

SIGNING A TAX RETURN FOR SOMEONE ELSE

Generally, a taxpayer is required to sign his or her own return; this requirement is in place to protect the taxpayer, but there are times when it is not possible. The IRS has procedures in place to handle many of these situations, but the requirements are not intuitive and the steps required are not apparent.

This document is provided as a generalized summary of the current rules and requirements related to signature requirements when dealing with the Internal Revenue Service. It is not intended to be comprehensive, and should not be relied upon to address any specific situation.

- **MINOR CHILD UNABLE TO SIGN**

A child is generally responsible for filing his or her own tax return and for paying any tax on the return. However a parent, guardian, or other legally responsible person must file an income tax return if the child cannot file it for any reason, such as age. **The parent or guardian must sign the child's name, followed by the words, "By (your signature), parent (or guardian) for minor child."**

- **SPOUSE UNABLE TO SIGN JOINT RETURN**

- **INJURY OR DISEASE PREVENTS SIGNING**

If your spouse cannot sign because of disease or injury **and tells you to sign**, you can **sign your spouse's name followed by the words, "By (your name), Husband (or Wife)". Attached a dated statement signed by you** which includes the **form number** of the return you are filing, the **tax year**, the **reason** your spouse cannot sign, and that your **spouse has agreed** to your signing for him or her. (Don't forget to also sign in the space provided for your signature.)

- **SPOUSE DIED BEFORE SIGNING**

If your spouse died before signing the return, the executor or administrator must sign the return for your spouse. If neither you nor anyone else has yet been appointed as executor or administrator, you can **sign the return for your spouse and enter "Filing as surviving spouse"** in the area where you sign the return.

- **SPOUSE IN COMBAT ZONE – NO POWER OF ATTORNEY**

You are permitted to sign for your spouse serving in a combat zone, or performing qualifying service outside of a combat zone, or in missing status in a combat zone. Attach a signed statement to your return that explains the situation qualifying you to sign.

- **SIGNING AS GUARDIAN OF YOUR SPOUSE**

If you are the guardian of your spouse who is mentally incompetent, you can sign the return for your spouse as guardian. **Sign your spouse's name, followed by the words, "By (your signature), guardian."**

- **SPOUSE AWAY FROM HOME**

If your spouse is continuously absent from the United States for at least 60 days prior to the due date for filing the return, you may be able to sign the tax return with a properly executed power of attorney. Otherwise, you should sign the return and send it to your spouse to sign so that it can be filed on time.

- **DIVORCED TAXPAYER**

If you are divorced under a final decree by the last day of the year, you are considered unmarried for the whole year, and cannot choose married filing jointly as your filing status. If the divorce became final after the end of the tax year, you may file a joint return. However, you generally can sign on behalf of your ex-spouse only if you are given a "valid power of attorney" that is enforceable after the divorce. (See "SIGNING WITH A POWER OF ATTORNEY" below.)

- **OTHER REASONS SPOUSE CANNOT SIGN**

If your spouse cannot sign the joint return for any other reason, you can sign for your spouse **only if you are given a "valid power of attorney"**. (See "SIGNING WITH A POWER OF ATTORNEY" below.)

- **SIGNING WITH A POWER OF ATTORNEY (POA)**

- Regulations §1.6012-1(a)(5) permits you to rely on a POA as authorization to sign a return for another person only if that person is unable to sign due to disease or injury, continuous absence from the United States for at least 60 days prior to the due date for filing, or if specific permission has been granted by the IRS. **The POA must specifically state that you are given the authority to sign, and give the specific**

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reason why as listed above.

You may be authorized to sign either as the taxpayer's representative or agent. Generally, a representative must be an individual eligible to practice before the IRS, such as an enrolled agent, attorney, or CPA; a family member (limited to spouse, parent, child, brother, or sister) may also act as your representative. There are no restrictions on who can be appointed as an agent for the specific purpose of signing a specific tax return.

The tax return (or electronic filing authorization) should be signed in the following manner: “(Taxpayer name), by (attorney-in-fact name) under authority of the attached power of attorney.”

- **The POA must be attached to the return.** If the return is filed electronically, the power of attorney must be attached to Form 8453 and mailed to the appropriate service center once the electronic return is accepted for processing.
- A non-IRS POA may be used, but it **MUST** contain the taxpayer's name and mailing address, social security number, the name and address of the agent or representative, the type of tax involved (“income tax”), the federal tax form number (1040, 1040A, etc.), the specific year(s) involved, a clear expression of the authority granted, and the taxpayer's dated signature. To be authorized as the taxpayer's representative (as opposed to agent), the non-IRS POA must also contain or have attached to it a signed and dated statement made by the representative referred to as the Declaration of Representative (which can be found in Part II of Form 2848). **If the non-IRS power of attorney does not contain all the information listed, the IRS will not accept it.**

Non-IRS POAs typically do NOT contain all the information required, simply because they often don't specify tax form numbers and years, and don't specifically authorize the signing of the tax return. Fortunately, **a non-IRS POA may be “perfected”** by signing a Form 2848 on behalf of the taxpayer, as long as the original non-IRS POA grants authority to handle federal tax matters (for example, general authority to perform any acts), **and a statement signed under penalty of perjury is attached to the Form 2848 stating that the original non-IRS POA is valid under the laws of the governing jurisdiction. Sign Form 2848 in the following manner: “(Taxpayer name), by (attorney-in-fact name) under authority of the attached power of attorney.”** The individual named as representative on Form 2848, often the attorney-in-fact, must **also sign and date Part II of the form.** (Don't forget to specifically authorize yourself to sign the tax return!)

- **SIGNING IN A FIDUCIARY CAPACITY**

If you are an administrator, conservator, designee, executor, guardian, receiver, trustee of a trust, personal representative, or other person acting in a fiduciary capacity for another person, you are authorized to sign a tax return for the other person upon notice to the IRS of your authority. This notice, generally given on Form 56, must state the name and address of the taxpayer, as well as the type of tax and the tax year or years involved.

Once the proper notice is in place, the IRS deems the fiduciary to “be the taxpayer”; accordingly, no POA is required to sign a return for the taxpayer. As a fiduciary, you generally are required to **sign your own name and give your full title** (e.g. conservator, guardian, personal representative). Many sources recommend adding “for (taxpayer) to the signature line. Of course, your specific appointment may require something different.

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Interpretations of the Internal Revenue Code and the related Regulations, Procedures, Rulings, and other authoritative documents are subject to various conclusions and may yield different results when applied to individual taxpayers or situations. Accordingly, professional advice and/or reference to the applicable law should be obtained for specific cases.

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