

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: F. Barbara Vis Manager Group 4900

from: Michael B. Frosch
Chief, Branch 3
Disclosure & Privacy Law

subject: **2848s**

You requested advice concerning the effectiveness of a 2848 which lists one attorney and two non-attorneys from one law firm in Part I, paragraph 2, of the 2848. In Part II of the 2848, the attorney has been appropriately self-designated as an attorney by inserting the letter "a" in the left column and signing under penalty of perjury. All other persons have self-designated themselves as "h", "Unenrolled Return Preparers."

In analyzing the question that you presented to us, you must bear in mind the distinction between disclosure of return information to a designee of the taxpayer and practicing before the IRS under the Conference and Practice Requirements. The disclosure of return information to a designee of the taxpayer is controlled by Treas. Reg. § 301.6103(c)-1T. There are only four required elements for a written document which has been signed and dated by the taxpayer and which solely authorizes the disclosure of a taxpayer's return or return information to a third party to be a valid disclosure authorization. The document must indicate:

- (i) The taxpayer's taxpayer identity information described in section 6103(b)(6);
- (ii) The identity of the person or persons to whom the disclosure is to be made;
- (iii) The type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and
- (iv) The taxable year or years covered by the return or return information.

In addition, the document must be received by the Service within 60 days of the date of the taxpayer's signature. Treas. Reg. § 301.6103(c)-1T(b).

A Part I of a properly filled-out, signed and dated, Form 2848 will generally suffice as a valid disclosure authorization, if it is received by the Service within 60 days of signature. Under Treas. Reg. § 301.6103(c)-1T(b)(ii), any person can qualify to be a designee of the taxpayer to receive returns or return information; there is no requirement that the person be one of the categories of persons listed in Part II of the 2848.

On the other hand, representation of a taxpayer is controlled by the Conference and Practice Requirements published at Treas. Reg. § 601.501 et. seq. and Circular No. 230 (31 CFR part 10). You are quite correct that a person who is not an attorney, or one of the other categories of individuals listed in Treas. Reg. § 601.502(b)(2) through (5) cannot represent the taxpayer before the Service. A non-attorney who is working for a law firm is not one of the categories of individuals so listed. An "unenrolled return preparer" is defined as an individual who "sign[ed] a return as having prepared it for a taxpayer, or who prepared a return with respect to which the instructions or regulations do not require that the return be signed by the preparer." Treas. Reg. § 601.502(b)(5)(iii). It is not likely that a non-attorney working in a law firm would be an unenrolled return preparer; nonetheless, even if such a person were an unenrolled return preparer with respect to a particular return, that person would not be permitted to represent the taxpayer in the collection process. Treas. Reg. § 601.502(b)(5)(iii); see also, Circular No. 230, § 10.7(c)(viii) (31 CFR 10.7(c)(viii)).

In conclusion, disclosures of returns and return information are authorized under a valid 2848 to all persons listed in Part I, paragraph 2. Notwithstanding being listed in Part I, paragraph 2 of the 2848, persons who do not meet the "category" requirements of Treas. Reg. § 601.502(b)(1) through (4) or (5)(i), (ii), or (iv), are not authorized to practice before an RO. An "unenrolled return preparer" is not authorized to practice before an RO. Therefore, in the situation you describe, it is permissible to disclose returns or return information to the non-attorney, but you may not give that individual an opportunity to practice before an RO.

cc: Brinton Warren, CC:PA:APJP
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