

IN CASE YOU MISSED IT – January 2022

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Almost every day, federal and state courts issue opinions that affect taxpayers. The IRS and state taxing authorities also publish guidance on myriad topics.

Each month, this column will review a selection of recent court cases or guidance that tax professionals should know about when advising their clients and preparing tax returns.

For more extensive detail on any of these items, please feel free to reach out to the author.

[Matter of Enzo Dirende \(Deceased\)](#) – unauthorized signature caused invalid petition

The New York administrative law judge had to determine whether a petition filed on behalf of a deceased taxpayer should be dismissed for improper form as it lacked a valid signature. The taxpayer died in 2018. In 2020 a petition was filed listing Kevin Kelly, the taxpayer's former accountant, as the taxpayer's representative. Mr. Kelly did not submit an executed Division of Tax Appeals power of attorney form with the petition, nor did he submit evidence establishing that any individual was appointed as the executor or executrix of the taxpayer's estate. The Division of Tax Appeals informed Mr. Kelly that the petition as filed was insufficient as, pursuant to [20 NYCRR 3000.3](#), a valid power of attorney must be attached to the petition.

Mr. Kelly then submitted a power of attorney form signed by the taxpayer's widow. (**Curiously**, the taxpayer's "signature" was also on the 2020 power of attorney – no explanation was provided how that happened from the grave.) Mr. Kelly listed his qualifications on the power of attorney as “an employee,” and the widow was listed as a representative of the taxpayer without any further explanation or proof that she had been appointed as executrix of the taxpayer's estate.

Rule 20 NYCRR 3000.3 (b) (7) explicitly requires that a petition contain “the signature of the petitioner or the petitioner's representative” in order to be a valid petition. Rule [20 NYCRR 3000.2 \(a\) \(2\)](#) provides that a taxpayer may be represented by: (i) an attorney-at-law licensed to practice in New York State; (ii) a certified public accountant duly qualified to practice in New York State; (iii) an enrolled agent enrolled to practice before the Internal Revenue Service; or (iv) a public accountant enrolled with the New York State Education Department. If an attorney, **CPA** or licensed public accountant that is authorized or licensed to practice in any other jurisdiction wishes to represent a petitioner, they must first receive written permission from the Secretary of the Tax Appeals Tribunal.

As the petition was not signed by the taxpayer (**he** had been dead for two years already, although that apparently did not stop him from signing the power of attorney), Mr. Kelly signed the petition as a representative, identifying himself as the taxpayer's former accountant and “employee.” He did not identify himself as a **CPA** duly qualified to practice in New York State, an enrolled agent enrolled to practice before the Internal Revenue Service, or a public accountant enrolled with the New York State Education Department. Additionally, there was no evidence presented that he was authorized to sign the petition on behalf of the taxpayer as **the** taxpayer's widow's failed to provide proof that she was the executrix with the authority to sign the power of attorney on behalf of the taxpayer to appoint Mr. Kelly as a representative.

The supervising administrative law judge informed Mr. Kelly of the deficiencies with the signature on the petition and the power of attorney, and **allowed** him an additional 30 days to correct and refile the petition.

As no such corrections were submitted, the petition was held not to be filed in proper form and the case was dismissed. As the 90-day deadline to dispute the Notice of Deficiency has passed, no new petition can be filed with the administrative law judge at a later date protesting the assessment.

Takeaway: It is important to make sure that someone signing a power of attorney for someone else, be it an estate or an entity, has the proper authority to sign.

[Om P. Soni and Anjali Soni v Commissioner](#): failure to sign joint returns does not invalidate legitimacy

This case also involved the validity of a signature, except here it was the taxpayer who was arguing that the Form 1040 U.S. Individual Income Tax Return which was signed on her behalf was not a valid joint return. The taxpayers also disputed the validity of the signature on the Form 872 purporting to extend the period of limitations for assessment of tax.

The court was unsympathetic to the taxpayer wife and was rather sarcastic in its opinion, as it described the case "analogous to the phrase ignorance is bliss, except when it is not." **Taxpayers** had an arranged married in India in 1978 and taxpayer wife, Anjali, moved to the United States to be with her husband, Om.

Anjali was a stay-at-home housewife who took care of the house and left her husband to handle all of their finances. She did not know how much money he earned, **which** investments they had, what their monthly expenses were, or what their tax liability was each year. She never signed any documents or tax forms.

Anjali acknowledged that she was generally aware of U.S. tax return filing requirements but viewed **these** as her husband's responsibility. Anjali testified that when she brought in the family mail, she would typically just take out her magazines and personal mail, leaving everything else in a pile for her husband.

Om claimed that he inspected and signed the couple's joint tax returns each year but never knew whether his wife herself had personally reviewed and signed them. He would typically give them to his son to arrange for her signature. The son stated that he did not give Anjali the returns but rather simply signed her signature. He admitted signing her name on numerous Forms 1040 and Forms 872, Consent to Extend the Time to Assess Tax. Anjali never asked her son or husband about their tax returns or filing obligations or whether she should be signing anything.

Om became aware of an IRS examination of their joint 2004 tax return sometime in 2006. The revenue agent sent a Form 872 requesting an extension of time to the taxpayers' home address on March 11, 2008. Taxpayers' accountant signed and submitted a copy of the Form 872 to the revenue agent along with a fully executed Form 2848 authorizing him to represent the taxpayers. The signatures on the Form 2848 were all dated April 10, 2006, and the signed Form 872 had a handwritten date of March 20, 2006.

The parties agreed that Anjali did not sign the 2004 tax return. It has long been established, however, that the failure of one spouse to actually sign the Form 1040 does not necessarily mean that the nonsigning spouse did not intend to agree to file a joint tax return. Judicial decisions have established the "tacit consent rule," which holds that the intent to file jointly may be inferred from the acquiescence or "tacit" approval by the nonsigning spouse. In order to establish tacit consent, the court looks to see if the nonsigning spouse filed a separate return of their own, whether the nonsigning spouse objected to filing jointly, what **the** couple's prior filing history indicates about the desire to file a joint return, and also if the nonsigning spouse relies on the other spouse to handle all the family's financial matters, including preparation of tax returns.

The taxpayers filed joint tax returns for the years 1999 through 2003 and the years 2005 through at least 2014. It was therefore not a stretch for the court to believe that the parties intended the 2004 return to be filed as a joint return as well. Anjali made no attempt to file separately and took no steps to disavow the joint status of the 2004 return before the date of trial. As she was the person who generally brought in the family mail, she would have seen the Service's notices addressed to her or to her and her husband jointly. The court was unsympathetic to the fact that she did not “really pay attention” to tax issues and easily concluded that she had tacitly consented to filing the 2004 return jointly. The fact that she did not actually sign the return was held to be irrelevant.

The taxpayers also raised arguments regarding the validity of the Form 872 that was submitted in 2008. First they tried to argue that it was not valid as it was dated March **2006** when the power of attorney authorizing the accountant to represent them was not signed until April 2006, therefore his signature on the earlier signed Form 872 could not bind them to the extension. The court agreed that this was simply a scrivener error as the Form 872 was not even prepared until March **2008**, so clearly the signer meant to date it March 20, 2008, not March 20, 2006.

Taxpayers then argued that they did not sign the Form 2848 so it was not valid; **therefore**, the accountant had no authority to sign the Form 872. The court noted that both taxpayers were **aware** that the accountant was representing them before the Service with respect to the audit for several years and that he was the one corresponding on their behalf with the auditor. The original **Form** 872 was mailed to the taxpayers at home so they had to have been the ones to provide it to the accountant for signature and submission to the auditor. [Code section 6064](#) provides that an individual's name signed on a document “shall be prima facie evidence for all purposes that the * * * document was actually signed by him.” The Form 2848 that the accountant submitted appeared to be signed by the taxpayers and thus looked facially valid. **Although** Anjali did not personally sign the Form 2848, she implicitly consented for others to sign on her behalf. Om argued that signature on the Form 2848 was not his but he provided no evidence to the contrary other than his own testimony. Thus, the court held that the Form 2848 was valid, and the Form 872 signed by the accountant was valid as well.

Note that penalties were also asserted under [Code section 6651\(a\)\(1\)](#) and [Code section 6662\(a\)](#). The court found that the taxpayers offered no evidence of reasonable cause to excuse the imposition of either penalty.

There was no suggestion in the court's opinion that Anjali attempted to raise an innocent spouse defense to the underpayment or to the imposition of penalties.

Takeaway: A taxpayer can be bound by the signature of another if objections are not raised in a timely manner.

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