

Does a Power of Attorney Make You Your Father's Keeper?

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Recently, the First Circuit Court of Appeals affirmed the United States District Court for Massachusetts' opinion that an incompetent taxpayer could not suspend the statutory period for filing for a tax refund because a competent adult held the incompetent taxpayer's durable power of attorney (POA) and could have acted on the taxpayer's behalf. This was the case even though the agent did not use the POA or know that the taxpayer was entitled to a tax refund.

In 2005, Carlton Stauffer executed a durable power of attorney giving his son Hoff the authority to act on his behalf in financial matters, and Hoff initially exercised the POA to gather and manage some of his father's assets. However, in 2006 due to a disagreement over Carlton's girlfriend's spending, father and son had a falling out. Carlton made some ineffective attempts to revoke the POA, but the POA remained in force. Nevertheless, Hoff ceased to exercise the POA. Father and son reconciled in 2009, but Carlton continued to handle his own affairs without his son's use of the POA. Carlton died in 2012, and Hoff was named the executor of his father's estate. At that point, Hoff discovered that his father had not been filing his tax returns since 2006, and in fact was due a refund of almost \$100,000 for 2006.

Even though the statutory deadline for requesting refunds is three years, Hoff tried to file a refund claim in 2012. He argued that Internal Revenue Code Section 6511(h)(2)(A) suspends the general statutory limitations period under Section 6511(h)(1) due to his father's financial disability, which is defined as a person's inability to handle his financial affairs due to physical or mental impairment. However, the District Court found that the rule suspending the statutory limitations period did not apply, because Section 6511(h)(2)(B) provides that an individual is not deemed financially disabled if any person is authorized to act on that individual's behalf in financial matters. The First Circuit dismissed Hoff's contention on appeal that, in addition to having the authority to file his father's tax returns, Section 6511(f)(2)(B) also requires not only a *duty* to file his father's tax returns, but also actual or constructive knowledge on Hoff's behalf that *he had to file* his father's tax returns for the particular year. The POA that Hoff held on his father's behalf was deemed sufficient to give Hoff the power to act on his father's behalf, even though they were estranged at that point and Hoff had no involvement with his father's financial dealings. The First Circuit agreed that a valid POA was enough to constitute "authority" to act on his father's behalf and suspension of the statutory limitations period did not occur.

Lesson learned: if you hold a power of attorney on behalf of another, you may want to insist that accurate and timely tax returns are being filed. The mere existence of the POA you are holding may prevent that person from being able to use the exception to the general statutory limitations period for a financial disabled taxpayer if a mistake is made and a refund is later sought.

For more information about this alert, please contact one of the authors or any member of McGlinchey Stafford's Tax Law team.

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