Why Signing on the Dotted Line Is Harder Than It Seems: A Primer on Signature Authority

*By Jennifer Breen, Michael Kummer and Nick Zemil**

Jennifer Breen, Michael Kummer and Nick Zemil examine signature authority in their article to sensitize taxpayers and their advisors to the reality that the signature requirement—a simple, fundamental rule—is difficult to apply in practice.

It is a longstanding rule that income tax returns, forms and other documents must be signed by individuals with authority to do so. Code Sec. 6061 states:

> [A]ny return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.[1]

This longstanding rule is fundamental to tax compliance. A tax return that is not signed is "no return at all."[2] Therefore, failing to properly sign a tax return, form or other document can mean that the document was not actually filed in the first place. Dire consequences can result: statutes of limitations might be open,[3] tax elections might not apply,[4] agreements might be unenforceable[5] and penalties could be imposed.[6]

The rule that income tax forms must be signed by properly authorized individuals is simple and, in many instances, complying with it is straightforward. But, as is often the case in income tax matters, things are not as simple as they seem. For nearly a century, signature authority questions have consistently plagued taxpayers and the IRS and generated controversy and litigation.[7]

This article is a primer designed to sensitize taxpayers and their advisors to the reality that the signature requirement—a simple, fundamental rule—is difficult to apply in practice. However, this article could not possibly address each and every

JENNIFER BREEN is a Partner in the tax group at Morgan, Lewis & Bockius LLP in Washington, D.C.

MICHAEL KUMMER is an Associate in the tax group at Morgan, Lewis & Bockius LLP in Washington, D.C.

NICK ZEMIL is an Associate in the tax group at Morgan, Lewis & Bockius LLP in Washington, D.C.

nuance and wide-ranging piece of guidance in this area.[8] As discussed below, the sheer breadth of authorities, guidance and factors that taxpayers must confront can make it surprisingly difficult to ascertain who should sign their name on the dotted line. This primer is simply one place to start.

Part I explains some of the reasons why, in practice, complying with this fundamental requirement is harder than it looks. For example, taxpayers must analyze applicable federal tax statutes and regulations, but those authorities commonly point taxpayers to IRS informal guidance, such as forms, publications and instructions. The volume of that guidance is daunting and, in a few instances, it actually departs from the statutes and regulations.[9] Taxpayers must also keep abreast of changes that impact signature authority. These include statutory changes, such as the recent repeal of the partnership audit rules in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)[10]; corporate events, such as mergers, acquisitions, dissolutions and bankruptcies; and routine personnel issues, such as a promotion or resignation.

Part II describes how taxpayers and the IRS address signature authority mistakes. Broadly, state law principles of apparent agency and estoppel allow the IRS to rely on unauthorized taxpayer signatures when doing so favors the IRS but, when the shoe is on the other foot, taxpayers cannot profit from their own signature authority mistakes. Taxpayers might consider seeking relief under Reg. §301.9100 or asserting a substantial compliance defense, but these options are not guaranteed solutions.

Part III concludes that the signature requirement should not be an afterthought that taxpayers, their employees and their advisors postpone addressing until shortly before submitting a form to the IRS. While signing on the dotted line is not as simple as it seems, taxpayers and their advisors can avoid mistakes by exercising care and foresight.

I. A Few Reasons Why Signing on the Dotted Line Is Not as Simple as It Seems

There are several reasons why, as a practical matter, it is easy to make mistakes when signing a return, form or other document. First, exactly who can sign for a taxpayer varies depending on the type of entity and form at issue. Second, unlike most instances in federal income tax law—where the Code and Regulations embody the substantive law—a host of forms, instructions and publications contain the rules for who can sign which forms. And this guidance occasionally departs from the statutes and regulations. Third, because an individual derives the power to bind an entity from state law, taxpayers must consult state statutes and the entity's organizational documents to ensure an individual is duly authorized to sign on behalf of the entity. Moreover, corporate events such as mergers, acquisitions, dissolutions and bankruptcies can often alter who can sign for an entity under relevant state law.

1. Different Taxpayers Have Different Rules

While the tax law commonly treats different types of entities differently, the requirement that returns, statements and other documents be properly signed is universal and applies to all taxpayers, regardless of their classification. Nevertheless, exactly who is authorized to sign documents is not a uniform rule and, instead, varies depending on the classification of the taxpayer at issue. This section first explains the differences between the rules for corporations and partnerships and then addresses individuals for whom the rules at first blush seem easier to apply, but even then can be complex.

a. Corporations vs. Partnerships

It is important to understand at the outset that "natural persons," not entities, must sign their names to returns, forms and other documents.[11] But determining exactly which natural person should sign on behalf of an entity can be a complex undertaking. Indeed, the day-to-day actions of corporations and partnerships might be carried out by hundreds (or thousands) of natural persons.[12]

The general statutory rule for corporations (C corporations and S corporations alike) is that returns and other documents "shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act."[13] In contrast, partnership information returns "shall be signed by any one of the partners."[14] Although these rules are simple on their face, they have caused confusion.

This confusion is perhaps on reason why Code Sec. 6062 (corporations) and Code Sec. 6063 (partnerships) each explain that the fact that an individual's or partner's name "is signed on the return shall be prima facie evidence" that such individual or partner "is authorized to sign the return."[15] However, this rule operates as a safe harbor for the IRS to allow for the processing of a filing. It promotes administrative convenience by allowing an IRS service center to process a signed return, form or other document without first analyzing whether the signatory was in fact authorized to sign.[16] As noted below, this is not an uncommon occurrence.

With respect to partnerships, in *Weiner*, the taxpayer, an individual, was a limited partner in a California limited partnership called Travertine Flame Associates ("TFA") that acquired and developed land to grow grapes.[17] In

1984, American Agri-Corp. was Travertine's managing agent and was responsible for "managing all day-to-day activities of TFA, including negotiating and executing contracts and tax planning and reporting."[18] Travertine's general partners were each executive officers and directors of American Agri-Corp. In 1985, American Agri-Corp. continued to act as TFA's managing agent. In January of 1985, American Agri-Corp.'s treasurer signed and timely submitted TFA's 1984 Form 1065 as "treasurer." Later in 1985, American Agri-Corp. became a partner in TFA.

The U.S. District Court for the Southern District of Texas found that TFA's 1984 Form 1065 was invalid because it was not signed by one of TFA's partners, even though it was signed by an officer of TFA's managing agent who could apparently bind TFA in other contexts.[19] *Weiner* illustrates that the ability to bind an entity for certain state law purposes does not necessarily translate into an ability to bind it for purposes of filing a federal income tax return.

A similar rule exists in the corporate context. For instance, the common parent of a consolidated group generally is the "sole agent" with regard to the group's federal income tax liability, which entitles it to take a range of actions on the group's behalf.[20] Such actions include filing the Form 1120 for the consolidated group.[21] They also include filing "all extensions of time," executing waivers, bonds, closing agreements, offers in compromise and "all other documents," and being the sole recipient of notices of claim disallowance, notices of deficiency and notices and demands for payment of tax.[22] This is true even though various group members might retain the ability to bind themselves or other group members for state law purposes.

As discussed below, the rules for signing individual income tax returns are easier to apply, but even they include complications.

b. Individuals

Naturally, an individual has the authority to sign for himself or herself.[23] But this straightforward rule becomes more complex when agents or joint returns are involved.

Taxpayers commonly have their returns prepared entirely by agents, such as an accountant, CPA or tax attorney. However, agents may only execute returns on behalf of taxpayers in limited scenarios. Reg. §1.6012-1 allows agents to sign for individual taxpayers if the taxpayer is unable to sign by reason of disease, injury or continuous absence from the United States.[24] Another arcane exception allows agents to sign returns where the taxpayer requests permission in writing from the local internal revenue district director and the district director "determines that good cause exists."[25] The regulations do not specify when or how a taxpayer must apply for such permission, when the director must render a decision or what factors comprise "good cause." In fact, this exception was promulgated over 50 years ago, and the IRS has undergone multiple internal reorganizations since that time,[26] adding confusion to the permission process. IRS internal reorganizations frequently change the IRS office where applications must be filed, forcing taxpayers to consult additional IRS guidance, which itself commonly changes.[27]

Special rules also apply for joint income tax returns. Generally, each spouse must sign. A joint return that is only signed by one spouse is invalid.[28] However, the regulations also provide that where one spouse "is physically unable by reason of disease or injury to sign a joint return," the other spouse may obtain the "oral consent of the one who is incapacitated," "sign the incapacitated spouse's name in the proper place on the return followed by the words 'By __________ Husband (or Wife),'" and file statement to this effect with the return.[29] However, the regulations do not explain how to approach a scenario when a spouse who is so physically incapacitated that he or she cannot sign a return is likewise unable to orally consent to signing the return.

Like the rules for signing corporate returns and partnership information returns, these rules cause confusion in practice. For instance, in *B.C. Reifler*, the Tax Court recently noted that the signature requirement on joint income tax returns was the "easiest to satisfy" of the requirements for a valid joint tax return.[30] Nevertheless, the taxpayers failed to comply with it and submitted a joint income tax return signed by just one spouse. The Tax Court rejected the taxpayers' reasonable cause defense and imposed failure-to-file penalties.[31]

While the rules are clear at first blush, taxpayers can (and do) make mistakes applying the statutory rules for signing corporate, partnership and individual returns. Additionally, the continued expansion of electronic filing adds a new dimension to what it means to "sign" a return. While electronic filing may make it easier to execute a return, it will not eliminate the need to ensure that the individual who executed the document electronically was authorized to do so.[32]

Moving beyond tax returns, the prospect for error increases significantly when signing the other miscellaneous forms, documents and statements entities must confront.

2. Different Forms Have Different Rules

While the Code contains statutory rules for who can sign returns, the rules for other documents are commonly set forth in forms, instructions and publications.[33] This might itself confuse taxpayers because in other contexts—such as when taxpayers argue they have complied with a rule or attempt to excuse noncompliance based on language in a form, instruction or publication—it is well-settled that IRS forms, instructions and publications are not binding authority.[34] More substantively, the promulgation of a wide range of miscellaneous tax forms and other documents obligates taxpayers to address the separate instructions and guidance associated with each. Aside from the sheer volume of instructions taxpayers must confront, this raises several thorny issues.

For example, there are various instances where the rules require signatures from individuals other than those authorized to sign returns.[35] Therefore, taxpayers should not simply look to a tax return to identify an appropriate signatory for other forms and documents. For instance, Form 2553, *Election by a Small Business Corporation*, must be signed by a duly authorized officer of the corporation but must also be signed by shareholders of the corporation on the date such election is made.[36] Thus, it may be necessary to obtain signatures from *former* shareholders.

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Relatedly, Form 8832, *Entity Classification Election*, must be signed by "[e]ach member of the electing entity who is an owner at the time the election is filed," or by "[a]ny officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents)."[37] If the election is to be effective for any period before it is filed, it again may be necessary to obtain signatures from former owners, shareholders or members.[38] Finally, IRS Chief Counsel recently took the position that the "sole agent" rules in the consolidated return context obligated the common parent of the consolidated group of which a partner in a partnership was a member to sign a Form 2848 for the partnership, even though the common parent was not itself a partner in the partnership.[39]

These differences even exist in the individual context. Although both spouses must sign a joint income tax return (and other forms),[40] a different rule applies to consents for extensions of time within which the IRS may assess tax. The Tax Court has previously held that "even though [spouses] file a joint return, they are separate taxpayers and it follows that one has an absolute right at any time to waive the restrictions on assessment and collection even though the other does not."[41] The IRS has applied this reasoning in similar contexts. A 1992 Field Service Advice concluded that a Form 870-P settlement agreement with respect to partnership items reported on a joint return was binding on both spouses even though it was only signed by one spouse.[42]

Finally, several idiosyncrasies in the partnership context deserve mention. First, although the Code explains that "any one of the partners" may sign the partnership's return, the instructions to Form 1065 state: "Form 1065 is not considered to be a return *unless it is signed by a general partner or LLC member manager*."[43] Obviously, not all partners are general partners or member managers.

Second, Form 941, *Employer's Quarterly Employment Tax Return*, must be signed by "[a] *responsible* and duly authorized member, partner, or *officer* having knowledge of its affairs."[44] Likewise, some partners may not have sufficient knowledge of the partnership's affairs and, in any event, an officer of the partnership can sign Form 941. A different rule obviously applies in the income tax context.

Third, the Bipartisan Budget Act of 2015 repealed TEFRA effective for partnership returns filed after 2017.[45] That legislation replaces the concept of a tax matters partner with a "partnership representative" who has "sole authority to act on behalf of the partnership."[46] However, the partnership representative does not have to be a partner in the partnership.[47] Thus, as drafted, the Bipartisan Budget Act of 2015 enables a partnership representative to act on a partnership's behalf even though that individual or entity might not be able to bind the partnership under state law. It also enables a partner who did not sign the Form 1065 to obtain "sole authority" to control the audit and litigation of the Form 1065, including by signing various consents, agreements, waivers and other documents.[48]

3. Different States Have Different Rules

In addition to navigating various forms, instructions and publications, taxpayers looking to answer signature authority questions must also grapple with state law. Natural persons generally derive from state law the power to bind an entity or other individuals.[49] The regulations expressly recognize this by requiring, for instance, that an officer signing an entity classification election on behalf of an organization be authorized to do so "under local law or the entity's organizational documents."[50] Thus, taxpayers faced with signature authority questions should supplement any analysis of forms, instructions and publications with an analysis of state law to confirm that an individual signing a form is indeed authorized to do so.

In many instances, identifying the correct signatory becomes more difficult when an entity ceases to exist by reason of merger, reorganization or liquidation. State statutes commonly resolve these issues and explain who can (or cannot) act for a merged, reorganized or liquidated entity.[51] For instance, the IRS has recognized that there may be certain instances when, by virtue of state law, "no one may sign" a document on behalf of an entity, such as when a corporation dissolves and the applicable state law provides that the corporation's existence is terminated.[52] On the other hand, in states whose laws provide that a dissolved corporation continues in existence to wind up its affairs, the normal rules set forth above apply during the period the corporation continues in existence under state law.[53]

Further complicating matters, the foregoing transactions can trigger the obligation to notify the IRS of a change in authority. As noted above, the common parent of a consolidated group for a consolidated return year is generally the sole agent for the group for the year. This remains true even if, in a later year, another corporation becomes the common parent or the group terminates.[54] However, when the agent terminates or merges out of existence, its successor must notify the IRS to ensure the IRS will act on its communications on behalf of the consolidated group.[55]

In CCA 201552025, one corporation ("Oldco") was the agent of a consolidated group for Year 1 but, in a later year, dissolved under state law. Oldco failed to designate a substitute agent before it dissolved, and the IRS did not designate a substitute agent. After Oldco dissolved, the corporation that assumed all of Oldco's Year 1 federal tax liabilities ("Holdco") submitted to the IRS a competent authority request for Year 1 for one of Oldco's foreign subsidiaries. However, Holdco had not yet notified the IRS that it was Oldco's successor. Chief Counsel concluded that Holdco was the proper party to submit the competent authority request as Oldco's default substitute agent but also cautioned that the IRS has no reason to accept or act on communications submitted on behalf of a consolidated group by a substitute agent that fails to provide proper notification of its status to the IRS.

II. Resolving Signature Authority Errors: Commonly a One-Way Street

Given the complexity of the rules set forth above, mistakes in this area can be difficult to avoid. They can also yield harsh and seemingly inequitable results.[56] As explained below, the IRS has several avenues of relief—agency principles and equitable estoppel—that typically act as one-way remedies. Taxpayers typically cannot use them to defend their own mistakes, but the IRS can use them to uphold an improperly signed form—such as a consent to extend the statute of limitations on assessment—when doing so favors the IRS. While this may make sense in principle—taxpayers should not profit from their own mistakes—it can be hard for taxpayers to stomach. However, taxpayers with signature authority errors are not entirely without options. This part concludes by explaining a few mechanisms taxpayers can employ to potentially remedy signature authority errors or otherwise avoid some of their harsh consequences.

1. Agency Principles and Estoppel Are Remedies for the IRS

It can be difficult for taxpayers to disavow the impact of certain documents they submit to the IRS, even if those documents turn out to be signed by individuals without the authority to do so. State law agency principles of apparent authority and ratification, as well as equitable estoppel, commonly allow the IRS to rely on unauthorized taxpayer signatures to a taxpayer's detriment.

a. Apparent Authority and Ratification

Broadly, to bind a principal, an agent must have actual or apparent authority. Alternatively, the principal may ratify the agent's acts. As the Tax Court has explained:

> Actual agency or actual authority is defined as the authority which a principal expressly or implicitly grants to an agent. Apparent agency or apparent authority "arises when the principal creates by its words or conduct the reasonable impression in a third party that the agent has authority to act." If apparent agency or apparent authority is established, and it is shown that a third party relying on the apparent authority did so rely in good faith and was justified in so relying, the principal is bound to the same extent as with actual authority.[57]

Ratification, on the other hand, can validate "what was originally an unauthorized and illegal act."[58] With respect to signature authority, ratification is "retroactive adoption of an unauthorized signature by the person whose name is signed."[59]

The Tax Court applied apparent authority in *Summit Vineyard Holdings*,[60] holding that an extension of a partnership's statute of limitations on assessment was valid even though it was not signed by the designated tax matters partner (TMP). At issue was whether a Form 872-P consenting to extend the statute of limitations on assessment for Summit Vineyard Holdings, LLC's ("Summit") 2007 tax year was valid. At all relevant times, Summit was a TEFRA partnership. Summit SV Holdings, LLC ("SV") was Summit's TMP for the 2007 tax year. Eric Gjelde ("Mr. Gjelde") was SV's managing member. Gjelde was also the managing member for Meridian Equity, LLC ("Meridian"). Meridian became Summit's TMP in 2009. On December 13, 2010, Gjelde signed a Form 872-P for Summit's 2007 tax year as managing member of Meridian. However, Meridian was not Summit's TMP for the 2007 tax year; SV was.

The Tax Court held that, even though Mr. Gjelde was not Summit's TMP, "Mr. Gjelde, as managing member of Meridian, had apparent authority to execute the Form 872-P."[61] The crucial factor appears to have been that one of Summit's representatives transmitted the Form 872-P to the IRS examining agent with a note saying "[y]ou have the scanned copy. That should be sufficient enough proof that it is on the way. I'm sure that will hold up in any court that the intent was for it to be signed and delivered."[62] The Tax Court stated that "Summit, through its representative … led [the IRS examining agent] to believe that Mr. Gjelde, as managing member of Meridian, had the power to execute such consents."[63] Absent these facts, the result may have been different.

The Tax Court also highlighted the fact that Mr. Gjelde was managing member of both Meridian and SV. It distinguished a case where the purported TMP and the actual TMP "were two different individuals."[64] In other words, it was important "that Mr. Gjelde was the correct natural person to sign, albeit in a different capacity."[65]

IRS counsel recently analyzed facts where the same natural person signed in the wrong capacity, reached a conclusion similar to that in *Summit Vineyard Holdings* and backstopped its conclusion with ratification.[66] In Chief Counsel Memo 20152301F, the IRS sought to rely on an extension of the statute of limitations that was signed by a representative ("Representative") acting pursuant to a possibly invalid Form 2848. The Form 2848 was signed by an individual ("Officer One") as president of a corporation ("Corporation A") that was previously merged with and into its subsidiary ("Corporation B").

Officer One was Corporation A's president before the merger and became Corporation B's president after the merger. The merger occurred in Year 4. After the merger, Officer One signed a Form 2848 in Corporation A's name as Corporation A's president. The Form 2848 related to Corporation A's Year 3 and authorized Representative to act for Corporation A. Representative then signed Consent One to extend Corporation A's statute of limitations for Year 3.[67] Representative signed Consent One as a representative of Corporation A.

Counsel concluded that the IRS could rely on Consent One. Technically, an officer of Corporation B should have signed the Form 2848 as an officer of Corporation B (because Corporation B was Corporation A's successor). Nevertheless, subsequent acts during the audit ratified Officer One's unauthorized signature on Form 2848. After the merger and during the audit, Corporation B undertook a "pattern of actions representing [that] Corporation A had authority to act in its own name." Although the memorandum acknowledged that ratification is a "complex, fact-intensive inquiry," exactly what acts served to ratify Officer One's authority are redacted. However, it appears that none of the relevant parties repudiated Officer One or Corporation A's actions.

b. Equitable Estoppel

A taxpayer can be estopped from challenging signature authority where (1) the taxpayer made a false representation or wrongful, misleading silence; (2) the error originated in a statement of fact, not in opinion or of law; (3) the IRS actually and reasonably detrimentally relied on the taxpayer's action (or inaction); and (4) the IRS did not know the true facts.[68]

In *Union Texas International Corp.*, the Tax Court held that a taxpayer was equitably estopped from denying that it had properly extended the statute of limitations on assessment.[69] There, a corporation ("New Petroleum") whose 1985 Forms 720, *Quarterly Federal Excise Tax Returns*, were being audited merged with and into an affiliated corporation ("Energy") and, as of December 31, 1991, ceased to exist. None of New Petroleum's or Energy's representatives told the IRS examining agents or appeals officers about the merger. On three occasions from 1992 to 1993, two former officers of New Petroleum signed Forms 872 consenting to extend the statute of limitations on assessment for 1985. When they signed the Forms 872, the officers were officers of Energy and "would have had authority" to sign a Form 872 on its behalf.[70] However, they signed on New Petroleum's behalf, which did not exist and therefore "no longer had authority to extend the period of limitations after December 31, 1991."[71] The IRS conceded that the Forms 872 were invalid but argued that Energy was estopped from denying their invalidity.

The Tax Court agreed. It held that Energy's failure to inform the IRS examining agents and appeals officers about the merger was a wrongful, misleading silence that originated in a statement of fact—that, when the Forms 872 were signed, New Petroleum existed and the signing individuals were its properly authorized officers—on which the IRS detrimentally relied by failing to obtaining a correct Form 872 or assessing additional tax in a timely fashion. The Tax Court also held that the IRS did not know the true facts, even though, three months before the first erroneous Form 872 was signed, the IRS received New

Petroleum's final quarterly employment tax return marked "cancel corporation merged out of existence" and, shortly after the first erroneous Form 872 was signed, the IRS received with the income tax return of New Petroleum's parent company a statement and certificate of merger explaining that New Petroleum had merged into Energy.[72]

In short, equitable estoppel commonly operates to prevent a taxpayer's mistake from working an injustice to the IRS.[73] It is not so easy, however, for taxpayers to avoid the negative consequences of their signature authority mistakes. Nevertheless, taxpayers facing signature authority errors have several potential avenues for relief.

2. Potential Options for Taxpayers

a. Relief Under Reg. §301.9100-1

The IRS has the authority to grant relief to taxpayers from certain filing errors. Relief under Reg. §301.9100-1 (so-called "9100 Relief") does not cure improper filings. Instead, it enables the IRS to grant taxpayers a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) when the taxpayer has failed to do so on a timely basis.[74]

Statutory elections are those whose due dates are prescribed by statute.[75] Regulatory elections are those whose due dates are prescribed by regulation published in the Federal Register, or revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.[76]

Reg. §301.9100-2 provides for automatic extensions of time in certain scenarios. Reg. §301.9100-3 provides for other extensions and requires the taxpayer to establish to the satisfaction of the IRS that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the government.[77]

There are a wide variety of "elections" to which 9100 Relief might apply. For instance, it applies to elections under Code Sec. 338 for corporations making qualified stock purchases,[78] entity classification elections,[79] qualified separate lines of business elections for employers' qualified plan testing purposes[80] and elections to extend the time to assess branch profits tax.[81] Applications for relief in respect of tax or a request to adopt, change or retain an accounting method or period will qualify for 9100 Relief.[82]

Reasonable mistakes with respect to signature authority issues will likely qualify for relief under these provisions.[83] This should provide some comfort to taxpayers because some of the foregoing elections—in particular, Form 8023, *Elections Under Section 338 for Corporations Making Qualified Stock Purchases*, and Form 8832, *Entity Classification Election*—present some of the most complex signature authority issues.[84]

Indeed, the IRS has granted a taxpayer an extension to file Form 3115 to change its accounting method where the taxpayer's authorized officer inadvertently filed an unsigned copy of the Form 3115 with the IRS national office.[85] This is consistent with relief the IRS has granted for invalid signatures in other contexts.[86] If invalid signatures carry the same consequence as no signature at all, it follows that taxpayers filing forms signed by unauthorized individuals could qualify for 9100 Relief in the same manner as taxpayers filing forms bearing no signature at all.

b. Substantial Compliance

The doctrine of substantial compliance is a possible avenue of relief for problems of improper signature authority.[87] Broadly, the doctrine excuses certain procedural failures where a taxpayer has otherwise complied with a rule's essential requirements:

> The critical question to be answered is whether the requirements relate "to the substance or essence of the statute." If so, strict adherence to all statutory and regulatory requirements is a precondition to an effective election. On the other hand, if the requirements are procedural or directory in that they are not of the essence of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict, compliance.[88]

Taxpayers and their advisors should understand the consequences of failing to have a return, form or other document signed by an authorized individual.

Mistakes with respect to signature authority might instinctively seem like good candidates for substantial compliance relief. A taxpayer might accurately complete and timely submit an entire tax return, form or other document and simply fail to have the form signed by a properly authorized individual. However, the "substance or essence" of the statutory and regulatory rules in this area is that returns, forms and documents must be signed by persons with proper authority. Thus, attempting to excuse a signature authority mistake by arguing substantial compliance may not succeed.

Nevertheless, in *Columbia Iron & Metal Co.*, the Tax Court found substantial compliance despite the complete absence of a required statement.[89] It stands to reason that a similar result could attain when a taxpayer *submits* a statement that is simply signed by the wrong individual.

The issue in *Columbia Iron & Metal Co.*, was whether a corporation properly made an election to treat charitable contributions as paid during the tax year.[90] To make the election, the applicable regulation required the corporation to attach to its return a written declaration, "verified by a statement signed by an officer authorized to sign the return."[91] While the corporation's return identified the donee, date and amount of each contribution and that they were accrued at the end of the tax year, the return did not include the required discrete statement signed and verified by an authorized corporate officer.

Nevertheless, the Tax Court held that the corporation was entitled to deductions for the charitable contributions because the corporation substantially complied with the regulation at issue. The Tax Court noted that "[i]n several cases, where a taxpayer has complied with the essential requirements, this Court has held that an election was effective, even though the taxpayer has failed to comply with certain procedural requirements."[92]

The Tax Court explained that:

> [A]lthough the copy of the resolution and the written, verified statement of an officer were not attached to the return, the copy of the resolution was furnished to the respondent shortly after the return was filed [during an audit], and the written and verified statement of an officer has now been furnished the respondent. Thus, the respondent now has the documents which he requires be submitted to support the deduction.[93]

This result is consistent with certain the IRS letter rulings.[94] For example, in LTR 8903047, the IRS ruled that a taxpayer substantially complied with the requirements for making a qualified subchapter S trust election, despite the fact that persons who signed Form 2553 as trustees of several trusts should have signed in their capacity as beneficiaries, that the name of one trust was incorrectly listed, and that one signature was omitted entirely. The IRS explained that, under "somewhat analogous circumstances," the Tax Court in *Columbia Iron & Metal Co.* held for the taxpayer on a substantial compliance rationale.[95]

Therefore, in appropriate instances, taxpayers may be able to "cure" problems of signature authority by correcting errors in a timely fashion and furnishing corrected forms to the IRS. Indeed, this is the strategic route the taxpayer and its advisors chose in LTR 8903047.[96] Although it is not clear that such a strategy would work, given the dire consequences that mistakes in this area can cause, it is an option that taxpayers could consider if faced with a capacity issue on a previously filed document.[97]

On the other hand, in *Weiner*, the U.S. District Court for the Southern District of Texas rejected a substantial compliance defense where a partnership's return was not signed by a partner.[98] The partnership's Form 1065 was instead signed by an officer of the partnership's managing agent. Although the managing agent was responsible for executing contracts, tax planning and conducting other matters for the partnership,[99] the court found that:

> Section 6063 contains the express requirement that a partnership return be signed by a partner … . Weiner's various arguments invite uncertainty where Congress was clear and unambiguous. The tax laws are to be strictly construed. Weiner's contentions regarding substantial compliance with the partnership tax return signature requirement are rejected.[100]

More recently, the Tax Court rejected a taxpayer's substantial compliance defense where a joint income tax return was signed by one spouse but not both.[101] In *Reifler*, the Tax Court held:

> The substantial compliance doctrine indeed allows a taxpayer to file a return that may contain some inaccuracies and mistakes as long as an honest and reasonable attempt to comply with the tax law requirements has been made. But, as clarified in *Beard,* signing a return under penalty of perjury is a separate and distinct requirement that has not been met in this case. The substantial compliance doctrine is not intended and should not be used to justify a failure to comply with simple and clear requirements. The history of the doctrine and the policy behind it do not support the finding that the substantial compliance doctrine is applicable in this case.[102]

Although *Reifler* dealt with a scenario where a return entirely failed to include one required signature, the IRS could try to extend its principles to cases involving the inclusion of an unauthorized signature on a return, form or other document.[103] Such a case would presumably hinge on the clarity (or lack thereof) of the statutory or regulatory rule at issue.

III. Conclusion

As noted above, the authority in this area is wide ranging and the rules vary depending on the type of taxpayer, form and state law at issue. This leads to confusion and causes problems, which can have devastating consequences.

For taxpayers and their internal and external advisors, preparing and submitting returns, forms and other documents is a regular part of business and tax compliance. It might be easy for taxpayers and advisors to focus on the substantive aspects of returns, forms and documents and place signature authority issues on the back burner. But they should not. Signature authority issues deserve the same attention as other technical aspects reported on returns, forms and documents. Taxpayers and their advisors should understand the consequences of failing to have a return, form or other document signed by an authorized individual. They should research the rules to determine who has signature authority. Finally, they should be aware of possible avenues for fixing a mistake when an unauthorized individual signs on the dotted line.

ENDNOTES

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1 Code Sec. 6061(a). *See also* Code Secs. 6062 and 6063. Unless otherwise indicated, all section references in this article are to the Internal Revenue Code of 1986, as amended (hereinafter "Code") and the Treasury Regulations.

2 *R. Dixon*, 28 TC 338, Dec. 22,366 (1957). *See also R.D. Beard*, 82 TC 766, Dec. 41,237 (1984) (establishing requirements for a valid return), *aff'd,* CA-6, 86-2 USTC ¶9496, 793 F2d 139.

3 *See, e.g.*, *Lucas v. Pilliod Lumber Co.*, SCt, 2 USTC ¶521, 281 US 245, 249, 50 SCt 297 (1930); *H.C. Elliot*, 113 TC 125, Dec. 53,498 (1999).

4 *See, e.g.*, GCM 32241 (Mar. 30, 1962) (invalid section 1361 election); LTR 199951036 (Sept. 28, 1999) (invalid entity classification elections).

5 *See, e.g.*, Code Sec. 7121(a) (allowing written agreements "with any person relating to the liability of such person (or of the person or estate for whom he acts)"); Rev. Proc. 68-16, 1968-1 CB 770 (establishing procedures for executing closing agreements on behalf of various entities and taxpayers).

6 *See, e.g.*, *P. Vaira*, 52 TC 986, 1004–1005, Dec. 29,750 (1969), *rev'd on other grounds*, CA-3, 71-1 USTC ¶9495, 444 F2d 770; *T.R. Plunkett*, 41 BTA 700, Dec. 11,045 (1940), *aff'd,* CA-1, 41-1 USTC ¶9373, 118 F2d 644.

7 *See, e.g.*, *Lucas v. Pilliod Lumber Co.*, SCt, 2 USTC ¶521, 281 US 245, 50 SCt 297; *B.C. Reifler*, 110 TCM 360, Dec. 60,425(M), TC Memo. 2015-199; *Summit Vineyard Holdings, LLC*, 110 TCM 113, Dec. 60,362(M), TC Memo. 2015-140; *Agri-Cal Venture Assocs.*, 80 TCM 295, Dec. 54,022(M), TC Memo. 2000-271; *J.A. Doll*, 24 TCM 995, Dec. 27,479(M), TC Memo. 1965-191, *aff'd*, CA-3, 66-1 USTC ¶9363, 358 F2d 713.

8 Tax Court petitions are an important topic beyond the scope of this article. Whether a Tax Court petition has been properly signed in accordance with Tax Ct. R. 34(b)(7) has been litigated repeatedly. *See, e.g., S.S. Hoj*, 26 TC 1074, Dec. 21,935 (1956); Order of Dismissal for Lack of Jurisdiction, *Soublet*, Tax Ct. Docket No. 27242-14 (Apr. 6, 2015), *aff'd,* CA-4, 615 FedAppx 120 (Aug. 27, 2015). The frequency of problems with the Tax Court's signature requirement may be attributable to the high percentage of unrepresented, individual taxpayers who litigate in that forum. One estimate recently noted that approximately 71 percent of cases brought in Tax Court were brought by *pro se* taxpayers. Hon. Paige L. Marvel, *The Evolution of Trial Practice in the United States Tax Court*, 68 TAX LAWYER 289, 289 (2015). A petition that has not been properly signed does not invoke the jurisdiction of the Tax Court and can render the court's decision void. *See, e.g.*, *Hoj*, 26 TC 1074, Dec. 21,935 (1956); *Great Falls Bonding Agency, Inc.*, 63 TC 304, Dec. 32,867 (1974). However, the Tax Court's Rules of Practice and Procedure contain a provision that allows taxpayers to fix mistakes by ratifying the petition. Tax Ct. R. 60(a)(1). *See also O.H. Kraasch*, 70 TC 623, Dec. 35,318 (1978); *Trans World Travel*, 81 TCM 979, Dec. 54,210(M), TC Memo. 2001-6.

9 For instance, Code Sec. 6063 states that partnership returns "shall be signed by any one of the partners" but the instructions to Form 1065 state that "Form 1065 is not considered to be a return unless it is signed by a general partner or LLC member manager." Instructions to 2014 Form 1065, at 4 (emphasis added).

10 On November 2, 2015, President Obama signed into law H.R. 1314, the Bipartisan Budget Act of 2015. The law repeals TEFRA's unified partnership audit and litigation procedures and replaces TEFRA's "tax matters partner" with a "partnership representative," who need not be a partner but can nevertheless bind the partnership and its partners with respect to a host of partnership matters.

11 *See, e.g.*, CCA 201425011 (Feb. 21, 2014). ("[I]t is our view that the signer should sign by writing his name, rather than the name of the business entity. This is because only a natural person may sign tax returns, as opposed to an entity.")

12 There are specific signature rules for other entities, as well. For instance, Reg. §1.6012-3(a)(1) requires every fiduciary, or at least one of the joint fiduciaries, to file a return using Form 1041 for estates and trusts. Reg. §1.6012-3(b)(1) requires the executor or administrator of the estate of a decedent or other person charged with the property of a decedent to file an income tax return required for the decedent. This article focuses on the rules applicable to individuals, corporations and partnerships.

13 Code Sec. 6062 (emphasis added); Reg. §1.6062-1(a)(1). Where a fiduciary files a corporation's return pursuant to Code Sec. 6012(b)(3), the fiduciary shall sign, and in situations where an agent of a foreign corporation files a corporation's return, the agent shall sign. *See* Code Sec. 6062.

14 Code Sec. 6063. *See also* Reg. §1.6063-1(a). Partnerships, of course, are not taxpayers. They report their items of income, gain, loss, deduction and credit on Form 1065 and pass those items through to their partners.

15 *See* Code Secs. 6062 and 6063.

16 *See, e.g.*, Service Center Advice 200247046 (Oct. 21, 2002) (concluding that "Service Centers should accept signed Forms 8655, no matter what corporate or partnership title is used in connection with the signature block on the Form"). But it does not preclude the IRS from later—on audit, for instance—analyzing and challenging signature authority. Another rule of note is that "when an individual is authorized to sign consents on behalf of a principal … and, in so doing, does not clearly indicate the capacity in which he affixes his signature," the Tax Court will not "conclusively presume that he acted in other than his correct representative capacity." *Sanderling, Inc.*, 66 TC 743, Dec. 33,939 (1976).

17 *Weiner*, DC-TX, 255 FSupp2d 624 (2002).

18 *Id.,* at 628 n.5.

19 In other proceedings pertinent to American Agri-Corp., the IRS stipulated that American Agri-Corp.'s treasurer "was a corporate officer with authority under the regulations to execute returns and other statements on behalf of" American Agri-Corp. *See Agri-Cal Venture Associates*, 80 TCM 295, Dec. 54,022(M), TC Memo. 2000-271.

20 *See* Reg. §§1.1502-77(c)(1), (d).

21 Reg. §1.1502-75(h)(1).

22 *See* Reg. §1.1502-77(d).

23 There may be instances when an individual might lack competency, free will or mental capacity such that his or her signature on a tax document lacks legal effect. *See, e.g.*, *R.D. Furnish*, CA-9, 59-1 USTC ¶9189, 262 F2d 727, 733 (fraud); *A. Berger*, 71 TCM 2160, Dec. 51,179(M), TC Memo. 1996-76 (duress); *In re Crockett*, BC-DC-FL, 172 BR 656 (1994) (mental incompetency). However, this article focuses on authority, not competency.

24 Reg. §1.6012-1(a)(5). In these situations, a properly completed Form 2848, *Power of Attorney and Declaration of Representative*, suffices to allow an agent to sign for an individual. Reg. §1.6012-1(a)(5). Exceptions to this rule exist for returns filed by agents on behalf of nonresident alien individuals. Reg. §1.6012-1(b)(3).

[25] Reg. §1.6012-1(a)(5).

[26] *See* T.D. 6817, 1965-1 CB 516.

[27] *See* Notice 2010-13, IRB 2010-31, 182, *revoking* Notice 2003-19, 2003-1 CB 703.

[28] *B.C. Reifler*, 110 TCM 360, Dec. 60,425(M), TC Memo. 2015-199. *See also* Reg. §1.6013-1(a)(2) ("A joint return … (if not made by an agent of one or both spouses) shall be signed by both spouses."); CCA 200923028 (Jan. 5, 2009); Notice 2007-35, 2007-1 CB 940 (Mar. 26, 2007) (listing common mistakes by individuals and return preparers in filing returns).

[29] Reg. §1.6012-1(a)(5).

[30] *B.C. Reifler*, 110 TCM 360, Dec. 60,425(M), TC Memo. 2015-199.

[31] *Id.*

[32] Concepts such as electronic signatures, also known as "e-signatures," and the use of personal identification numbers (PINs) in instances where a corporate officer authorizes an electronic return originator (an ERO) to enter a PIN as the officer's signature on an electronically filed income tax return are just two instances of the evolving methods to execute a return.

[33] *See, e.g.*, Reg. §1.6062-1(b).

[34] *T. Weiss*, 129 TC 175, 177, Dec. 57,206 (2007); *Casa de La Jolla Park, Inc.*, 94 TC 384, 396, Dec. 46,450 (1990); *T.J. Green, Jr.*, 59 TC 456, 458, Dec. 31,640 (1972); *I.A. Adler*, CA-9, 64-1 USTC ¶9388, 330 F2d 91. *See also* Dashiell Shapiro, *Can Taxpayers Rely on IRS Form Instructions?*, TAX NOTES TODAY (Nov. 16, 2015). *Cf. Pleasanton Gravel Co.*, 85 TC 839, 854, Dec. 42,494 (1985) (failure to follow instructions to Form 872 was a "mere clerical error" that did not invalidate statute extension); FSA 1999738 (May 4, 1992) (Form 870-P signed by only one spouse was valid despite instructions stating that a jointly filing spouse "must" sign).

[35] This is true even though, in the absence of other guidance, the IRS generally applies "the rules applicable to execution of the original returns" to other documents, such as Forms 2848 and consents to the extension of time to make an assessment. *See, e.g.*, Rev. Rul. 83-41, 1983-1 CB 349; Chief Counsel Memo 20152301F (Aug. 11, 2014). *Cf.* CCA 201602010 (Jan. 8, 2016). ("The best practice is to ensure that the Form 872 is signed the same way that the tax return is signed.")

[36] Instructions to Form 2553, at 4-5. Code Sec. 1362(a)(2) provides that "[a]n election under this subsection shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election."

[37] Reg. §301.7701-3(c)(2)(i). *See also* Instructions to Form 8832, at 6.

[38] Reg. §301.7701-3(c)(2)(iii). Another complex set of rules are those for Code Sec. 338 elections, which are made on Form 8023, *Elections Under Section 338 for Corporations Making Qualified Stock Purchases*. *See* Reg. §1.338-2(d). When a common parent of a consolidated group is the agent of the purchasing corporation under Reg. §1.1502-77, the "person authorized to sign … is the person authorized to act on behalf of that common parent." Instructions to Form 8023, at 2. But if "two or more corporations that are members of the same affiliated (but not consolidated) group" make the qualified stock purchase of the target corporation, Form 8023 "must be signed by a person authorized to sign on behalf of each corporation." *Id.* If a Code Sec. 338(h)(10) election is made for an S corporation, Form 8023 "must be signed by each S corporation shareholder regardless of whether the shareholder sells his interest in target stock in the [qualified stock purchase]." *Id.*

[39] CCA 201522005 (May 29, 2015).

[40] *See, e.g.*, Form 9465, *Installment Agreement Request* (Rev. Dec. 2013); 2015 Form 1045, *Application for Tentative Refund*; Form 1127, *Application for Extension of Time for Payment of Tax Due to Undue Hardship* (Rev. Dec. 2011).

[41] *J.J. Tallal, Jr.*, 77 TC 1291, 1295, Dec. 38,502 (1981) (citing *M.A. Dolan*, 44 TC 420, Dec. 27,440 (1965)). *See also* IRM §25.6.22.6.1.1(2) (last rev. Aug. 26, 2011).

[42] FSA 1999738 (May 4, 1992) (Form 870-P signed by only one spouse was valid despite instructions stating that a jointly filing spouse "must" sign). The Field Service Advice conceded, however, that the IRS's "position regarding assessment against the wife [was] untested." *Id.*

[43] Instructions to 2014 Form 1065, at 4 (emphasis added).

[44] Instructions to Form 941, at 10 (emphasis added).

[45] The Bipartisan Budget Act of 2015 (P.L. 114-74).

[46] Code Sec. 6223(a).

[47] *Id.*

[48] In the TEFRA context, any partner in a TEFRA partnership could have consented to extend the statute of limitations for assessing tax attributable to partnership items against that partner. Code Sec. 6229(b)(1)(A). However, only the tax matters partner (or any other person authorized by the partnership in writing) is authorized to extend with respect to all of the partners. Code Sec. 6229(b)(1)(B).

[49] *See, e.g.*, CCA 201425011 (June 20, 2014). ("[O]nly a natural person may sign tax returns, as opposed to an entity. A business entity must act through its authorized representatives.")

[50] Reg. §301.7701-3(c)(2)(i) (providing that entity classification elections must be signed by "[e]ach member of the electing entity who is an owner at the time the election is filed" or "[a]ny officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents)").

[51] *See, e.g.*, Chief Counsel Memo 20152301F (June 5, 2015) (noting state dissolution law and analyzing state merger law to determine who could act for merged corporation).

[52] Rev. Rul. 83-41, 1983-1 CB 349.

[53] *Id.*

[54] *See* Rev. Proc. 2015-26, IRB 2015-15, 875. For consolidated return years beginning before April 1, 2015, *see* Rev. Proc. 2002-43, 2002-2 CB 99.

[55] Rev. Proc. 2015-26, IRB 2015-15, 875.

[56] For instance, in *H.A. Julicher*, the Tax Court held that an improperly signed return was invalid even though the taxpayers' authorized representative submitted it to an IRS examining agent at the examining agent's request, the examining agent stated that the representative should "consider it filed," and the IRS subsequently failed to notify the taxpayers or their representative that the return had not been accepted. *H.A. Julicher,* 83 TCM 1285, Dec. 54,665(M), TC Memo. 2002-55. In *Vaira*, the Tax Court upheld the IRS's assertion of failure-to-file penalties for a taxpayer who submitted to the IRS a Form 1040 that was complete with the exception of the taxpayer's signature. The taxpayer also submitted a signed check for the balance of the tax shown to be due on the Form 1040. *Vaira*, 52 TC at 988. The IRS accepted the check but audited the return and asserted additional deficiencies. The taxpayer's failure to sign the return allowed the IRS to assert failure-to-file penalties on the additional deficiencies on the basis that "the filing of an unsigned form does not constitute the filing of a return." *Id.,* at 1004–1005. The Tax Court agreed and the Ninth Circuit upheld this result but acknowledged that "[i]t is not at all difficult for those of us not daily engaged in the often trying and sometimes amazingly zealous pursuit of collecting taxes to sympathize with taxpayer's position." *Vaira*, CA-3, 71-1 USTC ¶9495, 444 F2d 770, 777.

[57] *Alumax Inc.*, 109 TC 133, 197, Dec. 52,279 (1997) (applying Delaware law) (internal citations omitted).

[58] *Trans World Travel*, 81 TCM 979, Dec. 54,210(M), TC Memo. 2001-6 (applying Illinois law).

[59] *Id.*

[60] *Summit Vineyard Holdings*, 110 TCM 113, Dec. 60,362(M), TC Memo. 2015-140.

[61] *Id.* The Tax Court applied Washington state law, which holds that "apparent authority exists where words or conduct by the principal are reasonably interpreted by a third party as conferring authority upon the agent." *Id.* (quoting *State v. Bryant*, 42 P3d 1278, 1284 (Wash. 2002)).

[62] *Id.*

[63] *Id.*

[64] *Id.* (citing *Med. & Bus. Facilities, Ltd.*, CA-5, 95-2 USTC ¶50,394, 60 F3d 207, *rev'g,* 67 TCM 2068, Dec. 49,644(M), TC Memo. 1994-38).

[65] *Id.*

[66] Chief Counsel Memo 20152301F (June 5, 2015).

[67] One notable aspect of the memorandum is that Consent One on its face apparently applied to Corporation A's Year 4. However, based on "clear and convincing evidence" that the parties intended Consent One to apply to Corporation A's Year 3, IRS counsel opined that Consent One could be reformed to encompass Year 3. *See also Hartland Mgmt. Servs., Inc.*, 109 TCM 1040, Dec. 60,209(M), TC Memo. 2015-8 (reforming Form 872 to correct tax year subject to statute of limitations extension and conform to the intent of the parties). While Form 872 is not a contract, contract principles are relevant because Code Sec. 6501(c)(4) requires the consent to be a

written agreement between the Secretary and the taxpayer. *Hartland Management Servs., Inc.*, TC Memo. 2015-8, at *9–10 (citing *W.C. Piarulle*, 80 TC 1035, 1042, Dec. 40,130 (1983)).

[68] *Union Texas Int'l Corp.*, 110 TC 321, 327, Dec. 52,710 (1998). ("Generally speaking, equitable estoppel precludes a party from denying that party's own acts or representations which induced another to act to the other's detriment.")

[69] *Id.*

[70] *Id.,* at 324 n.6.

[71] *Id.,* at 324.

[72] *Id.,* at 331. On December 17, 1991, Energy also filed a certificate of merger with the Delaware secretary of state indicating that, as of December 31, 1991, New Petroleum would cease to exist. *Id.*

[73] *Id.,* at 327. ("The doctrine of equitable estoppel is based on the grounds of public policy, fair dealing, good faith, and justice, and is designed to aid the law in the administration of justice where without its aid injustice might result.")

[74] Reg. §301.9100-1(c). Such discretion extends to all subtitles of the Code except subtitles E, G, H and I. *Id.*

[75] *Id.*

[76] *Id.*

[77] Reg. §301.9100-3(a).

[78] Rev. Proc. 2003-33, 2003-1 CB 803.

[79] Rev. Proc. 2009-41, IRB 2009-39, 439.

[80] LTR 201247024 (Aug. 30, 2012).

[81] LTR 200404042 (Oct. 22, 2004).

[82] Reg. §301.9100-1(b). *See also* Rev. Proc. 2008-27, 2008-1 CB 1014 (withholding tax on disposition of U.S. real property interests).

[83] 9100 Relief will likely not apply to all signature authority mistakes, however. For example, an "election" does not include an application for extension of time to file a return under Code Sec. 6081. Reg. §301.9100-1(b).

[84] *See supra* notes 34–37 and accompanying text.

[85] LTR 200738001 (June 22, 2007).

[86] *Cf.* LTR 200407012 (Nov. 5, 2003) (granting relief under Code Sec. 1361(f) for elections under Code Sec. 1361 that were inadvertently signed by improper parties); LTR 200115022 (Jan. 11, 2001) (same).

[87] *See, e.g.*, *Columbia Iron & Metal Co.*, 61 TC 5, Dec. 32,159 (1973); *J.E. Taylor*, 67 TC 1071, Dec. 34,332 (1977); *J. Tipps*, 74 TC 458, Dec. 36,983 (1980).

[88] *Taylor*, 67 TC at 1077–1078 (upholding substantial compliance defense for election to allow farmers using accounting methods to report capital gain treatment upon the sale or disposition of farm recapture property) (internal citations omitted).

[89] *See also Hewlett-Packard Co.*, 67 TC 736, 747–751, Dec. 34,229 (1977), *acq in result*, 1979-1 CB 1.

[90] *Columbia Iron & Metal Co.,* 61 TC 5, Dec. 32,159 (1973).

[91] *Id.,* at 7–8.

[92] *Id.,* at 8.

[93] *Id.,* at 9.

[94] LTR 8903047 (Oct. 24, 1988) (citing *Hewlett-Packard Co.*, 67 TC 736, Dec. 32,159); LTR 9029017 (Apr. 19, 1990) (excusing taxpayer's failure to include signature on Form 2553 from person in their capacity as beneficiary of a trust, rather than co-trustee of the trust); LTR 9038019 (June 22, 1990) (excusing taxpayer's failure to include a shareholder's signature on Form 2553 and to identify that a person signed in representative capacity for that shareholder); LTR 8909041 (Dec. 7, 1988) (excusing taxpayer's failure to identify correct trust-shareholder and capacity in which beneficiary of trust was signing Form 2553).

[95] *Id.*

[96] LTR 8903047 (Oct. 24, 1988) (noting that, nearly a year after the filing of Form 2553 with improper signatures, "the accountant for X became aware that there was a problem with the original submission" and submitted two rounds of additional documentation "in an attempt to cure the election"). *See also* LTR 8909041 (Dec. 7, 1988).

[97] Taxpayers who discover a signature authority mistake may be inclined not to raise the issue at all, in the hopes that it might otherwise go undiscovered. Advisors must be aware of this possible inclination, analyze any possible duties to disclose, and advise their clients accordingly.

[98] *Weiner,* DC-TX, 255 FSupp2d 624 (2002).

[99] *Id.,* at 628 n.5.

[100] *Id.,* at 649–650.

[101] *Reifler*, 110 TCM 360, Dec. 60,425(M), TC Memo. 2015-199.

[102] *Id.*

[103] Indeed, the Tax Court noted that "[s]ometimes it is appropriate for the courts to clarify the subtleties of statutory and regulatory provisions. The requirement of a signature on a tax return, however, is not one of those issues. It would be inappropriate for this Court to use its power to create a potentially unlimited exception to a well-established and fairly simple rule." *See id. Cf. Penn-Dixie Steel Corp.*, 69 TC 837, 846, Dec. 35,001 (1978). ("While the actual filing of a copy of the required certification or application therefor may be a procedural detail, the implicit requirement that such an application must have been made goes to the very essence of the statute.")