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**From:**

**Sent:** Wednesday, February 25, 2009 11:37:54 AM

**To :**

**Cc:**

**Subject:** Statue Question re: 6672

The Service may assess the penalty imposed by section 6672 for all periods covered in the Letter 1153.

The principles of agency law can give effect to a protest letter sent by the taxpayer's representative within the prescribed 60 day period regardless of whether the letter was accompanied by a valid POA. The relationship between client and representative is akin to that of principal and agent, in which the representative is authorized to act for or in place of the client. In order to bind the principal, the agent must have either actual or apparent authority or the principal must ratify the agent's actions. For the periods, the representative had actual authority evidence by the Form 2848 and, therefore, the protest is valid and operates to extend the statute of limitations (6501) by the amount of time provided in section 6672(b)(3)(B).

For the periods, the Service will have to rely on the doctrines of apparent authority and ratification. Apparent authority, and the power to bind the purported principal, arises only when a third party reasonably believes that the agent has the authority to act on the principal's behalf and the third party's belief is based on the principal's manifestation. We cannot rely solely on the doctrine of apparent authority under the circumstances described in your email, however, because it would be difficult to argue the Service reasonably believed, in light of the Form 2848 only containing the periods, that the representative had authority to act for the taxpayer. In addition, the taxpayer never expressed the representative's role as such to the Service.

The common law doctrine of ratification, however, applies to validate the representative's actions. Under the circumstances you described, the taxpayer (purported principal) ratified the representative's actions (filing the protest) by providing the Service with a new Form 2848 covering the periods. As a consequence, the taxpayer's legal relations are affected as they would have been had the representative been an agent acting with actual authority at the time of the act. Therefore, if the taxpayer takes an affirmative step to ratify the agent's action, the Service and taxpayer will be bound by the agent's action as of the date of the act (the date the taxpayer's representative sent the protest). Therefore, under the doctrine of apparent authority and ratification, the protest is valid for the periods and operates to extend the statute of limitations (6501) by the amount of time provided in section 6672(b)(3)(B).

If you have any additional questions or concerns, please give me a call.