

Power of Attorney Does Not Include Right to Sign Return

Cross References

- *Levi*, T.C. Memo. 2015-118, June 29, 2015

In April 2011, the taxpayers hired a Florida attorney to prepare their Form 1040, *U.S. Individual Income Tax Return*. The taxpayers also signed Form 2848, *Power of Attorney and Declaration of Representative*, appointing the attorney as their representatives. The attorney prepared, signed, and timely submitted the taxpayer's 2010 Form 1040 on behalf of the taxpayers.

The IRS Philadelphia Service Center processed the 2010 return, but did not return it to the taxpayers for any further signatures or modifications. On February 11, 2013, the IRS issued a notice of deficiency to the taxpayers determining a \$10,500 deficiency for tax year 2010, plus a \$4,024 failure to file penalty under IRC section 6651(a)(1), plus a \$16,094 accuracy related penalty under IRC section 6662(a).

The IRS alleged that the taxpayers did not sign their 2010 tax return and therefore, they failed to file a return for that year.

IRC section 6011(a) states that any person made liable for any tax shall make a return according to the forms and regulations prescribed by the IRS. IRC section 6065 states that any return required to be made "shall contain or be verified by a written declaration that it is made under the penalties of perjury." IRC section 6061(a) states that any return, statement, or other document required to be made under any provision of the Internal Revenue Laws or regulations shall be signed in accordance with forms or regulations prescribed by the IRS.

Regulations under IRC section 6061 states "Each individual...shall sign the income tax return required to be made by him, except that the return may be signed for the taxpayer by an agent who is duly authorized in accordance with Reg. §1.6012-1(a)(5) or Reg. §1.6012-1(b) to make such return." Regulation section 1.6012-1(a)(5) provides that a return may be made by an agent if the taxpayer is unable to make the return by reason of disease, injury, or continuous absence from the U.S., or if upon a showing of good cause, the taxpayer obtains permission from the IRS. Whenever a return is made by an agent it must be accompanied by a power of attorney authorizing him to represent his principal in making, executing, or filing the return.

Form 2848 clearly states that the power of attorney authorized by this form does not include the power to sign certain returns. The court said that the attorney was the only person who signed the taxpayer's 2010 return. The Form 2848 attached to Form 1040 did not authorize the attorney to sign the 2010 return. The taxpayers:

- 1) Were not disabled or injured such that he or she was unable to sign the 2010 return, or
- 2) Were not continuously absent from the U.S. for a period of at least 60 days before the filing deadline, or
- 3) Did not request permission in writing from the IRS for the 2010 return to be made by an agent.

Thus, the taxpayers did not satisfy any of the conditions under which a return may be signed by their agent. As a result, the tax return was not signed and as such was not a valid return.