



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

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SB/SE) CC:SB:7:SAC:1

FROM: Chief, Branch 1 (Disclosure and Privacy Law) /s/ David L. Fish
CC:PA:DPL:B01

SUBJECT: Disclosure Issues Pertaining to Collection of Taxes Owed by
Minors

This Chief Counsel Advice responds to your electronic mail inquiry dated July 16, 2001, and subsequent electronic mail messages. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

You requested advice regarding potential disclosure problems pertaining to collection of taxes owed by minors in the context of offers in compromise (OIC). On August 31, 2001, you posed three scenarios which are typical of the many possible fact patterns. Below, we have updated a 1988 memorandum regarding disclosures to minors and applied that guidance to the fact patterns. We first set forth the general rules and then apply them to your fact patterns.

Minor

Returns and return information of a minor may be disclosed to the minor. I.R.C. § 6103(e)(1)(A) (returns),¹ (e)(7) (return information); IRM 1.3.2.4.10(1).

Earned Income

Disclosures may be made to parents if the minor's return reflects earned income. Pursuant to I.R.C. § 6201(c), an unpaid assessment against a child is also considered to be an unpaid assessment against the parent to the extent it is based on

¹ Persons who can obtain returns under section 6103(e)(1)-(5) can also obtain the related return information under section 6103(e)(7). The disclosure of returns requires a written request. No written request is required for the disclosure of return information.

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compensation for the child's services. If the return reflects earned income of the minor, the return may be disclosed to the parent pursuant to I.R.C. § 6103(e)(1)(A)(i), and the return information pertaining thereto may be disclosed to the parent pursuant to section 6103(e)(7). IRM 1.3.2.4.10(3).

Signer of Return

Disclosures may be made to the parent who signed the return on behalf of the child. Rev. Rul. 82-206, 1982-2 C.B. 356, advises that if the child cannot make and file his own tax return, the parent should do so on behalf of the child by the use of the following language: "By (signature) Parent (or guardian) for minor child." The revenue ruling is derived from section 6012 and the regulations promulgated thereunder. Treas. Reg. § 1.6012-1(a)(4) requires the guardian or other person charged with the care of the minor's person or property to make and file the return on behalf of the child if the child did not make and file the return. Inherent in this section is the authority to discuss the return and resulting tax liability, including any necessary collection activities, with the parent who signed the return. IRM 1.3.2.4.10(2).²

Trustee, Committee, or Guardian of Incompetent's Estate

Section 6103(e)(2) provides for disclosure to the committee, trustee, or guardian of an incompetent's estate. If, under state law, the parent is the legal guardian of the minor's estate, all issues concerning the minor's tax liability (whether it relates to earned or unearned income) may be discussed with the parent.³

Consent and Power of Attorney

Section 6103(c) provides for disclosures of returns and return information to the designee of a taxpayer upon consent to such disclosure. If the child signed the return, the child is the taxpayer, and the child may consent to such disclosure by executing a Form 8821 (Tax Information Authorization) or other consent meeting the requirements

² In contrast, return preparers are, generally, not entitled to receive returns or return information without written authorization from the taxpayer. I.R.M. 1.3.2.5.2(1).

³ You note in your incoming memorandum, that, under California law, the parent is not the legal guardian of the minor's estate, citing Cal. Fam. Code § 7502; Re Minor Children of Hunt, 103 Cal. 355, 37 P. 206 (1984); Re Guardianship of Imperatrice, 182 Cal. 355, 188 P. 48 (1920); Re Guardianship of Yano, 188 Cal. 645, 206 P. 995 (1922); Re White, 54 Cal. App. 2d 637, 129 P.2d 706 (1942); Cal. Prob. Code §§ 3400 et. seq. You also note that it appears that, under California law, no one is authorized to sign an offer in compromise on behalf of a minor, unless that person has been appointed by a state court specifically for that purpose pursuant to Cal. Prob. Code §§ 1500 et. seq.

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of Treas. Reg. § 301.6103(c)-1T. If the parent signed the return on behalf of the child, the signing parent may execute a Form 8821 on behalf of the child to designate disclosure to others; e.g., the non-signing parent, or an accountant. If the parent is the guardian of the minor's estate under state law, the parent may also sign a consent on behalf of a minor. See 301.6103(c)-1T(e)(4) (authority to execute disclosure consents). Similarly, the child, or the parent who signed the return, can execute a Form 2848 (Power of Attorney and Declaration of Representative) to have a third party represent the child before the Service.⁴

There is no disclosure authority for the parent who did not sign a return that reflects only unearned income to execute a Form 8821 or Form 2848 on behalf of the child. If, however, under state law the parent is the legal guardian of the minor's estate or if the parent has been appointed (by the appropriate court) the guardian of the child's estate, that parent may file a Form 8821 on behalf of the child irrespective of who signed the child's tax return. In those states in which the parent is not the guardian of the minor's estate, the parent who did not sign the minor's tax return which reflects only unearned income may not execute a Form 8821 on behalf of the child.⁵

We will now apply these principles to your fact patterns.

Q1. Child signed return and Child signed OIC. IRS rejects OIC. Mother writes in requesting information concerning the rejection of the OIC.

A1. IRS may not disclose Child's return information to Mother unless (1) earned income is or should have been reported on Child's return; (2) Child has executed a disclosure consent or power of attorney permitting disclosure of Child's return information to Mother, or (3) State law establishes estate guardianship of Mother as to Child. IRS may explain, in general terms, the OIC process.

Q2. Father signed OIC. It is unknown who signed the return (Collection usually does not have the return; it has the Taxpayer Delinquent Account (TDA)). IRS will reject the

⁴ We are advised by the Director of Practice that, while the Conference and Practice Requirements, 26 C.F.R. § 601.501– 601.509, do not address whether the Service may recognize a Form 2848 executed by a minor, a prudent approach would be to look to state law to see whether a minor is capable of entering into an agency relationship. If so, then IRS should recognize a power of attorney signed by a minor.

⁵ Section 6103(k)(6) may authorize disclosure of return information to a parent to the extent the disclosure is necessary to obtain information that is not otherwise reasonably available. However, in the majority of circumstances involving minor children, we believe section 6103(e) and (c), as described above, would be the appropriate authority.

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offer and anticipates correspondence from Father and wants to reply to correspondence if received.

A2. IRS may not disclose return information of Child to Father unless (1) Father signed return, (2) earned income is or should have been reported on Child's return, (3) Child has executed a disclosure consent or power of attorney permitting disclosure of Child's return information to Father, or (4) State law establishes estate guardianship of Father as to Child.

Q3. Father and Mother signed OIC, intending to compromise their own liability and the liability of their two minor children. It is unknown who signed children's returns. IRS wants to advise Father and Mother that separate offers are required for each child's liability and that financial statements are needed for each child.

A3. IRS may reject OIC of Father and Mother because of the general rule that a separate OIC is required for the liabilities of any one person (or the joint liability of two persons). Return information of Children may not be disclosed to Father or Mother unless (1) Father or Mother, respectively, signed return, (2) earned income is or should have been reported on Child's return, (3) Child has executed a disclosure consent or power of attorney permitting disclosure of Child's return information to Father and Mother, or (4) State law establishes estate guardianship of Father or Mother, respectively, as to child. However, Father and Mother can be advised that separate offers are required for each child's liability and that financial statements are needed for each child, since that is not a disclosure of return information.

Please call me at (202) 622-4580 if you have any further questions.