

**INTERNAL REVENUE SERVICE**

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MEMORANDUM FOR SOUTHERN CALIFORNIA DISTRICT COUNSEL

FROM: Kathryn A. Zuba  
Chief, Branch 2 (General Litigation)

SUBJECT: Unenrolled POA Before Appeals: Offer in Compromise

This responds to your request for advice, dated December 6, 1999, in the above referenced case. This document is not to be cited as precedent.

LEGEND:

Taxpayers  
Years 1 - 8  
Date A  
Date B

ISSUES:

1. Can an unenrolled return preparer with a valid Power of Attorney sign an appeal of a rejected offer in compromise (OIC) on behalf of a taxpayer?
2. Is the statute of limitations for collection set forth in I.R.C. § 6502 suspended as a result of such an appeal?

CONCLUSIONS:

1. An unenrolled return preparer is not authorized to sign an appeal of a rejected offer in compromise on behalf of a taxpayer. However, the Office of Appeals has made a decision to consider such appeals as "pending" and to allow the taxpayer to perfect the appeal during the appeal process.
2. Because such an appeal is considered "pending" for purposes of I.R.C. § 6331(k)(1)(B), the statute of limitations under I.R.C. § 6502 remains suspended during the appeal process.

BACKGROUND:

According to your request for advice, the facts relevant to this inquiry are as follows. The taxpayers, \_\_\_\_\_, were assessed additional income taxes for

Year 3 through 7.

The taxpayers executed a Form 2848, Power of Attorney (POA), authorizing an unenrolled return preparer to represent them before the Service for the years at issue. The unenrolled return preparer is not an attorney, certified public accountant (CPA), enrolled agent, or an enrolled actuary as defined in Treasury Circular No. 230 (31 C.F.R. Part 10). See also 26 C.F.R. § 601.502.

The taxpayers submitted an offer in compromise for the Years 1, 2, 5, 7, and 8, on the grounds of doubt as to collectibility. In a letter dated Date A, the Service rejected the taxpayer's offer because the amount offered was less than the Service's maximum collection potential. The rejection letter contained instructions on how to protest the rejection of the offer to the Office of Appeals. In relevant part, the rejection letter provided as follows:

You must sign the [protest], stating that it is true, under penalties of perjury as follows:

Under penalties of perjury, I declare that I have examined the facts stated in this protest, including any accompanying documents, and to the best of my knowledge and belief, they are true, correct and complete.

If your representative prepares and signs the protest for you, he or she may substituted a declaration stating:

1. That he or she submitted the protest and accompanying documents, and
2. Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

A copy of the rejection letter containing the above language was also sent to the unenrolled return preparer. In a letter dated Date B, the unenrolled return preparer, appealed the rejection of the taxpayers' offer in compromise. The appeal was not signed by the taxpayers.<sup>1</sup>

The local Office of Appeals is inclined to return the taxpayers' appeal and to request that the appeal be resubmitted by the taxpayers or a person authorized to represent the taxpayers before the Office of Appeals. The Office of Appeals believes that an offer

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<sup>1</sup> Please note that in addition to the appeal not being signed by the taxpayer it also included years for which the unenrolled return preparer did not have a valid Power of Attorney.

signed by an unenrolled return preparer or another person not authorized to practice before the Office of Appeals is invalid and thus, that the statute of limitations on collection is not suspended during the time such an appeal is “pending” with the Office of Appeals.

### LAW & ANALYSIS:

#### Issue 1:

Treasury Department Circular No. 230, codified in 31 C.F.R. Part 10, sets forth rules governing the practice of taxpayers’ representatives before the Internal Revenue Service (Service). Only certain individuals are authorized to practice before the Service. 31 C.F.R. § 10.3. These are attorneys, certified public accountants (CPA), enrolled agents, and enrolled actuaries.<sup>2</sup> Id.

An unenrolled return preparer is any individual, not otherwise eligible to practice before the Service, who wishes to exercise the privilege of limited practice before the Service. See Rev. Proc. 81-38; 31 C.F.R. Part 10, Section 10.7. The acts which an unenrolled return preparer may perform under a Power of Attorney are limited to representation of a taxpayer before revenue agents and examining officers of the Examination Division in the offices of District Director with respect to the tax liability of the taxpayer for the taxable year or period covered by a return prepared by the unenrolled return preparer. 26 C.F.R. § 601.502(a)(5)(iii); 31 C.F.R. § 10.7(c)(viii). See also Internal Revenue Manual Handbook HB 12(16)0, part 280 (4/2/93).

Initially, the Department of Treasury issued its Regulations authorizing limited practice by unenrolled return preparers to relieve the burden on taxpayers who, because they have not sought professional representation, would otherwise have to personally appear before revenue agents to resolve disputes at the Examination level, and to facilitate the resolution of tax disputes at the lowest possible level. See News Release A-447 (Feb. 16, 1959). The authority of unenrolled return preparers has remained limited to practice at the Examination level. Consequently, an unenrolled return preparer may not represent or correspond as the taxpayer’s representative before either the Collection division, the Office of Appeals, the Taxpayer Advocate, or the officials in the National Office. See Rev. Proc. 81-38, as printed in Publication 470 (Rev. 1-82). Moreover, an unenrolled return preparer is generally prohibited from signing any documents on behalf of a taxpayer. See Form 2848, Power of Attorney and Declaration of Representative. These include, but are not limited to, waivers of the statutory period of limitations on assessment or collection, and closing agreements with respect to a tax liability or specific matter. Rev. Proc. 81-38.

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<sup>2</sup> Enrolled actuaries are authorized to practice before the Service with respect to only certain issues. See 31 C.F.R. § 10.3(d).

An unenrolled return preparer, therefore, may not execute an offer in compromise on behalf of a taxpayer or represent the taxpayer before the Collection division of the Service. Likewise, he may not represent or correspond as the taxpayer's representative before the Office of Appeals. Thus, while an unenrolled return preparer with a valid Power of Attorney may attend Appeals conferences with the taxpayer as a witness, or to help explain how a return was prepared, he may not advocate or sign any documents on behalf of a taxpayer. This includes an appeal of a rejected offer in compromise.

While the Service's current procedures governing appeals of rejected offers in compromise require the taxpayer or a recognized representative to sign an appeal of a rejected offer in compromise, we have been informed by the Office of Appeals that it is the Appeal's administrative policy to consider an appeal even if the signature requirement has not been met.<sup>3</sup> In other words, if an appeal is filed on behalf of a taxpayer by an individual with a valid Power of Attorney, *i.e.*, an individual whom the taxpayer designated to act as an attorney-in-fact on the taxpayer's behalf, the Office of Appeals will consider such an appeal and will allow the taxpayer to cure the defect during the appeal process. Once the taxpayer cures the defect by signing the appeal, the appeal will be considered on its merits by the Office of Appeals.

#### Issue 2:

While the Service prescribes the mode for filing an appeal of a rejected offer in compromise, the statute prescribes the time frame during which an appeal must be filed in order for the statute of limitations on collection to be suspended by operation of section 6331(k)(3). The statute of limitations on collection is suspended during the period the offer in compromise is pending with the Service, and if such offer is rejected for 30 days thereafter. The period continues to be suspended if an appeal of a rejection of the offer is filed within 30 days from the date of the rejection. I.R.C. § 6331(k)(1)(B). Thus, while the Office of Appeals may consider a taxpayer's appeal of a rejected offer in compromise even if such appeal is filed outside of the 30-day period prescribed by the statute; the statute of limitations on collection is not suspended unless the appeal was filed within 30 days of the rejection of the offer.

In the present case, the letter rejecting the taxpayers' proposed offer in compromise is dated Date A. The appeal filed on the taxpayers' behalf by the unenrolled return preparer is dated Date B. Accordingly, the collection period is not suspended and the Service may levy on the taxpayers' assets to collect the unpaid taxes. Furthermore, since the taxpayers did not file an appeal within the prescribed time period, the Office of

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<sup>3</sup> It is evident from your inquiry that this policy has not been adequately communicated to the appeals officers in the field offices. Accordingly, we will work with the National Office of Appeals on revising the Internal Revenue Manual and other necessary documents to clearly provide when an appeal is considered "pending" for purposes of I.R.C. § 6331(k)(1).

Appeals is not required to consider the taxpayers' appeal.

HAZARDS & OTHER CONSIDERATIONS:



Thus, even if the appeal of the rejected offer in compromise was timely under the statute, the collection period would not be suspended with respect to the years not covered by the Power of Attorney.

In conclusion, [REDACTED] we recommend that Form 2848, Form 656, and the applicable Internal Revenue Manual provisions be revised to clearly provide the limited scope of the authority of an unenrolled return preparer. In addition, Service personnel and taxpayers should be advised of the taxpayers' right to be represented and of the limits of that representation, and that those rights and limits must be respected both by the taxpayers and the Service.

This advice was coordinated with the Office of the Associate Chief Counsel (General Legal Services). If you have any comments or questions, please contact the attorney assigned to this matter at 202-622-3620.

cc: