

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200510027**

Release Date: 3/11/2005

CC:PA:APJP:B02:MSCooper
SCAF-158164-04

UILC: 7453.00-00

date: January 18, 2005

to: Associate Area Counsel (Long Island)
Small Business/Self-Employed

from: Special Counsel to the Associate Chief Counsel
(Procedure & Administration)

subject: Ineligible Representative on Form 2848

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

ISSUE

Whether the Service may accept a taxpayer's declaration of representation to an individual eligible to practice before the IRS if the form, which is otherwise complete, also purports to authorize representation by an individual ineligible to practice before the IRS.

CONCLUSION

Yes. Although the Service will not accept a declaration of representative that purports to authorize representation by an individual ineligible to practice before the IRS, the taxpayer's declaration of this individual does not affect the Service's recognition of the eligible individual's right to represent the taxpayer.

FACTS

Taxpayer submits a completed Form 2848, Power of Attorney and Declaration of Representative, purporting to authorize representation by two individuals. The first individual is an attorney, certified public accountant or an enrolled agent who is eligible to practice before the IRS. The second individual is an "Unenrolled Return Preparer" who did not prepare the taxpayer's tax return for the period covered by the Form 2848.

LAW AND ANALYSIS

The Secretary is authorized to regulate practice before the Internal Revenue Service. 31 U.S.C. 330. The rules governing practice before the Internal Revenue Service are published at 31 C.F.R. part 10 and reprinted as Treasury Department Circular No. 230. While attorneys, certified public accountants, enrolled agents and enrolled actuaries generally are authorized to represent taxpayers before all IRS officers and employees, an unenrolled return preparer is only authorized to represent taxpayers before revenue agents, customer service representatives or similar officers or employees and only during an examination of the taxable year or period covered by a tax return the unenrolled return preparer prepared and signed as a preparer. Circular 230, secs. 10.3 and 10.7(c)(1)(viii).

Section 601.501(a) of the Statement of Procedural Rules provides that the authority to act on behalf of a taxpayer must be evidenced by a power of attorney and declaration of representative filed with the appropriate Service office. The power of attorney and declaration of representative must contain the name and mailing address of the taxpayer, taxpayer identification number, name and mailing address of the recognized representative(s), and a description of the matter(s) for which representation is authorized. Statement of Procedural Rules, sec. 601.503(a). The taxpayer may designate more than one eligible representative on any power of attorney and declaration of representative. If the power of attorney purports to designate more than one individual, and at least one of these individuals is eligible to practice before the IRS, the Service should recognize the right of the eligible individuals to represent the taxpayer. See, generally, IRM 21.3.7.11.1(1). Any individual who is not eligible to practice before the IRS is, however, precluded from representing the taxpayer and the Service should notify the taxpayer, through the eligible representative(s), that the power of attorney is valid only with respect to the eligible representative(s) and that the ineligible individuals will not be permitted to represent the taxpayer before the IRS. IRM 21.3.7.11.1(1).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions, please contact this office at (202) 622-3400.

cc: Director, Office of Professional Responsibility
Associate Chief Counsel (General Legal Services)
Attn: Kirsten Witter