



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR MAXINE SPIEGEL
PHILADELPHIA SUBMISSION PROCESSING CENTER

FROM: George J. Blaine
Chief, Branch 1 (Administrative Provisions & Judicial Practice)
CC:PA:APJP:1

SUBJECT: Significant Service Center Advice: Signing Nonresident Alien
Income Tax Returns

This responds to your request for Significant Service Center advice. We have restated the issue as follows:

ISSUE

May a nonresident alien individual sign an income tax return (Form 1040NR) on behalf of a nonresident alien taxpayer?

CONCLUSION

Nothing in section 6012 of the Internal Revenue Code (Code) or the regulations prohibits a properly authorized nonresident alien individual from signing a Form 1040NR on behalf of a nonresident alien taxpayer. However, if the Service intends to accept Forms 1040NR signed by nonresident alien agents, we suggest that it modify the instructions to Form 1040NR.

FACTS

As we understand the facts, your office processes Forms 1040NR, U.S. Nonresident Alien Income Tax Returns, received from nonresident alien taxpayers. Form 1040NR is required to be signed by the taxpayer under penalties of perjury. Your office has been asked whether nonresident alien taxpayers may designate their tax advisors as their agents for purposes of signing Form 1040NR. Typically, these tax advisors are citizens and residents of the same country as the nonresident alien taxpayers, and are not citizens or residents of the United States. You note that you have no administrative objection to permitting these agents to sign on behalf of the taxpayer, but you request our opinion.

LAW & ANALYSIS

Section 6012 of the Code and the regulations thereunder identify persons required to make returns of income. Section 1.6012-1(b)(1) of the Income Tax Regulations provides that, subject to certain exceptions not relevant here, every nonresident alien individual who is engaged in a trade or business in the United States at any time during the taxable year or who has income which is subject to taxation under subtitle A of the Code shall make a return on Form 1040NR.

Section 1.6012-1(b)(3)(ii) provides that whenever a return of income of a nonresident alien individual is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof, specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for this purpose.

Nothing in section 6012 or the regulations prohibits a nonresident alien individual from serving as an agent for purposes of signing the income tax return of a nonresident alien taxpayer. We note that the Code gives the Service broad authority to prescribe the manner of signing any return, statement, or other document. Section 6061(a) of the Code, and the regulations thereunder, provide that the Service may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws.

We have reviewed the instructions to Form 1040NR. The portion of the instructions pertaining to signatures provides as follows:

Sign and Date Your Return

Form 1040NR is not considered a valid return unless you sign it. You may have an agent in the United States prepare and sign your return if you could not do so for one of the following reasons:

- You were ill.
- You were not in the United States at any time during the 60 days before the return was due.
- For other reasons that you explained in writing to the Internal Revenue Service Center, Philadelphia, PA 19255, U.S.A., and that the IRS approved.

A return prepared by an agent must be accompanied by a power of attorney. Form 2848 may be used for this purpose.

We read the limitations on agents contained in the Form 1040NR instructions as inconsistent with section 1.6012-1(b)(3)(ii). We note that this provision of the Form 1040NR instructions predates the promulgation of section 1.6012-1(b)(3)(ii) of the regulations. We suspect that this provision of the instructions may have originally been

based on section 1.6012-1(a)(5) of the Income Tax Regulations. Section 1.6012-1(a)(5) of the regulations provides, in part:

Returns made by agents. The return of income may be made by an agent if, by reason of disease or injury, the person liable for the making of the return is unable to make it. The return may also be made by an agent if the taxpayer is unable to make the return by reason of continuous absence from the United States for a period of at least 60 days prior to the date prescribed by law for making the return. In addition, a return may be made by an agent if the taxpayer requests permission, in writing, of the district director for the internal revenue district in which is located the legal residence or principal place of business of the person liable for the making of the return, and such district director determines that good cause exists for permitting the return to be so made.

However, section 1.6012-1(a)(5) applies only to citizens or residents of the United States; it does not apply to nonresident aliens. The standards applicable to nonresident alien returns are contained in section 1.6012-1(b)(3)(ii) of the regulations.

Based on the broad language of section 1.6012-1(b)(3)(ii) of the regulations, we conclude that a nonresident alien agent may sign Form 1040NR on behalf of a nonresident alien taxpayer, provided that the taxpayer executes a power of attorney authorizing the agent to sign and the agent attaches the power of attorney to Form 1040NR. We suggest that the Service modify the instructions to Form 1040NR if it intends to permit nonresident alien agents to sign returns on behalf of nonresident alien taxpayers.

If you have further questions, please contact Andrew Keyso at (202) 622-4910.