

1513-0001

5 U.S.C.

Sec. 500. Administrative practice; general provisions

(a) For the purpose of this section--

(1) "agency" has the meaning given it by section 551 of this title; and

(2) "State" means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(d) This section does not--

(1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;

(2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;

(3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or

(4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.

(e) Subsections (b)-(d) of this section do not apply to practice before the United States Patent and Trademark Office with respect to patent matters that continue to be covered by chapter 3 (sections 31-33) of title 35.

(f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is

represented by more than one such qualified representative, service on any one of the representatives is sufficient.

(Added Pub. L. 90-83, Sec. 1(1)(A), Sept. 11, 1967, 81 Stat. 195; amended Pub. L. 106-113, div. B, Sec. 1000(a)(9) [title IV, Sec. 4732(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

Historical and Revision Notes

Section of title 5	Source (U.S. Code)	Source (Revised Statutes at Large)
500(a).....	5 App.: 1014.	Nov. 8, 1965, Pub. L. 89-332, Sec. 3, 79 Stat. 1281.
500(b)-(e).....	5 App.: 1012.	Nov. 8, 1965, Pub. L. 89-332, Sec. 1, 79 Stat. 1281.
500(f).....	5 App.: 1013.	Nov. 8, 1965, Pub. L. 89-332, Sec. 2, 79 Stat. 1281.

The definition of "State" in subsection (a)(2) is supplied for convenience and is based on the words "State, possession, territory, Commonwealth, or District of Columbia" in subsections (a) and (b) of 5 App. U.S.C. 1012.

In subsection (d), the words "This section does not" are substituted for "nothing herein shall be construed".

In subsection (d)(3), the word "employee" is substituted for "officer or employee" to conform to the definition of "employee" in 5 U.S.C. 2105.

26 CFR

Sec. 601.502 Recognized representative.

(a) A recognized representative is an individual who is
(1) Appointed as an attorney-in-fact under a power of attorney, and
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(2) Member of one of the categories described in Sec. 601.502(b) and who files a declaration of representative, as described in Sec. 601.502(c).

(b) Categories--(1) Attorney. Any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia;

(2) Certified public accountant. Any individual who is duly qualified to practice as a certified public accountant in any state, possession, territory, commonwealth, or the District of Columbia;

(3) Enrolled agent. Any individual who is enrolled to practice before the Internal Revenue Service and is in active status pursuant to the requirements of Circular No. 230;

(4) Enrolled actuary. Any individual who is enrolled as an actuary by and is in active status with the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242.

(5) Other individuals--(i) Temporary recognition. Any individual who is granted temporary recognition as an enrolled agent by the Director of Practice (31 CFR 10.5(c)).

(ii) Practice based on a relationship or special status with a taxpayer. Any individual authorized to represent a taxpayer with whom/which a special relationship exists (31 CFR 10.7(a) (1)-(6)). (For example, an individual may represent another individual who is his/her regular full-time employer or a member of his/her immediate family; an individual who is a bona fide officer or regular full-time employee of a corporation or certain other organizations may represent that entity.)

(iii) Unenrolled return preparer. Any individual who signs 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. The acts which an unenrolled return preparer may perform 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 (31 CFR 10.7(a)(7)).

(iv) Special appearance. Any individual who, upon written application, is authorized by the Director of Practice to represent a taxpayer in a particular matter (31 CFR 10.7(b)).

(c) Declaration of representative. A recognized representative must attach to the power of attorney a written declaration (e.g., part II of form 2848) stating the following--

(1) I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;

(2) I am aware of the regulations contained in Treasury Department Circular No. 230 (31 CFR part 10), concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others);

(3) I am authorized to represent the taxpayer(s) identified in the

power of attorney; and

(4) I am an individual described in Sec. 601.502(b).

If an individual is unable to make such declaration, he/she may not engage in representation of a taxpayer before the Internal Revenue Service or perform the acts described in Sec. Sec. 601.504(a) (2) through (6).

[56 FR 24004, May 28, 1991; amended at 57 FR 27356, June 19, 1992]

Sec. 601.503 Requirements of power of attorney, signatures, fiduciaries and Commissioner's authority to substitute other requirements.

(a) Requirements. A power of attorney must contain the following information--

- (1) Name and mailing address of the taxpayer;
- (2) Identification number of the taxpayer (i.e., social security number and/or employer identification number);
- (3) Employee plan number (if applicable);
- (4) Name and mailing address of the recognized representative(s);
- (5) Description of the matter(s) for which representation is authorized which, if applicable, must include--
 - (i) The type of tax involved;
 - (ii) The Federal tax form number;
 - (iii) The specific year(s)/period(s) involved; and
 - (iv) In estate matters, decedent's date of death; and
- (6) A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s).

(b) Acceptable power of attorney documents--(1) Form 2848. A properly completed form 2848 satisfies the requirements for both a power of attorney (as described in Sec. 601.503(a)) and a declaration of representative (as described in Sec. 601.502(c)).

(2) Other documents. The Internal Revenue Service will accept a power of attorney other than form 2848 provided such document satisfies the requirements of Sec. 601.503(a). However, for purposes of processing such documents onto the Centralized Authorization File (see Sec. 601.506(d)), a completed form 2848 must be attached. (In such situations, form 2848 is not the operative power of attorney and need not be signed by the taxpayer. However, the Declaration of Representative must be signed by the representative.)

(3) Special provision. The Internal Revenue Service will not accept a power of attorney which fails to include the information required by Sec. Sec. 601.503(a)(1) through (5). If a power of attorney fails to include some or all of the information required by such section, the attorney-in-fact can cure this defect by executing a form 2848 (on behalf of the taxpayer) which includes the missing information. Attaching a form 2848 to a copy of the original power of attorney will validate the original power of attorney (and will be treated in all circumstances as one signed and filed by the taxpayer) provided the following conditions are satisfied--

- (i) The original power of attorney contemplates authorization to handle, among other things, Federal tax matters, (e.g., the power of attorney includes language to the effect that the attorney-in-fact has the authority to perform any and all acts).

(ii) The attorney-in-fact attaches a statement (signed under penalty of perjury) to the form 2848 which states that the original power of attorney is valid under the laws of the governing jurisdiction.

(4) Other categories of powers of attorney. Categories of powers of attorney not addressed in these rules (e.g., durable powers of attorney and limited powers of attorney) will be accepted by the Internal Revenue Service provided such documents satisfy the requirements of Sec. Sec. 601.503(b) (2) or (3).

(c) Signatures. Internal Revenue Service officials may require a taxpayer (or such individual(s) required or authorized to sign on behalf of a taxpayer) to submit appropriate identification or evidence of authority. Except when form 2848 (or its equivalent) is executed by an attorney-in-fact under the provisions of Sec. 601.503(b)(3), the individual who must execute a form 2848 depends on the type of taxpayer involved--

(1) Individual taxpayer. In matter(s) involving an individual taxpayer, a power of attorney must be signed by such individual.

(2) Husband and wife. In matters involving a joint return the following rules apply--

(i) Joint representation. In the case of any matter concerning a joint return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife.

(ii) Individual representation. In the case of any matter concerning a joint return in which both husband and wife are not to be represented by the same recognized representative(s), the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse being represented cannot perform alone.

(3) Corporation. In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that he/she has such authority.

(4) Association. In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, who must certify that he/she has such authority.

(5) Partnership. In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that he/she has such authority.

(6) Dissolved partnership. In the case of a dissolved partnership, each of the former partners must execute a power of attorney. However, if one or more of the former partners is deceased, the following provisions apply--

(i) The legal representative of each deceased partner(s) (or such person(s) having legal control over the disposition of partnership interest(s) and/or the share of partnership asset(s) of the deceased partner(s)) must execute a power of attorney in the place of such deceased partner(s). (See Sec. 601.503(c)(6)(ii).)

(ii) Notwithstanding Sec. 601.503(c)(6)(i), if the laws of the governing jurisdiction provide that such partner(s) has exclusive right to control or possession of the firm's assets for the purpose of winding up its affairs, the signature(s) of the surviving partner(s) alone will be sufficient. (If the surviving partner(s) claims exclusive right to control or possession of the firm's assets for the purpose of winding up its affairs, Internal Revenue Service officials may require the

submission of a copy of or a citation to the pertinent provisions of the law of the governing jurisdiction upon which the surviving partner(s) relies.)

(d) Fiduciaries. In general, when a fiduciary is involved in a tax matter, a power of attorney is not required. Instead form 56, ``Notice Concerning Fiduciary Relationship'' should be filed. Types of taxpayer for which fiduciaries act are--

(1) Dissolved corpooirity of the voting stock of the corporation as of the date of dissolution. Internal Revenue Service officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to a power of attorney, the date of dissolution, and a representation that no trustee has been appointed.

(2) Insolvent taxpayer. In the case of an insolvent taxpayer, form 56, ``Notice Concerning Fiduciary Relationship,'' should be filed by the trustee, receiver, or attorney appointed by the court. Internal Revenue Service officials may require the submission of a certified order or document from the court having jurisdiction over the insolvent taxpayer which shows the appointment and qualification of the trustee, receiver, or attorney and that his/her authority has not been terminated. In cases pending before a court of the United States (e.g., U.S. District Court or U.S. Bankruptcy Court), an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(3) Deceased taxpayers--(i) Executor, personal representative or administrator. In the case of a deceased taxpayer, a form 56, ``Notice Concerning Fiduciary Relationship,'' should be filed by the executor, personal representative or administrator if one has been appointed and is responsible for disposition of the matter under consideration. Internal Revenue Service officials may require the submission of a short-form certificate (or authenticated copy of letters testamentary or letters of administration) showing that such authority is in full force and effect at the time the form 56, ``Notice Concerning Fiduciary Relationship,'' is filed.

(ii) Testamentary trustee(s). In the event that a trustee is acting under the provisions of the will, a form 56, ``Notice Concerning Fiduciary Relationship,'' should be filed by the trustee, unless the executor, personal representative or administrator has not been discharged and is responsible for disposition of the matter. Internal Revenue Service officials may require either the submission of evidence of the discharge of the executor and appointment of the trustee or other appropriate evidence of the authority of the trustee.

(iii) Residuary legatee(s). If no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter and the estate has been distributed to the residuary legatee(s), a form 56, ``Notice Concerning Fiduciary Relationship,'' should be filed by the residuary legatee(s). Internal Revenue Service officials may require the submission of a statement from the court certifying that no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter, naming the residuary legatee(s), and indicating the proper share to which each is entitled.

(iv) Distributee(s). In the event that the decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter (or none was ever appointed), a form 56, ``Notice Concerning Fiduciary Relationship,'' should be filed by the distributee(s). Internal Revenue Service officials may require the

submission of evidence of the discharge of the administrator (if one had been appointed) and evidence that the administrator is not responsible for disposition of the matter. It also may require a statement(s) signed under penalty of perjury (and such other appropriate evidence as can be produced) to show the relationship of the individual(s) who sign the form 56, ``Notice Concerning Fiduciary Relationship,' ' to the decedent and the right of each signer to the respective shares of the assets claimed under the law of the domicile of the decedent.

(4) Taxpayer for whom a guardian or other fiduciary has been appointed. In the case of a taxpayer for whom a guardian or other fiduciary has been appointed by a court of record, a form 56, ``Notice Concerning Fiduciary Relationship,' ' should be filed by the fiduciary. Internal Revenue Service officials may require the submission of a court certificate or court order showing that the individual who executes the form 56, ``Notice Concerning Fiduciary Relationship,' ' has been appointed and that his/her appointment has not been terminated.

(5) Taxpayer who has appointed a trustee. In the case of a taxpayer who has appointed a trustee, a form 56, ``Notice Concerning Fiduciary Relationship,' ' should be filed by the trustee. If there is more than one trustee appointed, all should join unless it is shown that fewer than all have authority to act. Internal Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of a properly executed trust instrument or a certified copy of extracts from the trust instruments, showing--

(i) The date of the instrument;

(ii) That it is or is not of record in any court;

(iii) The names of the beneficiaries;

(iv) The appointment of the trustee, the authority granted, and other information as may be necessary to show that such authority extends to Federal tax matters; and

(v) That the trust has not been terminated and the trustee appointed therein is still legally acting as such.

In the event that the trustee appointed in the original trust instrument has been replaced by another trustee, documentary evidence of the appointment of the new trustee must be submitted.

(e) Commissioner's authority to substitute other requirements for power of attorney. Upon application of a taxpayer or a recognized representative, the Commissioner of Internal Revenue may substitute a requirement(s) other than provided herein for a power of attorney as evidence of the authority of the representative.

[56 FR 24005, May 28, 1991; 57 FR 27356, June 19, 1992]

Sec. 601.523 Tax information authorization.

Where any of the acts specified in paragraph (c)(2)(i) of Sec. 601.502 are to be performed by a representative, and a power of attorney for such representative has not been filed, a tax information authorization, or copy thereof, will be required. The authorization may be executed on Form 1534-A, copies of which may be obtained from the regional regulatory administrator in the Bureau of Alcohol, Tobacco, and Firearms. Such authorization may cover one or more of the acts for which a tax information authorization is required and will continue in effect with respect to such acts until revoked as provided in Sec. 601.526. The exceptions to the requirements for a tax information authorization,

provided in paragraphs (c) (3) and (4) of Sec. 601.502, are applicable to such authorizations under this section.

[34 FR 6432, Apr. 12, 1969]