

Form 2848 vs. Form 8821

Retirement Plans Phone Forum

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Preparation of Forms 2848 & 8821 and Their Uses - Background -

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Background

- Why does this matter?
- Why is it so important to use the proper form?
- How does the ERPA Program affect the form rules?
- Are the rules still the same?

Background

- Aren't these forms similar?
- Is the ongoing dialogue still present between EP and practitioners?
 - How can we submit comments and questions about these rules?
 - RetirementPlanQuestions@irs.gov
- What if I cannot get my question answered during this forum?
 - RetirementPlanQuestions@irs.gov

Preparation of Forms 2848 & 8821 and Their Uses

Introduction
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Special Review

Preparation of Forms 2848 & 8821 and Their Uses

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Special Review

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Memo Content

- Introduction and purpose
- Questions and Answers
 - First 4 relate to preparation of forms
 - Next 8 relate to specific situations
- Discussion on Unenrolled Return Preparers
- Completed Forms relating to Question 1

Purpose

- Guidance on the proper completion of Forms 2848 & 8821
- Avoid violations of IRC 6103 (Disclosure) & 7602(c) (Third Party Contacts)
- Understand the difference between Form 2848 and Form 8821
- Protects Government and Examiner's interests

Purpose - Forms 2848 & 8821

- Many similarities in their preparation
- No similarities in their use
- Form 8821: Authorizes the party designated to “inspect and/or receive your confidential information in any office of the IRS for the type of tax and the years or periods you list” – NOTHING ELSE

Questions 1 – 4: Preparation

Question 1

Who is the Taxpayer?

- Plan Sponsor
- Trust – Defined as an accumulation of assets held in the name of the plan participants
- Participant/Annuitant/Beneficiary

Question 1 – Who is the Taxpayer?

Line 1 of each form – Whose records are you looking at?

- Plan Sponsor – That is the entity (Plan Name) listed in “Taxpayer Information” on Line 1 along with the name and address and EIN of the sponsoring employer and the plan number

Question 1 – Who is the taxpayer?

Line 1 of each form – Whose records are you looking at?

- Trust Records – That is the entity (Trust Name) listed in “Taxpayer Information” on Line 1 along with the name and address and of the sponsoring employer and the plan number and trust EIN

Question 1 – Who is the taxpayer?

Line 1 of each form – Whose records are you looking at?

- Participant Records – Discrepancy Adjustment; 1099-R amounts not picked up on 1040: Participant and Spouse (if applicable) plus their name, address and appropriate SSN(s)

Question 1 – Who is the taxpayer?

- The memo provides examples of completed forms for different situations
- An EP Examination could require multiple Forms 2848 and 8821
- Trust Records – Forms 56 also required (Reg. 601.503(d))
- The free flow of information amongst the entities, as necessary, is not an improper disclosure

Question 2 – Representatives & Appointees

Item 2 of Forms

- 2848 – Only individuals
- 8821 – also corporations, partnerships, ETC.
- Full 9 Digit CAF Number or “None”
- All other requested information
- ONLY Parties listed on those forms qualify

Question 3 – “Tax Matters”

- Plan Sponsor (Form 5500) – No tax ever so “NA” is only correct answer
- Trust – Income Tax
 - 1041 – Calendar Year Only
 - 990-T – Plan year
- Participant – Income and/or Excise Tax
 - 5330 IRC 4975
 - 1040 Discrepancy Adjustment
- Corporation – Income and/or Excise Tax
 - 5330 IRC 4971, 4972, 4973, ETC.
 - 1120 Discrepancy Adjustment

Question 3 – “Tax Matters”

- Each Form 2848 or 8821 can only cover one taxable entity and the tax or taxes related to that entity
- The Year or Years entered are the only years covered by that form. Additional years require a new or additional form

Question 4 – Proper Title

- The Signature (Item 9-2848; Item 7-8821) should be accompanied by the proper title.
- Plan Sponsor – Title held by the individual who is authorized: If more than 1 title- use the 1 that can legally bind the entity
- Trust – Trustee
- Participant/Annuitant/Beneficiary – Either individual (8821) and Spouse (2848)

Questions Covering Specific Circumstances

Question 5

Bank or other entity as trustee

- Officer having the authority to legally bind this entity (Trust Department)
- Since a Trustee – Need Form 56

Questions Covering Specific Circumstances

Question 6

IRC 403(b) plan examination

- 403(b) - Whose records are being examined? Plan Sponsor
- If plan is disqualified – Tax assessed against Participant – New 2848

Questions Covering Specific Circumstances

Question 7

Refusal to accept responsibility for the plan

- Ex. – 403(b) - The plan sponsor records are examined
- Plan Disqualified – Again Participant Taxed; New 2848

Questions Covering Specific Circumstances

Question 8

Compliance contacts for non-return units (SEP-IRAs)

- Whose records looked at? Likely Plan Sponsor

Questions Covering Specific Circumstances

Question 9

“Pen and Ink Changes”

- The Cure is worse than the “Disease”
- Get a new Form 2848

Questions Covering Specific Circumstances

Question 10

Large case (EPTA) special procedures for contacting

- This is the equivalent of a Form 8821
- Effective means of determining which Plan Sponsor employees to obtain info from
- Accountant, Lawyer not employed by Plan Sponsor – Need Form 2848

Questions Covering Specific Circumstances

Question 11

Prior legitimate Forms 2848 & 8821

- 2848 Line 8: 8821 Line 6: 56 Line 7: All provide for revocation of any same type of prior form on file with IRS
- Forms 2848 & 8821 do this automatically unless the box is checked
- 2848 & 8821 - Not revoking prior forms? Must be attached to current form

Questions Covering Specific Circumstances

Question 12

Multiemployer Plans

- Whose records are being looked at? Trust records? If Trust-review trust document to determine who has the authority to sign (Form 56)
- If necessary to expand to individual records of one of the participating employers-determine who can legally bind them & they should sign

Unenrolled Return Preparers

- In order to qualify to be a POA – must have prepared return
- Plan Years prepared must be in “jurisdiction” box next to signature plus 2 letter Abbrev. for state in which prepared
- If exam expanded need new 2848 for additional years

Unenrolled Return Preparers

- Cannot
 - Execute waivers, statute extensions, closing agreements or claims for refund
 - Represent the taxpayer before Appeals
 - Sign any documents for a taxpayer

Additional Guidance

Multiple Employer Plans are not yet covered by this guidance

- Hope to have guidance when memo is re-issued
- General rule still applies: Whose records are being examined?

Proper Completion of Forms 2848 & 8821

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Overview

- Introduction
- Questions and Answers

Introduction

- Interaction between the Service and practitioner is limited by the authority granted under IRC §§ 6103 and 6104
- Many of these limitations are captured by the instructions and entries which must be provided to Forms 2848 and 8821, as completed by the taxpayer
- Generally, IRC §§ 6103 and 6104 both apply to determination letter requests, but § 6104 (dealing with records open to public inspection) does not apply to examination activity.

Introduction

- Other statutory considerations include the rules limiting disclosure and third party contacts
 - These rules are meant to ensure taxpayer and representative rights be properly observed and protected
 - For this reason, a Form 2848 that is improperly completed or completion of a Form 8821 may not permit an authorized Third Party Contact under IRC 7602(c), and may result in an improper disclosure

Disclosure Rules for EP Determinations

- 6104(a)(1)(B) applies to determination applications.
- Most qualification applications under IRC section 401(a)(1) and 408 are open to public inspection
- Open to Public Inspection
 - All papers submitted in support of an application
 - All letters or other documents issued by the IRS and dealing with the qualification of the above plans

Disclosure rules for EP Determinations

- Plan has fewer than 26 participants
 - only the actual participants in the plan can inspect the documents that would normally be open to the public
- Even though information for a plan with more than 25 participants is open to public inspection, IRM § 7.11.1.9 (09-01-2008) requires Form 2848 or Form 8821 be used by the taxpayer to allow the specialist to speak with third party representatives

Disclosure rules for EP Determinations

- Not open to public inspection
 - Information which compensation of any individual may be ascertained
 - Organization requests because of any trade secrets, patents, processes, styles of work, and the Secretary determines that the public disclosure of such information would adversely affect the organization

Disclosure rules for EP Examinations

In general, EP Examination materials are not open to public inspection, except as may be acquired through a FOIA request.

What is the difference between the Forms 2848 and 8821?

For the IRS to recognize someone as a representative,

1. The representative must present evidence of representational authority, such as a completed Form 2848 or Form 8821.
2. If the representative is **eligible to practice in front of the IRS**, then the representative should use the Form 2848
 - May prepare and file necessary documents, correspond and communicate with the IRS;
 - Represent a client at conferences, hearings, and meetings; and
 - The individual may advocate for a taxpayer.

What is the difference between the Forms 2848 and 8821? - Continued

A properly executed Form 8821, Tax Information Authorization, allows an unenrolled return preparer to:

- Provide plan information to the IRS and receive plan information from the IRS;
- Receive copies of correspondence from the IRS; and
- Submit information requested by the IRS (such as participant data, asset information, etc.) as part of the review of a DL application

What is the difference between the Forms 2848 and 8821? - Continued

However, unenrolled return preparers are **not** authorized to represent the taxpayer even with Form 8821.

May not -

- advocate positions
- amend plan documents
- sign documents
- negotiate closing agreements

If the unenrolled preparer submits proposed plan amendments or advocates positions contrary to those taken by the employee who is assigned the case,

- Must explicitly state, preferably in writing, that the decisions are made by the Taxpayer, either by telephone, in person or in writing

Who should receive correspondence?

- Specialists must send determination letters and correspondence copies to attorneys, CPAs, enrolled agents, enrolled retirement plan agents and enrolled actuaries named in valid Form 2848
- If the valid POA is listed second in Part I item 2 and if item 7a is not checked then the employer and the first POA should be the only ones receiving correspondence, including the determination letter

Who should receive correspondence?

7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.

a If you also want the second representative listed to receive a copy of notices and communications, check this box . . . ►

b If you do not want any notices or communications sent to your representative(s), check this box ►

8 Retention (designation of principal) of attorney. The filing of this power of attorney automatically makes all copies

- If item 7a is not marked then the second POA can be contacted by telephone, but cannot receive correspondence
- If item 7b is checked and the POA does not want to submit a new 2848 or an 8821, then neither POA listed will receive correspondence

Who should receive correspondence?

- Continued

If the Form 8821 is being used, and box 5a is not checked, then the appointee should not be sent any correspondence.

4 **Specific use not recorded on Centralized Authorization File (CAF).** If the tax information authorization is for a specific use not recorded on CAF, check this box. See the instructions on page 4. If you check this box, skip lines 5 and 6 .▶

5 **Disclosure of tax information** (you **must** check a box on line 5a or 5b unless the box on line 4 is checked):

a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box▶

b If you do not want any copies of notices or communications sent to your appointee, check this box.▶

If the case file contains a valid Form 2848 and a Form 8821 for 2 different representatives then both representatives should receive correspondence.

Who is the Taxpayer for the purposes of a 5300?

The plan and trust are two separate legal entities.

Therefore there are three taxpayers in a Form 5300 application for determination—

- The sponsoring employer,

- The trust, and

- The plan participants or their beneficiaries.

The instructions for both the Form 2848 and Form 8821 require that, Item 1 (Taxpayer Information) contain the plan name and number and the plan sponsor name, address & EIN.

Unless the employer is also the trustee, a second POA may be necessary if amendments to the trust are required.

Who is entered in Item 2 on the Forms 2848 (Representative(s)) & 8821 (Appointee)?

- Only individuals may be named as a Representative on Form 2848. Any individual, organization, firm, corporation or partnership may be named as an Appointee on Form 8821.
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- Each form should contain the full 9 digit CAF number. All other information must be fully completed before the determination letter is issued .

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

CAF No.

Telephone No.

Fax No.

Check if new: Address Telephone No. Fax No.

What is to be entered in Item 3 which is “Tax Matters” on both Forms 2848 and 8821?

- The plan could never, under any circumstances, produce a tax liability. For that reason, the plan’s only valid entry under “Type of Tax” would be “NA”;
- “Tax Form Number” would be 5300, 5307 or 5310; &
- “Year(s) or Period(s)” answered “N/A”.

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)

Questions?

