

17-6 October 17, 2017

## FINANCE MEMORANDUM

### Joint State/City Power of Attorney Form

On September 18, 2017, the New York City Department of Finance (“DOF”) began accepting a revised power of attorney form for taxpayers that appoint individuals to represent them in tax matters with DOF and the New York State Department of Taxation and Finance (“DTF”). The revised power of attorney form is Form POA-1 (version 6/17, the “POA”), and it is available on both the DOF and DTF websites.<sup>1</sup> This Finance Memorandum explains the POA, and general operational and processing procedures for POAs. It supersedes Finance Memorandum 17-4 (6/28/2017).<sup>2</sup>

#### I. Major Changes to the Form POA-1

The POA includes two modifications that are important to note:

- a. It does not automatically revoke any previously filed POAs (a taxpayer may elect on the POA to revoke all other POAs that the taxpayer submitted for the same tax matters); and
- b. It only requires the taxpayer’s signature.

#### II. Taxpayer Information

##### a. Identifying Information

The taxpayer should enter his, her or its name and identification number as they appear on the most recent tax return filed with DOF or notice sent by DOF. The taxpayer identification number may be a Social Security Number (SSN), employer identification number (EIN), IRS-issued individual taxpayer identification number (ITIN), or a DOF-issued identification number. DOF will not process a POA if the taxpayer does not include its complete identification number.

##### b. Death, Dissolution or other

A POA will not remain active after the death of an individual taxpayer, or, if the taxpayer is a business entity, the dissolution or other termination of its existence under state law.<sup>3</sup> In the case of a business entity that terminates, the successor(s) to the entity’s assets and liabilities must execute a new POA to appoint a Representative for tax matters that precede the entity’s termination.

<sup>1</sup> Located here: <http://www1.nyc.gov/assets/finance/downloads/pdf/poa/poa1.pdf> and <https://www.tax.ny.gov/poa/>

<sup>2</sup> Section 27-01 of Title 19 of the Rules of the City of New York (“RCNY”).

<sup>3</sup> A technical termination for tax purposes under section 708(b)(1)(B) of the Internal Revenue Code of 1986, as amended, does not constitute a termination for this purpose.

The new POA should name the successor(s) as successor(s) in interest to the taxpayer and include the EINs of the successor(s) and the taxpayer. If the entity was a partnership, the former partners and legal representatives of deceased partners would execute a new POA, unless the surviving partners exclusively control and possess the firm's assets for purposes of winding up its affairs, in which case, their signatures suffice.

### **III. Representative Information**

The taxpayer may appoint one or more individuals as representatives (each, a "Representative"). Only certain categories of individuals may represent a taxpayer, and business entities, including professional firms, are ineligible.<sup>4</sup> A POA will remain active until the taxpayer revokes it or the representative withdraws from the representation. To ensure proper processing, the taxpayer and Representative should be sure to include the Representative's title or profession and state of professional license, if not New York.

#### **a. Multiple Representatives**

To appoint more than two Representatives through a single POA, the taxpayer should manually create and attach a separate schedule that provides all the information requested in section 2 of the POA for each additional Representative.<sup>5</sup> Each additional schedule must be signed and dated by the taxpayer named in section 1 of the POA. All Representatives are authorized to act separately unless the taxpayer explicitly states in the *Authority granted* section that Representatives are required to act jointly. If a single POA appoints multiple Representatives, a taxpayer may not later revoke the authority of just one of the Representatives listed (see section VII below for more information regarding revocations).

#### **b. Representation by Fiduciaries**

A fiduciary (such as a trustee, executor, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as a Representative and should not file a POA when acting in the position of the taxpayer. However, a fiduciary may be asked to submit proof of authority. Examples of evidence could include: Letters Testamentary, Letters of Administration, or Letters of Guardianship. A copy of a will by itself is not acceptable evidence or documentation. If a fiduciary wants to authorize a Representative to act on behalf of the taxpayer, the fiduciary, acting in the position of the taxpayer, must file and sign the POA.

#### **c. Representation by Former Government Employees**

Section 2604(d) of Chapter 68 of the New York City Charter bars a city government employee from appearing or practicing before his or her former agency for one year, and permanently prohibits that employee from participating in any matter that had his or her direct, personal involvement while he or she was a government employee.

<sup>4</sup> For additional information, see the regulations relating to representation before the New York City Department of Finance in RCNY § 27-01.

<sup>5</sup> If a taxpayer prepares two or more POAs for the purpose of appointing multiple Representatives to the same matter, and submits the POAs to DOF at the same time in lieu of attaching a separate schedule to a single POA, DOF must have the taxpayer identify the intended primary individual Representative.

#### **IV. Mailings**

The POA allows the taxpayer to decide which Representatives should receive copies of notices and other communications that DOF sends the taxpayer. DOF will automatically send notices required by statute to the taxpayer, and will give effect to the taxpayer's mailing instructions until it revokes the associated POA or the Representative withdraws.

By default, DOF will send copies of notices and other communications to the primary individual Representative appointed on the most recent POA for the same tax type and periods. If a taxpayer would like DOF to send copies of notices and other communications to a Representative appointed on a different POA for the same tax matters, the taxpayer should enter the name of that Representative as the designated mailings recipient in section 3 of the POA. If a taxpayer does not want copies of notices and other communications to go to any of its Representatives, the taxpayer should write *None* in section 3.

If a taxpayer wants DOF to send some communications, such as information document requests, exclusively to the primary individual Representative, or another Representative, the taxpayer must submit a statement to that effect. The taxpayer should write "see attached" in section 3, and attach a separate statement that identifies the mailings that the taxpayer does not want to receive, and the Representative that should receive them, if not the primary individual Representative. The taxpayer named in section 1 of the POA must sign and date this statement and submit it as an attachment to the POA.

#### **V. Authority Granted**

The POA authorizes a Representative to act on behalf of a taxpayer on the terms provided in section 4 of the POA. If a taxpayer leaves the POA blank as to tax types and/or tax periods, the authority will apply to all tax types and/or all tax periods. All tax periods includes tax periods that have not yet started.

##### **a. Tax types**

If the tax type at issue is not listed as an available option, or the taxpayer is granting authority for a special assessment or fee, the taxpayer should mark an "X" in the *Other* box and explain. The taxpayer should not enter: (i) federal taxes or taxes administered by other agencies or localities, such as unemployment taxes; (ii) a form number in lieu of a tax type; or (iii) a collection action, such as a warrant, levy, or income execution (in this case, taxpayers should enter the tax type and period associated with the collection action, or grant authority for all tax types and periods).

##### **b. Tax periods other than calendar years**

For tax periods other than calendar years, the taxpayer should enter the beginning and ending dates for the periods. For taxes based on specific transactions, such as the real property transfer tax, the taxpayer should enter the date of the transaction. The taxpayer should not enter *all open periods, current, or collection matters*; these are not valid tax periods or matters and DOF may reject any POA that a taxpayer submits with these errors.

##### **c. Audit cases, assessments, or collection cases**

To identify a specific audit case, assessment, or collection case, a taxpayer must mark "X" in the *Other* box and enter a case, account or letter identification number. If the taxpayer enters an audit case identification

number and the audit expands to include additional tax periods under the same audit case identification number, an additional POA is unnecessary; however, if the audit expands to include a new audit case, the taxpayer must file a new POA that includes the new audit case identification number.

d. Offers in compromise

If a POA relates to an offer in compromise, the taxpayer may leave the tax type and tax periods blank and indicate in section 4 that the POA applies to an offer in compromise. The grant of authority will include all tax matters that the offer in compromise addresses.

e. Conciliation conferences

If a POA relates to a conciliation conference, the taxpayer should indicate in section 4 that the POA applies to a conciliation conference. The taxpayer may, but is not required to, specify the tax type and tax periods that the conciliation process will address.

f. Restricting authority

A taxpayer should, in the space provided, explain any limitations he, she or it wants to place on the authority he, she or it is granting. If a taxpayer needs more space to explain the limitation, the taxpayer named in section 1 should continue the explanation on a separate sheet, and sign, date and submit that sheet with the POA.

g. Granting additional authority

A taxpayer may authorize Representatives to sign returns or delegate the authority the taxpayer grants them on the POA by marking "X" in the appropriate box in section 4. A general grant of authority does not include the power to sign returns or delegate.

If permitted by the taxpayer, a Representative may complete a delegation by executing and submitting a declaration that delegates of his or her authority under the POA, together with a copy of the original POA. The statement must include (i) the taxpayer's name and identification number, as it appears on the POA, (ii) the originally delegating Representative's name and address, and (iii) the delegate's name and address. A Representative may not execute a POA on behalf of a taxpayer to appoint a new Representative; the Representative may only delegate his or her own authority. The delegate exclusively exercises the delegated authority until the Representative revokes the delegation, the delegate withdraws, the taxpayer revokes the Representative's authority, or the POA otherwise becomes invalid. In the event the primary individual Representative delegates his or her authority, DOF will substitute the delegate for the Representative on mailings.

The Representative should submit his or her delegation to the DOF office in which the matter is pending (or contact DOF through its website<sup>6</sup> for an alternate location). DOF will not give effect to a delegation that the Representative submits to DTF unless and until the Representative also submits it to DOF.

**VI. Submitting and Signing Form POA-1**

The taxpayer or his, her or its representatives should submit a completed and properly executed POA to the DOF employee with whom he, she or it is in contact regarding the tax matter at issue. Individual signatures

<sup>6</sup> <http://www1.nyc.gov/site/finance/about/contact-by-email/contact-business-taxes-gct-ubt-crt-e-911.page>.

must be handwritten and electronic signatures are not permitted. DOF will, however, accept a copy of a POA in most cases, including facsimile transmissions. If a taxpayer desires to submit a POA through electronic mail, it should first contact the DOF employee handling his, her or its tax matter, and request permission, which DOF may grant in its discretion. DOF reserves the right to require an original POA to be submitted.

The POA should not be attached to or incorporated in any return, report or other document that is routinely filed with DOF unless that return, report or other document specifically provides that the taxpayer should attach or incorporate the POA.

DOF will not process any POA that is not signed and dated by the taxpayer. A taxpayer that is a business entity, such as a corporation, limited liability company, or partnership can meet this requirement by having a “duly authorized” officer, member or manager, or partner, respectively, sign on behalf of the business entity. Individuals who sign the POA certify under penalty of perjury that they have the requisite authority to execute the form. Individuals who sign on behalf of business entities may be required to provide proof of authority, such as business resolutions, official meeting minutes, or organizational documents.

In the event a taxpayer must include more than one entity on the signature line to properly reflect the authority of the person executing the POA, the taxpayer should: (a) write “See attached” in the signature line; and (b) attach a separate signature page on which the taxpayer replicates the declaration under penalty of perjury from the POA, and executes using a signature block in the format that the taxpayer would use to execute a commercial contract, such as a loan agreement.

## **VII. Revoking a POA**

A taxpayer may revoke the authority it has granted on a POA in any one of the following ways:

- a. Submit a new POA to DOF that appoints a new Representative and adopts the election in section 4 to revoke all other POAs that apply to the same tax matters. The subsequent POA will not revoke the original POA, in whole or in part, unless its grant of authority encompasses the same authority as the original.
- b. Submit a revocation copy of the previously filed POA to DOF. To use this method, the taxpayer should make a copy of the previously filed POA that he, she or it desires to revoke, write “REVOKED” across the top, and sign and date the top.
- c. Submit a Statement of Revocation to DOF. If the taxpayer does not have a copy of the previously filed POA that he, she or it wishes to revoke, the taxpayer must send a written statement of revocation that identifies that previously filed POA, and declares it no longer has effect. The statement must include: (i) the taxpayer’s name and identification number as they appear on the POA, and (ii) the name and address of each Representative whose authority the taxpayer is revoking. If the terminated Representative has multiple grants of authority pursuant to multiple POAs, the statement of revocation will revoke the Representative’s authority to represent the taxpayer in all matters before DOF unless the taxpayer specifically identifies and describes the grant of authority that he, she or it is revoking.

A revocation applies to all Representatives on the POA that the taxpayer is revoking, even if the Taxpayer does not identify all the Representatives it originally listed on the POA. The taxpayer must re-appoint, on a new POA, any Representative that it appointed on a revoked POA.

Under each method, the taxpayer should submit the revocation to the DOF office in which the matter is pending (or contact DOF through its website<sup>7</sup> for an alternate location). DOF will not give effect to a revocation that the taxpayer submits to DTF unless and until the taxpayer also submits it to DOF.

### **VIII. Representative Withdrawal**

A Representative may withdraw from an appointment on a POA. To do so, the Representative must send a statement of withdrawal to DOF that identifies the matters from which the Representative is withdrawing, and declares the POA no longer has effect. The statement must include: (i) the taxpayer's name and identification number, as they appear on the POA, and (ii) the Representative's name and address. Withdrawing from any portion of the authority granted under the POA will invalidate the entire grant of authority on the POA. If the Representative has multiple grants of authority pursuant to multiple POAs from the same taxpayer, a statement of withdrawal will revoke the Representative's authority to represent the taxpayer in all matters before DOF, unless the Representative specifically identifies and describes the grant of authority from which he or she is withdrawing.

If the taxpayer originally appointed multiple Representatives on the POA from which the Representative is withdrawing, the withdrawal will invalidate the authority for those Representatives as well. The taxpayer must re-appoint, on a new POA, any Representative that it appointed on the invalidated POA that it desires to retain.

The Representative should submit the withdrawal to the office in which the matter is pending (or contact DOF through its website<sup>8</sup> for an alternate location). DOF will not give effect to a withdrawal that the Representative submits to DTF unless and until the Representative also submits it to DOF.

### **IX. Transitional Matters**

The powers of attorney that taxpayers properly completed and filed prior to September 18, 2017 remain in effect. Accordingly, DOF continues to recognize the authority of those individuals properly appointed as Representatives prior to that date. DOF will continue to accept previous versions of the form, Form POA-1 (version 9/10 and predecessors), and will process and give effect to them in accordance with their specific terms and instructions.

DOF has issued this Finance Memorandum for the purpose of advising taxpayers and tax professionals of the issue addressed so that they may act accordingly. Finance Memoranda are advisory in nature and are merely explanatory. Finance Memoranda are not declaratory rulings or rules of DOF and do not have legal force or effect, do not set precedent and are not binding on taxpayers.

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<sup>7</sup> Id.

<sup>8</sup> Id.