to handle federal tax matters (general authority to perform any acts, for example), and
- 2) The attorney-in-fact attaches a statement (signed under penalty of perjury) to the Form 2848 stating that the original non-IRS power of attorney is valid under the laws of the governing jurisdiction.

The Form 2848 prepared by your attorney-in-fact should be signed in the following manner: "Jane Taxpayer (your name), by John Attorney (your attorney-in-fact's name) under authority of the attached power of attorney."

The individual named as representative in the Form 2848 can be the attorney-in-fact named in the original power of attorney or any other individual recognized to practice before the IRS.

**Example.** John Elm, a taxpayer, signs a durable power of attorney that names his neighbor, Ed Larch, as his attorney-in-fact. The power of attorney grants Ed the authority to perform any and all acts on John's behalf. However, it does not list specific tax-related information such as types of tax or tax form numbers.

Shortly after John signs the power of attorney, he is declared incompetent. Later, a federal tax matter arises concerning a prior year return filed by John. Ed attempts to represent John before the IRS, but is rejected

because the durable power of attorney does not contain required information.

If Ed attaches a statement (signed under the penalty of perjury) that the durable power of attorney is valid under the laws of the governing jurisdiction, he can sign a completed Form 2848 and submit it on John's behalf. If Ed can practice before the IRS (see *Who Can Practice Before the IRS*, earlier), he can name himself as representative on Form 2848; otherwise, he must name another individual who can practice before the IRS.

**Processing a non-IRS power of attorney.** The IRS has a centralized computer database called the CAF that contains information on the authority of taxpayer representatives. Generally, when you submit a power of attorney document to the IRS, it is processed for inclusion in the CAF. Entry of your power of attorney into the CAF enables IRS personnel, who do not have a copy of your power of attorney, to verify the authority of your representative by accessing the central computer file. It also enables the IRS to automatically send copies of notices and other IRS communications to your representative.

You can have your non-IRS power of attorney entered into the CAF by attaching it to a completed "transmittal" Form 2848 and submitting it to the IRS. You do not have to sign the transmittal Form 2848, but, in the space provided for your signature, you should enter the words "For Transmittal Purposes Only." Also, your attorney-in-fact must sign the Declaration of Representative (see Part II of Form 2848).

## Preparation of Form – Helpful Hints

The preparation of Form 2848 is illustrated by an example, later, under *How Do I Fill Out Form 2848*. However, the following will also assist you in preparing the form.

**Line-by-line hints.** The following hints are summaries of some of the line-by-line instructions for Form 2848.

**Line 1–Taxpayer Information.** If a joint return is involved and you and your spouse have different addresses, you must enter each address. If you and your spouse choose different representatives, each of you must file a Form 2848.

**Line 2–Representative.** Only individuals can represent you. If your representative has not been assigned a CAF number, enter "None" on that line and the IRS will issue one to him or her. If the representative's address or phone number has changed since the CAF number was issued, you should check the appropriate box.

If you want to name more than three representatives, you must attach a list of the additional representatives to the form. Normally, the IRS will send notices and other written communications to you and a copy to the first representative listed. However, you can choose other options (see line 7 of Form 2848).

**Line 3–Tax Matters.** You can list any tax years or periods that ended before the date the form is signed. You also may list future periods that end no later than 3 years from that date. However, avoid general references such as "all years" or "all periods."

If the "type of tax," "tax form number," or "year(s) or period(s)" column does not apply to your particular tax matter, you should enter "not applicable" in that column and, instead, describe the matter.

**Line 4–Specific Uses Not Recorded on Centralized Authorization File (CAF).** Certain matters cannot be recorded onto the CAF system. Examples of such matters include, but are not limited to, the following.

- 1) Civil penalty issues.
- 2) Trust fund recovery penalties.
- 3) Requests for a private letter ruling.
- 4) Applications for an employer identification number.
- 5) Claims filed on Form 843, *Claim for Refund and Request for Abatement*.
- 6) Corporate dissolutions.
- 7) Requests for change of accounting method.
- 8) Requests for change of accounting period.

If the tax matter described on line 3 of Form 2848 concerns one of these matters specifically, check the box on this line (line 4). If this line is checked, your representative should bring a copy of the power of attorney to each IRS office where the specific matter will be discussed.

## Where To File a Power of Attorney

File the power of attorney with each IRS office with which you deal. If the power of attorney is filed for a matter currently pending before an office of the IRS, such as an examination, file the power of attorney with that office. Otherwise, file it with the service center where the related return was, or will be, filed. Refer to the instructions for the related tax return for the service center address.

**Facsimile copies.** The IRS will accept a copy of a power of attorney that is submitted by facsimile transmission (FAX). If you choose to file a power of attorney by FAX, be sure the appropriate IRS office is equipped to accept this type of transmission.

Powers of attorney may be filed directly with the CAF units at the service center where you filed, or will file your tax return(s) shown on the power of attorney form. The FAX telephone numbers of the CAF units are as follows:

Service Center	Voice	FAX
Austin	512-460-0006	512-460-0176
Andover	978-474-5276	978-474-9405
Brookhaven	516-654-6680	516-654-6583
Atlanta	678-530-6394	678-530-6393
Cincinnati	606-292-5768	606-292-5185
Fresno*	559-454-7180	559-454-6334
Odgen	801-620-6473	801-620-6671
Memphis	901-546-4176	901-546-4115
Philadelphia	215-516-4779	215-516-5994
Kansas City**	816-926-5960	816-823-2076

\* The 559 area code is effective April 1999.

\*\*This CAF unit is available weekdays after 4:00 P.M. central standard time.

**Updating power of attorney.** To update Form 2848, tell the IRS when any information on the form changes. Do this by writing a letter to the IRS office(s) where you filed the power of attorney, or file a new power of attorney.

**Revoking a power of attorney.** If you want to revoke an existing power of attorney and do not want to name a new representative, there are two ways to do it. You can revoke a power of attorney by sending a *revocation copy* of Form 2848 to each office of the IRS where you originally filed the form. You should also send a copy to the service center where you filed the return for the matter covered by the power of attorney. If you do not have a copy, you can revoke by filing a *revocation statement* with the same places you would send a revocation copy.

**Revocation copy.** A revocation copy is a copy of the original Form 2848 that you revise as follows:

- 1) Write the word "REVOKE" at the top center of page 1, and
- 2) Sign and date it at the bottom of page 2 following the *Declaration of Representative* section.

**Revocation statement.** The statement of revocation must indicate that the authority of the power of attorney is revoked and it must list the name and address of each recognized representative whose authority is revoked. You must sign the statement.

**Revoking a non-IRS power of attorney.** If you want to revoke a power of attorney for which a Form 2848 was not filed, write a letter requesting the revocation and attach a copy of the power of attorney that you want to be revoked. Sign and date the letter, and send it to each office of the IRS where you originally filed the non-IRS power of attorney.

**Automatic revocation of power of attorney (or tax information authorization).** Unless you specify otherwise on the form (line 8, Part 1), a newly filed power of attorney concerning the same matter will revoke a previously filed power of attorney, but not a previously filed tax information authorization.

Similarly, a newly filed tax information authorization will revoke a previously filed tax information authorization concerning the same tax matter, but will not revoke a power of attorney concerning that matter.

## When Is a Power of Attorney Not Required

The following situations do not require a power of attorney.

**Providing information to the IRS.** A power of attorney is not required when a person is merely furnishing information at the request of the IRS.

**Disclosure of tax return information.** You are not required to file a power of attorney to authorize the IRS to disclose information concerning your tax account(s) to an individual (whether or not the individual is authorized to practice before the IRS) or other party (such as a corporation, a partnership, or an association). For this purpose, you can use Form 8821, *Tax Information Authorization*. **Form 8821 is strictly a disclosure authorization form and cannot be used to name an individual to represent you before the IRS.** If you want to name a representative, you should use Form 2848.

**Form 8821 example.** The following example illustrates Form 8821. The filled-in form is illustrated on the following page.

**Example.** John Oak wants his associate, Jane Birch, to be informed about his personal tax accounts. To have this information disclosed to Jane, John fills out Form 8821. Since this is only a disclosure form, it will not give Jane any power to represent John before the IRS.

When you file a Form 8821 with the IRS, it also is processed for entry into the CAF. Entry into the file enables the IRS to send copies of notices and other IRS communications to the person (individual or other entity) designated on the form.

**A tax matters partner or person (TMP).** A TMP is authorized by law (see sections 6231(a)(7) of the Internal Revenue Code) to perform various acts on behalf of a partnership or subchapter S corporation. This may include the power to delegate authority to represent the TMP and to sign documents in that capacity. But certain acts performed by the TMP cannot be delegated. Sections 6221 through 6234 and sections 6240 through 6255 of the Internal Revenue Code and the related regulations discuss "partnership level" tax proceedings and the responsibilities of the TMP.

**Fiduciary.** A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of the taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as a representative and should not file a power of attorney. However, a fiduciary should file Form 56, *Notice Concerning Fiduciary Relationship*, to notify the IRS of the fiduciary relationship.

## Tax Information Authorization

OMB No. 1545-1165  
For IRS Use Only

Received by: \_\_\_\_\_  
Name \_\_\_\_\_  
Telephone (\_\_\_\_) \_\_\_\_\_  
Function \_\_\_\_\_  
Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**▶ IF THIS AUTHORIZATION IS NOT SIGNED AND DATED, IT WILL BE RETURNED.**

**1 Taxpayer information.**

Taxpayer name(s) and address (please type or print)  John Oak 8821 Dogwood Lane Anyplace, North Carolina 28000	Social security number(s) 000 : 00 : 0003	Employer identification number  :
	Daytime telephone number ( 910 ) 555-4321	Plan number (if applicable)

**2 Appointee.**

Name and address (please type or print)  Jane Birch 12 Peartree Lane Anyplace, North Carolina 28000	CAF No. _____ Telephone No. ( 910 ) 555-3210 Fax No. (____) _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
---	---

**3 Tax matters.** The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line.

(a) Type of Tax (Income, Employment, Excise, etc.)	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s)	(d) Specific Tax Matters (see instr.)
Income	1040	1996, 1997, 1998	

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the tax information authorization is for a specific use not recorded on CAF, check this box. (See the instructions on page 2.) . . . . .   
If you checked this box, skip lines 5 and 6.

**5 Disclosure of tax information (you must check box 5a or b unless box 4 is checked):**

a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box . . . . .

b If you do not want any copies of notices or communications sent to your appointee, check this box . . . . .

**6 Retention/revocation of tax information authorizations.** This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed above on line 3 unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you MUST attach a copy of any authorizations you want to remain in effect AND check this box . . . . .   
To revoke this tax information authorization, see the instructions on page 2.

**7 Signature of taxpayer(s).** If a tax matter applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods covered.

John Oak	6/30/99	
Signature	Date	Signature
John Oak		
Print Name	Title (if applicable)	Print Name

**General Instructions**

*Section references are to the Internal Revenue Code unless otherwise noted.*

**Change To Note.** New column (d) is added to line 3 for specific tax matters. Use column (d) to specify tax information that is to be provided by the IRS. See the line 3 instructions on page 2.

**Purpose of form.** Form 8821 authorizes any individual, corporation, firm, organization, or partnership you designate to inspect and/or receive confidential information in any office of the IRS for the type of tax and the years or periods you list on this form.

Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent

you, use **Form 2848**, Power of Attorney and Declaration of Representative, instead of Form 8821. You may file your own tax information authorization without using Form 8821, but it must include all the information that is requested on the form.

**Taxpayer identification numbers (TINs).** TINs are used to identify taxpayer information with corresponding tax returns. It is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) so that the IRS can respond to your request.

**Fiduciaries.** A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as an appointee and should not file Form 8821. File **Form 56**, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a



## How Do I Fill Out Form 2848

The following example illustrates how to complete Form 2848. The filled-in form follows the example.

**Example.** Stan and Mary Doe have been notified that their joint tax return (Form 1040) for 1998 is being examined. They have decided to appoint Jim Smith, an enrolled agent, to represent them in this matter and any future matters concerning the return. Jim, who has prepared returns at the same location for years, already has a Centralized Authorization File (CAF) number assigned to him. Stan and Mary do not want Jim to sign any agreements to pay additional taxes or to receive any refund checks. They want copies of all notices and written communications to be sent to Jim. This is the first time Stan and Mary have given power of attorney to anyone. They should complete one Form 2848 as follows:

**Line 1—Taxpayer Information.** They enter their names, street address, and social security numbers in the spaces provided.

**Line 2—Representatives.** They enter the name and current address of their chosen representative, Jim Smith. They also enter Mr. Smith's CAF number, his telephone number, and his FAX number. Since Mr. Smith's address and telephone number have not changed since the IRS issued his CAF number, Stan and Mary do not check either box in the second column.

**Line 3—Tax Matters.** They enter "income" for the type of tax, "1040" for the form number, and "1998" for the tax year.

**Line 4—Specific Uses Not Recorded on CAF.** Stan and Mary make no entry on this line because they do not want to restrict the use for their power of attorney to a specific use that is not recorded on the CAF. See *Preparation of Form – Helpful Hints*, earlier.

**Line 5—Acts Authorized.** Because Stan and Mary want to sign any agreement form that reflects changes to their 1998 income tax liability, they restrict the acts Mr. Smith is authorized to perform by writing "taxpayers must sign any agreement form" on line 5. If they had chosen, they could have listed other restrictions on line 5.

**Line 6—Receipt of Refund Checks.** They make no entry on line 6 because they want any refund checks sent directly to them.

**Line 7—Notices and Communications.** Stan and Mary make no entry on line 7 because they want the original notices and communications sent to them, and the copies sent to Mr. Smith.

**Line 8—Retention/Revocation of Prior Powers of Attorney.** Since Stan and Mary are filing their first power of attorney, they make no entry on this line. However, if they had filed prior powers of attorney, the filing of this current power would automatically revoke

any earlier ones for the same tax matter(s). Therefore, to retain an earlier power of attorney, they would need to check the box on line 8 and attach a copy of the prior power of attorney that they want to maintain.

If Stan and Mary decide later that they can handle the examination on their own, they can revoke the power of attorney. (See *Revoking a power of attorney*, earlier for the special rules.)

**Line 9—Signature of Taxpayer(s).** Because this is a joint authorization (see line 1), both Stan and Mary must sign and date the form. If they do not, the IRS cannot accept it.

**Part II—Declaration of Representative.** Jim Smith must complete this part of Form 2848. If he does not sign this part, IRS cannot accept the form.

## What Happens to the Power of Attorney When Filed

A power of attorney will be recognized after it is received, reviewed, and determined by the IRS to contain the required information. However, until a power of attorney is entered into the CAF system, IRS personnel other than the individual to whom the form is submitted may be unaware of the authority of the person you have named to represent you. Therefore, during this interim, other IRS personnel who do not have access to a copy of your power of attorney may request that you or your representative submit an additional copy.

### Processing and Handling

Processing and handling of the power of attorney submitted differs depending on whether it is a complete or incomplete document.

**Incomplete documents.** If the power of attorney document is incomplete, the IRS will attempt to secure the missing information either by writing or telephoning you or your representative. For example, if your signature or signature date is missing, the IRS will contact you. Also, if information concerning your representative is missing and information sufficient to make a contact (such as an address and/or a telephone number) is on the document, the IRS will attempt to contact your representative.

In either case, the power of attorney is not considered valid until all required information is entered on the document. The individual(s) named as representative(s) will not be recognized to practice before the IRS until the document is complete and accepted by the IRS.

**Complete documents.** When the IRS receives a complete and valid power of attorney, the IRS will then take action to recognize the representative. In most instances, this involves processing the document into the CAF system. Recording the data on the CAF enables the IRS to automatically direct copies of mailings to authorized representatives and to instantly recognize the scope of authority granted.

## Power of Attorney and Declaration of Representative

OMB No. 1545-0150  
**For IRS Use Only**  
 Received by: \_\_\_\_\_  
 Name \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Function \_\_\_\_\_  
 Date \_\_\_\_/\_\_\_\_/\_\_\_\_

▶ See the separate instructions.

**Part I Power of Attorney** (Please type or print.)

**1 Taxpayer Information** (Taxpayer(s) must sign and date this form on page 2, line 9.)

Taxpayer name(s) and address  Stan and Mary Doe 1040 Any Street Anytown, Virginia 22000	<b>Social security number(s)</b> 000 : 00 : 0001  000 : 00 : 0002 <b>Daytime telephone number</b>	<b>Employer identification number</b>  Plan number (if applicable)
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hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

**2 Representative(s)** (Representative(s) must sign and date this form on page 2, Part II.)

Name and address Jim Smith 1065 Any Street Anytown, Virginia 22000	CAF No. 6800-06530R Telephone No. 703 555-4321 Fax No. 703 555-5432 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

**3 Tax Matters**

Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Income	1040	1998

**4 Specific Use Not Recorded on Centralized Authorization File (CAF).**—If the power of attorney is for a specific use not recorded on CAF, check this box. (See instruction for **Line 4—Specific uses not recorded on CAF.**) . . . . .

**5 Acts Authorized.**—The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative unless specifically added below, or the power to sign certain returns (see instruction for **Line 5—Acts authorized**).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_  
 \_\_\_\_\_ Taxpayers must sign any agreement form \_\_\_\_\_  
 \_\_\_\_\_

**Note:** In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.

**Note:** The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the instructions for more information.

**6 Receipt of Refund Checks.**—If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here \_\_\_\_\_ and list the name of that representative below.

Name of representative to receive refund check(s) ▶ \_\_\_\_\_

- 7 Notices and Communications.**—Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.
- a If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box
  - b If you also want the second representative listed to receive a copy of such notices and communications, check this box
  - c If you do not want any notices or communications sent to your representative(s), check this box
- 8 Retention/Revocation of Prior Power(s) of Attorney.**—The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here.   
**YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 Signature of Taxpayer(s).**—If a tax matter concerns a joint return, **both** husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- ▶ **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

Stan Doe	6/21/99	
Signature	Date	Title (if applicable)
Stan Doe		
Print Name		
Mary Doe	6/21/99	
Signature	Date	Title (if applicable)
Mary Doe		
Print Name		

**Part II Declaration of Representative**

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
  - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
  - d Officer—a bona fide officer of the taxpayer's organization.
  - e Full-Time Employee—a full-time employee of the taxpayer.
  - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
  - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
  - h Unenrolled Return Preparer—an unenrolled return preparer under section 10.7(c)(viii) of Treasury Department Circular No. 230.

▶ **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.**

Designation—Insert above letter (a–h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
c	90-99999	Jim Smith	6/21/99

**Documents not processed on CAF.** Specific-use powers of attorney, however, are not processed into the CAF (see *Preparation of Form - Helpful Hints*, earlier). For example, a power of attorney that is a one-time or specific-issue grant of authority is not processed on the CAF. These documents remain with the related case files. In this situation, check the box on line 4 of Form 2848. If it is checked, the representative should bring a copy of the power of attorney to each meeting with the IRS.

## Dealing With the Representative

After a valid power of attorney is filed, the IRS will recognize your representative. However, if it appears the representative is responsible for unreasonably delaying or hindering the prompt disposition of an IRS matter by failing to furnish, after repeated requests, nonprivileged information, the IRS can contact you directly. For example, in most instances in which a power of attorney is recognized, the IRS will contact the representative to set up appointments and to provide lists of required items. But, if the representative is unavailable, does not respond to repeated requests, and does not provide required items (other than items considered "privileged"), the IRS can bypass your representative and contact you directly.

If a representative engages in conduct described above, the matter can be referred to the Director of Practice for consideration of possible disciplinary action.

**Notices and other correspondence.** If you have a recognized representative, you and the representative will receive required notices and other correspondence from the IRS (either the original or a copy), unless you checked box (c) on line 7 of Form 2848 or placed a similar restriction on your authorization of a representative (power of attorney). If the power of attorney is processed on the CAF, the IRS will send your representative(s) a duplicate of all computer-generated correspondence that is sent to you. (This includes notices and letters produced either at our service centers or at the Martinsburg Computing Center.) The IRS employee handling the case is responsible for ensuring that the original and any requested copies of each manually-generated correspondence are sent to you and your representative(s) in accordance with your authorization.

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## Glossary

**Attorney-in-fact** means an agent authorized by a person under a power of attorney to perform certain act(s) or kind(s) of acts for that person.

**CAF number** is the Computer Authorization File number issued by IRS to each representative whose power of attorney, and each designee whose tax information authorization, has been recorded onto the CAF system.

**Centralized Authorization File (CAF) System** is a computer file containing information regarding the authority of individuals appointed under powers of attorney or persons designated under the tax information authorization system. This system gives IRS personnel quicker access to authorization information.

**Commissioner** means the Commissioner of the Internal Revenue Service.

**Durable power of attorney** means a power of attorney that is not subject to a time limit and that will continue in force after the incapacitation or incompetency of the grantor (the taxpayer).

**Enrolled agent** means any individual who is enrolled under the provisions of Treasury Department Circular 230 to practice before the IRS.

**General power of attorney** means a power of attorney that authorizes the attorney-in-fact to perform any and all acts the taxpayer can perform.

**Government officer and employee** means any officer or employee of a state or the United States in the executive, legislative, or judicial branch of the government, or in any agency of the United States, including the District of Columbia.

**Limited power of attorney** means a power of attorney that limits the attorney-in-fact to certain specified act(s).

**Practitioner** generally means only an attorney, CPA, enrolled agent, or enrolled actuary authorized to practice before the IRS. However, other individuals may qualify to temporarily practice or engage in limited practice before the IRS, but they are not referred to as practitioners.

**Recognized representative** means an individual who is recognized to practice before the IRS.

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## How To Get More Information

You can order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

**Free tax services.** To find out what services are available, get Publication 910, *Guide to Free Tax Services*. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.



**Personal computer.** With your personal computer and modem, you can access the IRS on the Internet at [www.irs.ustreas.gov](http://www.irs.ustreas.gov). While visiting our Web Site, you can select:

- *Frequently Asked Tax Questions* to find answers to questions you may have.
- *Fill-in Forms* to complete tax forms on-line.
- *Forms and Publications* to download forms and publications or search publications by topic or keyword.
- *Comments & Help* to e-mail us with comments about the site or with tax questions.
- *Digital Dispatch* and *IRS Local News Net* to receive our electronic newsletters on hot tax issues and news.

You can also reach us with your computer using any of the following.

- Telnet at [iris.irs.ustreas.gov](http://iris.irs.ustreas.gov)
- File Transfer Protocol at [ftp.irs.ustreas.gov](http://ftp.irs.ustreas.gov)
- Direct dial (by modem) 703-321-8020



**TaxFax Service.** Using the phone attached to your fax machine, you can receive forms and instructions by calling 703-368-9694. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.



**Phone.** Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-829-3676 to order current and prior year forms, instructions, and publications.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.

**Evaluating the quality of our telephone services.** To ensure that IRS representatives give accurate, courteous, and professional answers, we evaluate the quality of our telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.

- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying our customers for their opinions on our service.



**Walk-in.** You can pick up certain forms, instructions, and publications at many post offices, libraries, and IRS offices. Some libraries and IRS offices have an extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs.



**Mail.** You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response 7 to 15 workdays after your request is received. Find the address that applies to your part of the country.

- **Western part of U.S.:**  
Western Area Distribution Center  
Rancho Cordova, CA 95743-0001
- **Central part of U.S.:**  
Central Area Distribution Center  
P.O. Box 8903  
Bloomington, IL 61702-8903
- **Eastern part of U.S. and foreign addresses:**  
Eastern Area Distribution Center  
P.O. Box 85074  
Richmond, VA 23261-5074



**CD-ROM.** You can order IRS Publication 1796, *Federal Tax Products on CD-ROM*, and obtain:

- Current tax forms, instructions, and publications.
- Prior-year tax forms, instructions, and publications.
- Popular tax forms which may be filled-in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) for \$25.00 by calling 1-877-233-6767 or for \$18.00 on the Internet at [www.irs.ustreas.gov/cdorders](http://www.irs.ustreas.gov/cdorders). The first release is available in mid-December and the final release is available in late January.

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