

Office of Chief Counsel
Internal Revenue Service
memorandum

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subject: Doubt as to Liability Offers-in-Compromise and Unenrolled Return Preparers

This responds to an e-mail inquiry that you received from Karen Hines on March 12, 2004, and forwarded to Michael Sincavage. We coordinated this response with Collection, Bankruptcy, and Summonses, Branch 1, which has jurisdiction over offers-in-compromise, and they concur with this response.

Issue:

Is an unenrolled return preparer entitled to sign a Form 2848, Power of Attorney and Declaration of Representative, as a taxpayer's representative with regard to an offer-in-compromise based on doubt as to liability?

Conclusion:

An unenrolled return preparer may sign a Form 2848 as a taxpayer's representative with regard to an offer-in-compromise based on doubt as to liability **only if** (1) the unenrolled return preparer prepared the taxpayer's return for the year for which the liability is being disputed; and (2) the offer-in-compromise falls under the jurisdiction of Compliance Examination and will not be transferred to Compliance Collection.

Law and Analysis:

Section 10.7(c)(1)(viii) of Circular 230 provides that an individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not

required (by the instructions to the tax return or regulations) to sign the tax return, may represent the taxpayer before revenue agents, customer service representatives, or similar officers and employees of the IRS during an examination of the taxable year or period covered by that tax return. This does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel, or similar officers or employees of the Internal Revenue Service or the Department of Treasury.

IRM section 5.8.21.3(1) provides that Compliance Examination has jurisdiction over offers based on doubt as to liability, including preparation of the necessary documents and letters to effect their disposition. Paragraph (2) of that section provides, however, that Compliance Collection has jurisdiction of doubt as to liability offers involving the Trust Fund Recovery Penalty and Personal Liability for Excise Tax (§ 4103). Liability offers concerning assessment made during bankruptcy proceedings may also fall under the jurisdiction of Compliance Collection (i.e., inappropriate assessment because automatic stay was in place, and whether liability was discharged in bankruptcy). Penalty offers may be considered by either Compliance Centers or Compliance Filed: Collection or Examination.

Under section 10.7(c)(1)(viii), an unenrolled return preparer may represent a taxpayer in front of examination (revenue agents) regarding a liability for a tax year for which the unenrolled return preparer prepared the taxpayer's return. An unenrolled return preparer may represent a taxpayer on an offer-in-compromise based on doubt as to liability **only if** (1) the unenrolled return preparer prepared the taxpayer's return for the year in question, and (2) Compliance Examination has jurisdiction over the offer-in-compromise. An unenrolled return preparer who prepared the taxpayer's return for the year at issue may not represent the taxpayer in an offer-in-compromise based on doubt as to liability if Compliance Collection has jurisdiction or if the case will at any time be handled by Compliance Collection. In addition, if the offer in compromise is for an issue that arises in more than one year, and the unenrolled return preparer did not prepare the taxpayer's return for one or more of those years, the unenrolled return preparer may not represent the taxpayer on the offer-in-compromise.

If you have any questions, please contact Bridget Tombul at (202) 622-7679.