

ARIZONA GENERAL TAX PROCEDURE

GTP 95-2

This tax procedure is released to provide guidance with respect to powers of attorney acceptable by the Department of Revenue.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 14-5501 sets forth provisions for durable powers of attorney.

A.R.S. § 14-5502 provides that under certain circumstances a power of attorney will not be automatically revoked or terminated upon the death, disability, or incompetence of the principal who executed the power of attorney.

A.R.S. § 42-108.D.1 provides for the disclosure of confidential information.

A.R.S. § 42-139.04 provides for the disclosure of taxpayer information upon written request of the taxpayer when such disclosure does not violate A.R.S. § 42-108.

A.R.S. § 43-303 provides that if a taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

DISCUSSION:

The Arizona statutes require written authorization with respect to disclosure of tax information to a designee of a taxpayer. Due to the confidential nature of tax documents, the department requires that the authorization be a power of attorney. Only individuals may be designated as a taxpayer's representative for purposes of obtaining tax information or representing the taxpayer before the Department of Revenue.

However, for the purpose of inspecting and/or receiving withholding tax information, the department will accept a withholding tax information authorization. Such authorization may designate a corporation, firm, organization, or partnership to inspect and/or receive confidential

withholding tax information. Such authorization will not be accepted for purposes of representing the taxpayer before the Department of Revenue, performing other acts on behalf of the taxpayer, or inspecting and/or receiving confidential tax information for tax types other than withholding.

With respect to making Arizona individual income tax returns, A.R.S. § 43-303 provides, "If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of the taxpayer."

A power of attorney, which does not contain all of the information required by the department for purposes of obtaining tax information or representing a taxpayer, is acceptable for making (signing) an Arizona individual income tax return. A general power of attorney is sufficient to establish a "duly authorized agent" for purposes of making a return under A.R.S. § 43-303 even though the general power of attorney may not specifically relate to tax matters.

For purposes of obtaining tax information or representing a taxpayer, the department's requirements for powers of attorney are as follows.

PROCEDURE:

1. Information required. A power of attorney must contain the following information:

(a) Taxpayer(s) full name(s), address, employer identification number, and/or social security number;

(b) Representative's(s') full name(s), address, employer identification number, or social security number, and telephone number (only an individual may be designated as a taxpayer's representative);

(c) Type of tax. The type of tax must be specific by category, e.g., individual income tax, transaction privilege tax;

(d) Tax year(s) or period(s).

Any tax year(s) or period(s) that have ended as of the date a power of attorney is received by the department may be listed. The number of future tax years or periods which will be accepted is limited to tax years or periods which end no later than four years after the date the power of attorney is received.

A general reference to "all years" or "all periods" will be accepted as applying only to tax years (periods) prior to the date the power of attorney is received. A general reference to "all future years" will be subject to the four year limitation.

If a power of attorney is submitted which exceeds the future year (period) limitation, the department will notify the taxpayer and the representative (if authorized to receive notices) of the future years for which the power of attorney is accepted. The limitation does not affect the validity of a power of attorney and the same power of attorney may be resubmitted at a later date.

Example:

A power of attorney is received by the department on August 1, 1994, which indicates that the authorization applies to Arizona withholding tax for periods from January 1, 1992 through December 31, 2000. The department will accept and record the authorization for tax periods from January 1, 1992 through July 31, 1998.

2. Acceptable power of attorney documents

(a) A properly completed Department of Revenue power of attorney form.

(b) A federal power of attorney form (federal Form 2848) if the federal form has been modified to address Arizona taxes, and contains all of the required information specified above. The modification would necessitate crossing out Internal Revenue Service (the cross out must be initialed by the taxpayer) and inserting Arizona Department of Revenue, the appropriate Arizona tax type (e.g., Arizona individual income tax, transaction privilege tax), and appropriate Arizona tax form number.

(c) A general power of attorney or a limited power of attorney if such document contains all of the information specified above. A general power of attorney grants the representative the power to act in all matters except those specifically excluded. A limited power of attorney grants the power to act only in those instances or only with respect to those matters or periods specifically stated.

(d) A federal tax information authorization form (federal Form 8821) if the federal form has been modified to address Arizona taxes, and contains all of the required information specified above. The modification would necessitate crossing out Internal Revenue Service (the cross out must be initialed by the taxpayer) and inserting Arizona Department of Revenue, the appropriate Arizona tax type (e.g., Arizona individual income tax, transaction privilege tax), and appropriate Arizona

tax form number.

This form properly modified will be accepted as a limited power of attorney authorizing the designated individual to inspect and/or receive confidential information.

(e) A durable power of attorney if such document contains all of the information specified above.

3. Acceptance of Supplemental Information to Validate Power of Attorney

If a power of attorney fails to include all of the required information, the representative can supply the missing information by executing a department form (on behalf of the taxpayer) which includes the missing information provided both of the following conditions are satisfied:

(a) The original power of attorney authorizes the representative to handle, among other things, Arizona tax matters or includes language to the effect that the representative has the authority to perform any and all acts, and;

(b) The representative attaches a statement (signed under penalty of perjury) to the department form which states that the original power of attorney is valid.

If these conditions are not satisfied a new power of attorney must be executed by the taxpayer.

4. Signatures

(a) If the power of attorney is for an individual or sole proprietor of a business, it must be signed by that individual.

(b) If both husband and wife (or former husband and wife) are to be represented by the same representative with respect to an individual income tax joint return, both spouses (or former spouses) must sign the power of attorney.

In the case where only one spouse (or former spouse) signs a power of attorney with respect to an individual income tax joint return, only the spouse (or former spouse) who signs the power of attorney will be considered to be represented by the designated representative. The representative may have full access to information relating to the joint return but cannot perform any act with respect to the joint return that the spouse (or former spouse) being represented cannot perform alone.

If a joint return has been filed and husband and wife (or former husband and

wife) will be represented by different individuals, each taxpayer must execute his or her own power of attorney to designate a representative. A properly designated representative of either party to a joint return may have full access to information relating to the joint return.

(c) If the power of attorney is for a partnership, it must be signed by all partners or by a partner duly authorized to act for the partnership, who must certify that he or she has such authority.

(d) If the power of attorney is for a limited liability company, it must be signed by all members or by a manager duly authorized to act for the company, who must certify that he or she has such authority.

(e) If the power of attorney is for a corporation, it must be signed by an officer of the corporation having authority to bind the corporation, who must certify that he or she has such authority.

Note: It is no longer necessary for a designated representative who is an attorney, certified public accountant, enrolled agent, or enrolled actuary to sign the "Declaration of Representation" previously required.

5. Copy or Facsimile Transmission

The department will accept either the original or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (FAX) also will be accepted (see "Procedure for Public/Practitioner Use of Department of Revenue Facsimile Machines", GTP 94-4).

6. Notices and Communications

Any notice or other written communication required or permitted to be given to a taxpayer in any matter before the Department of Revenue will be given to the taxpayer. Copies of such notices or written communications may also be given to the representative designated in a power of attorney unless restricted by the taxpayer.

No more than two representatives designated in a power of attorney may be authorized to receive copies of notices and written communications. If more than two representatives are authorized to receive copies of notices and written communications, the department will give copies of such notices and communications only to the first two representatives designated.

If a taxpayer designates more than one representative in a power of attorney, but does not designate which representative is to receive copies of notices and written communications, the department will give copies of such notices and written communications only to the first representative designated.

7. Revocation, Change in Representation, or Withdrawal

(a) By the Taxpayer

(1) A new power of attorney will revoke a prior power of attorney if it is granted by the taxpayer to another representative with respect to the same matter. However, a new power of attorney will not revoke a prior power of attorney if it contains a clause stating that it does not revoke such prior power of attorney and there is attached to the new power of attorney either:

(i) a copy of the unrevoked prior power of attorney; or,

(ii) a statement signed by the taxpayer listing the name and address of each recognized representative authorized under the prior unrevoked power of attorney.

(2) A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of revocation with the department. The statement of revocation must indicate that the authority of the first power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the power of attorney to be revoked must be attached).

(b) By the Representative. A representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with the department. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

Harold Scott, Director

Signed: March 27, 1995

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to department personnel. A tax procedure is a written statement issued by the department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. **Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.