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ARIZONA GENERAL TAX PROCEDURE GTP 15-2

Procedure for Submitting an Authorization for Disclosure of Confidential Information and Powers of Attorney

(This Procedure supersedes and rescinds GTP 95-2 and GTP 95-2A)

This tax procedure is released to provide guidance with respect to an authorization to disclose confidential taxpayer information acceptable by the Department of Revenue (the "Department").

APPLICABLE LAW:

Arizona Revised Statutes ("A.R.S.") § 42-2003 provides for the disclosure of confidential information.

A.R.S. § 42-2054 provides for the disclosure of taxpayer information upon written request of the taxpayer provided such disclosure does not violate A.R.S. § 42-2003.

DISCUSSION:

In the process of conducting its duties, the Department receives confidential information from taxpayers and other sources. Such confidential information includes returns and reports filed with the Department for income tax, withholding tax, transaction privilege tax, luxury tax, use tax, property tax and severance tax purposes, among others.¹

Under A.R.S. § 42-2002 a person, including a former agent or employee of the Department who has received confidential information, is prohibited from disclosing that information unless a specific exception under A.R.S. § 42-2003 applies.

A.R.S. § 42-2003 details specific exceptions and circumstances under which confidential information may be disclosed. In addition, A.R.S. § 42-2003(A)(6) provides that confidential information relating to any taxpayer may be disclosed if the taxpayer has waived rights to confidentiality either in writing or on the record in any administrative or judicial proceeding. A.R.S. § 42-2054 authorizes disclosure on the written request of a taxpayer provided the disclosure does not violate A.R.S. §§ 42-2001 to 42-2004.

¹ See A.R.S. § 42-2001(1) for a more comprehensive definition of "confidential information."

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 2

The Department has a series of Forms 285 from which a taxpayer may select to authorize the disclosure of confidential tax information to an appointee or multiple appointees. Each form is intended to be used in specific situations and some forms authorize only the disclosure of information while others also authorize an appointee to take action on behalf of a taxpayer. For example, Form 285A authorizes the disclosure of taxpayer information in relation to an audit. This form only authorizes the disclosure of information; it does not authorize the appointed person to perform any additional acts on behalf of the taxpayer. Form 285B is the Department's general disclosure form. A taxpayer may use Form 285B to authorize the Department to disclose information to an appointee. Like Form 285A, it only authorizes the disclosure of confidential tax information. Form 285I is for use by individual taxpayers. It allows an individual taxpayer to authorize the disclosure of his/her confidential information to an appointee or to appoint a person to represent him before the Department where acts additional to disclosure are required.

Form 285C is a unique form in the Form 285 series because it does not actually authorize disclosure or authorize any acts to be performed on behalf of a taxpayer. Rather, it enables an individual to certify to the Department that he² is authorized by a taxpayer to *receive* confidential information or to *sign* a disclosure/authorization form on behalf of a taxpayer. This form is used in situations where the office holder has a non-traditional title, but nevertheless is authorized to sign as a principal corporate officer.³ For example, an out of state limited liability company may be set up with a corporate structure as opposed to managers and members. In that instance, the officer with an equivalent position as a principal corporate officer may sign Form 285C. Form 285C cannot be signed by a secondary corporate officer because secondary officers are not normally recognized by the Department as authorized principal corporate officers of a corporation. For example, a CFO (a secondary officer) is not permitted to sign Form 285C.

Example 1:

A Form 285 with attached Form 285C is received by the Department on April 10, 2014. The Form 285 indicates it applies to corporate income taxes for the 2010 to 2012 tax years. Both Forms 285 and 285C are signed by the taxpayer's assistant secretary, the latter purporting to indicate that the assistant secretary is authorized to sign on behalf of the taxpayer. The Department will NOT accept the authorization because the assistant

² Male gender pronouns are used for simplicity, but are meant to refer to any individual, either male or female.

³ See further discussion on this issue below. Principal corporate officers are generally recognized to be the CEO, president, secretary, treasurer and vice-president.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 3

secretary is not a recognized principal corporate officer.⁴ In that situation, the assistant secretary should attach a board resolution authorizing him to sign the Form 285 in lieu of Form 285C.

Forms 285P and 285UP allow a taxpayer to authorize the disclosure of confidential information and to authorize additional acts if any representation is needed. However, Form 285P is only for used in centrally valued property tax matters,⁵ while Form 285UP is only used for unclaimed property matters. These areas are governed by different statutes and rules and, therefore, require separate, special forms.

Some forms in the Form 285 series only authorize the disclosure of confidential tax information. Forms 285A and 284B are included in this category. Other forms, however, authorize the disclosure of confidential tax information and permit a taxpayer to authorize an appointee to perform additional acts on its behalf. Forms in this category include Forms 285, 285I, 285P and 285UP. Despite the fact that these forms authorize both disclosure and representation, a taxpayer need not do both; he has the option of using each form to only authorize disclosure.

Example 2:

A Form 285 is received by the Department on August 1, 2014, which indicates that the authorization applies to Arizona individual income tax for periods from 2010 through 2013. None of the boxes in either the section authorizing additional acts (section 4) or the section authorizing a power of attorney (section 5) is checked. As a result, the appointee will only be able to receive or exchange confidential information with the Department, nothing more. He will not be able to do any acts on behalf of the taxpayer such as sign a statute of limitations waiver, execute a protest of a deficiency or request a formal hearing.

Example 3:

Same facts as in example 2, except that the box allowing the appointee to protest a deficiency is checked. As a result, the appointee will only be able to protest an assessment, but he will not be able to represent the taxpayer in any administrative hearing, execute a closing agreement or do any other acts

⁴ See discussion on principal corporate officers below.

⁵ Centrally Valued Property Tax is a tax on large property. Examples include mills, mines, pipelines, flight property owned by airline companies, operating property of railroad companies, and property owned by telecommunication companies.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 4

on behalf of the taxpayer. The appointee is only limited to the specific authorization indicated by the checked box.

Example 4:

Same facts as in example 2, except that the power of attorney box (section 5) is checked. As a result, the appointee will be able to do any act the taxpayer could do without any limitation.

Example 5:

Same facts as in example 2, except that the taxpayer checked three boxes in the additional authorization section (section 4) and also checked the power of attorney box (section 5). Because the power of attorney box overrides all the boxes in the additional authorization section, the appointee will be able to perform any act the taxpayer could do without any limitation.

Example 6:

Same facts as in example 2, except that the taxpayer checked the power of attorney box (section 5) and entered a limitation. Because the power of attorney box is checked, the appointee will be able to perform any act the taxpayer could do, except the specified limitation(s).

The distinction between the two types of authorization (disclosure only and additional acts/full power of attorney) is very important. While every Form 285 is limited to the particular tax matters and years as authorized by a taxpayer, where only disclosure is authorized, the appointee may only receive confidential information.⁶ The appointee cannot take actions such as negotiating a settlement or signing documents. Where only the disclosure of confidential information is required, the taxpayer need not complete the sections of the Form 285 labeled additional authorization or power of attorney and the person appointed need not sign the declaration of appointee.

Where the taxpayer authorizes an appointee to perform additional acts, then the taxpayer must indicate those specific acts authorized in the additional authorization section by checking the appropriate box(es).⁷ In a case where a taxpayer grants full power of attorney authorization, meaning that the taxpayer wants the appointee to perform any and

⁶ For example, he may receive a copy of the taxpayer's tax return and exchange information in relation to the taxpayer's tax return.

⁷ Examples include the power to request a formal hearing on the taxpayer's behalf or to represent the taxpayer in an administrative tax proceeding.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 5

all acts that the taxpayer could perform, then the power of attorney section must be completed. Where the taxpayer authorizes additional acts or grants a full power of attorney, the person appointed to perform the additional acts or to whom a full power of attorney is granted must sign the declaration of appointee section.⁸

The signature of the appointee in the declaration of appointee section serves as an acknowledgement by that person that he complies with Rule 31 of the Arizona Supreme Court ("Rule 31"). Rule 31 deals with the unauthorized practice of law and prohibits actions by any non-attorney it deems to be the practice of law. Included in the definition of the practice of law, among other things, are:

- Preparing any document through any medium for filing in any court or administrative agency for a specific person or entity; and
- Representing another in a judicial, quasi-judicial or administrative proceeding or other formal dispute resolution process or preparing any document intended to affect or secure legal rights.

Thus, where any non-attorney does any of the above acts, he is deemed to be conducting the unauthorized practice of law in Arizona and could be potentially sanctioned.

Additionally, the Arizona State Bar issued an Unauthorized Practice of Law Advisory Opinion (UPL 05-01) which concluded that even the preparation of a request to the Department for a private taxpayer ruling or an information letter on behalf of another person constitutes the practice of law as defined under Rule 31. Under this broad definition then, any additional act an appointee may be authorized to carry out on behalf of a taxpayer in relation a tax matter will likely to be considered the unauthorized practice of law and potentially subject to sanctions.

Rule 31(d), however, provides for exceptions to the rule. Under Rule 31(d)(13), an exception is granted from the general rule for the following persons who represent taxpayers before the Department:

- An Arizona certified public accountant (C.P.A.)
- A federally authorized tax practitioner (as defined in the Treasury Department's Circular No. 230), or

⁸ An important note should be made here of the fact that the authorization forms dealt with in this procedure may only be used for Department purposes. If a taxpayer needs representation before the Office of Administrative Hearings or some other Agency, an Agency specific form must be completed.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 6

- Any duly appointed person where the amount in dispute is less than \$5,000.⁹
- If the taxpayer is a legal entity, a full-time officer, partner, member or manager of a limited liability company, or employee, provided the representation is not the appointee's primary duty and he is not receiving separate or additional compensation for it.

In relation to federally authorized tax practitioners, A.R.S. § 42-2069(D)(1) clarifies that a federally authorized tax practitioner includes any person who is engaged in practice with one or more federally authorized tax practitioners and who is subject to the same standards of practice and ethics requirements as a federally authorized tax practitioner. Thus, A.R.S. § 42-2069(D)(1) permits a person to represent a taxpayer before the Department even if that person is not a C.P.A., attorney or federally authorized practitioner, as long as the person is working under the control of the federally authorized practitioner and is subject to the same standards. The declaration of appointee section on the Arizona Form 285 allows the appointee to disclose this information by requiring him to disclose the name of the federally authorized practitioner he is working with as well as that person's CAF number.

Additionally, there is an exception for a property tax agent dealing with property tax matters under Rule (31)(d)(26).¹⁰

A.R.S. § 42-2004 provides that knowing disclosure of confidential information is a class six (6) felony. In addition, other types of disclosure in violation of the statute constitute class one (1) misdemeanors.

A.R.S. § 42-2003 permits disclosure of confidential information in certain circumstances and it indicates to whom confidential information may be disclosed. That provision also provides some guidance as to who may sign a document authorizing the disclosure of confidential taxpayer information.¹¹ An individual taxpayer may sign an authorization to disclose his tax information; however, some analysis of A.R.S. § 42-2003 is required to determine exactly who is authorized to sign an authorization on behalf of an entity taxpayer, and the form and content of such authorization. Generally speaking, only

⁹ See GTP 08-1 for more information.

¹⁰ See Ariz. Rule Sup. Ct. Rule 31(d)(26) for more information.

¹¹ With respect to a controlled subsidiary A.R.S. § 42-2003(A)(1) provides that the principal corporate officer of the parent corporation may sign the authorization. However, as will be explained more fully, the statute does not define "principal corporate officer."

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 7

individuals may be designated as a taxpayer's appointee for purposes of obtaining tax information or representing the taxpayer before the Department.¹²

The Department's requirements for authorizing an appointee are as follows:

PROCEDURE:

1. Information required. An authorization must contain the following information:

- (a) Taxpayer(s) full name(s), address, telephone number, taxpayer identification number (employer identification number, and/or social security number, TPT license number);
- (b) Appointee's(s') full name(s), address, telephone number and an identification number (bar license number, C.P.A. license number, enrolled agent number, social security number, or other ID);
- (c) The type of tax must be specified by category (e.g., individual income tax, transaction privilege tax, etc.); the taxpayer type should also be included (e.g., corporation, partnership, limited liability company, etc.)
- (d) The specific tax period to which the authorization refers; taxpayers are advised to be as specific as possible. See examples below.
- (e) A statement indicating whether any prior authorization is being revoked.
- (f) A clear statement indicating the scope or specific authority being given to the appointee or whether a full power of attorney is being granted.
- (g) A signature by or on behalf of the taxpayer and the date of execution of the authorization. In addition, the authorization must include a statement by the person signing the authorization certifying that he is authorized to release confidential information; it must also include the name and title of the person signing the authorization in legible writing or type-written form.

¹² However, please see the instructions to Form 821 which authorizes certain entities to receive confidential information or Form 821-PSC which authorizes certain entities to make withholding tax payments and file withholding tax returns.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 8

- (h) A declaration signed by the appointee (if acts in addition to disclosure are authorized) indicating he is qualified to act before the Department and that the requirements of Rule 31 are satisfied.

Example 1.1:

A Form 285 is received by the Department on August 1, 2014, which indicates that the authorization applies to Arizona individual income tax for periods from 2010 through 2013. The Department will accept and record the authorization for tax periods from 2010 through 2013 as specified by the form. The form remains valid as long as it is not revoked and may be used for any individual income tax matter related to the periods specified.

Example 1.2:

A Form 285 is received by the Department on August 1, 2014, which indicates that the authorization applies to Arizona individual income tax for “**all open years.**” The taxpayer did not file any income tax returns for the 2010 to 2012 tax years. However, the taxpayer filed an income tax return for the tax year 2013 on April 15, 2014. The Department will accept and record the authorization for all open tax periods for which the statute of limitations remains open as of the date the form is signed. So the appointee may act for the taxpayer for the tax years 2010 to 2014, as well as any other open years as of the date the authorization was signed. The form remains valid as long as it is not revoked and may be used for any individual income tax matter related to the open tax years.

Example 1.2a:

On April 5, 2017, the appointee in Example 1.2 sends a request to the Department for more information to be disclosed related to the 2013 tax year using the same Form 285 that was executed in 2014 (and which was not revoked). The appointee may receive any further information related to the 2013 tax year because that year is still open. The appointee could also receive information for any other open year as of the date the authorization was signed.

Example 1.3:

A Form 285 is received by the Department on August 1, 2014, which indicates that the authorization applies to Arizona individual income tax for “**all years being audited.**” The Department is auditing taxpayer’s returns for the years 2008 to 2012. The Department will accept and record the authorization for all tax

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 9

periods being audited by the Department (2008 to 2012) as of the date the form is signed. The form remains valid as long as it is not revoked.

Example 1.4:

A Form 285 is received by the Department on August 1, 2014, which indicates that the authorization applies to Arizona individual income tax for “**all years.**” The Department will accept and record the authorization for all open tax periods as of the date the form is signed. Here “all years” is interpreted to mean all tax years whether those years are opened or closed and includes future years. However, the availability of the documents requested is subject to the Department’s records retention schedule. Thus, all documents requested may not be available.

A note should be made here of Form 285P, which relates to centrally valued property. Where such a form is completed by a taxpayer appointing a property tax agent registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3652 as its appointee, A.R.S. § 42-16001 limits the period of representation to one year. Thus a taxpayer issuing a Form 285P to a property tax agent must renew it annually if the taxpayer wants to authorize that property tax agent as an appointee for multiple years.

2. Acceptable authorization documents. The Department will accept the following documents as authorizing the disclosure of confidential taxpayer information:

- (a) A properly completed form from the Form 285 series.
- (b) A federal power of attorney form (federal Form 2848) if the federal form has been modified to address Arizona taxes, and contains all of the required information specified above.
- (c) A general or durable power of attorney or a limited power of attorney if such document contains all of the information specified above.¹³

¹³ A general power of attorney grants the representative the power to act in all matters except those specifically excluded. A durable power of attorney is similar to a general power of attorney, except that it remains valid if the person giving the power becomes incapacitated. A limited power of attorney grants the power to act only in those instances or only with respect to those matters or periods specifically stated.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 10

- (d) A federal tax information authorization form (federal Form 8821) if the federal form has been modified to address Arizona taxes, and contains all of the required information specified above.

3. Acceptance of Supplemental Information to Validate a Form 285 or other Authorization Document

If a form from the Form 285 series fails to include all of the required information, the appointee may be able to supply the missing information in certain circumstances. Whether the appointee can do this depends on what is missing from the form. If the form is missing the taxpayer's (or his authorized agent's) signature, the form is invalid and a new form must be submitted. However, if the form is signed by the taxpayer or his authorized agent showing that confidential tax information can be disclosed, other defects on the authorization may be rectified by the appointee by changing, initialing and dating that change. Missing information relating to the appointee may be supplied and resubmitted by the appointee. However, missing information relating to the scope of authority of the appointee will render the authorization sufficient to facilitate the disclosure of confidential information, nothing more. The appointee may not do additional acts on behalf of the taxpayer, unless the taxpayer initials and dates the form or a new form is submitted.

Example 3.1:

A Form 285 is received by the Department on September 1, 2014, which indicates that the authorization applies to Arizona individual income tax for periods from 2010 through 2013. The taxpayer has not signed the form. Because the form is not signed, it is not valid and a new form must be submitted. The form cannot be rectified by initialing and resubmitting.

Example 3.2:

A Form 285 is received by the Department on September 1, 2014, which indicates that the authorization applies to Arizona individual income tax for periods from 2010 through 2013. The taxpayer or someone on his behalf signed the form, but the taxpayer's name is missing. Because the taxpayer signed indicating his intent to disclose confidential information, the appointee may include the taxpayer's name, have the taxpayer initial and date the change and resubmit the form.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 11

Example 3.3:

Same as in example 3.2, except that the **appointee** identification number is missing. The appointee may include the number, initial and date the change and resubmit the form.

Example 3.4:

Same as in example 3.2, except that the tax type information is missing. Because the taxpayer signed indicating his intent to disclose confidential information, the appointee may include the tax type information, have the taxpayer initial and date the change and resubmit the form

4. Signatures. The following people are permitted to sign an authorization on behalf of the following taxpayers:

Individuals

Under A.R.S. § 42-2003(A)(1), information relating to a taxpayer may be disclosed to the taxpayer or to a designee of the taxpayer who is authorized in writing by the taxpayer. Where an individual is the taxpayer, that individual must sign the authorization. In a situation where **only disclosure** is requested by the taxpayer and a joint return is in question, either taxpayer may sign the authorization. In the case where the representation of joint taxpayers is at issue and both taxpayers authorize the same appointee, both taxpayers must sign. Where joint taxpayers each have a separate appointee, each taxpayer must sign a separate document authorizing his appointee. In the case of a sole proprietorship (where tax information appears on federal Schedules C, E, F, etc.), the taxable individual must sign the authorization. However, this does not apply in relation to other taxes such as withholding taxes or transaction privilege taxes where a sole proprietorship is treated as a separate entity from its owners. In those cases, a person authorized on behalf of the business must sign.

Corporations

A.R.S. § 42-2003(A)(2) provides that confidential information relating to a corporate taxpayer may be disclosed to any principal officer, his designee or any person designated by resolution by the board of directors or other similar governing body.¹⁴ Note, the Arizona

¹⁴ The fact that the board is authorized to appoint a designee is consistent with general principles of corporate law which acknowledge that a corporation can act only through its board or its proper designee. See also A.R.S. § 10-801(B) that provides that "all corporate powers shall be exercised" by or under the authority of the board of directors.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 12

statute authorizes the disclosure of confidential information to a “principal” corporate officer, not just any corporate officer. There is no guidance in Title 42¹⁵ as to which corporate officer is a “principal” corporate officer.

Some guidance on who a principal officer is may be seen in Field Service Advice (“FSA”) (1996 WL 33320884). There, the IRS ruled on the proper party to sign federal Form SS-10.¹⁶ Treas. Reg. § 31.6061-1 provided that employment tax returns of a corporation must be signed by the president, vice-president, or other **principal** officer (emphasis added). Neither the Internal Revenue Code nor the Treasury Regulations defined “corporate officer” or “principal officer”. The IRS examined Black’s Law Dictionary which defined “corporate officer” as “[t]hose persons who fill the offices which are provided for in the corporate charter such as president, treasurer, etc., though in a broader sense the term includes vice presidents, general manager and other officials of the corporation.”

The IRS ruled that “the key element in determining whether a person is an officer is management responsibility” and that in corporations, “a person charged with important functions of management such as president, vice-president, treasurer, etc.” would qualify. Unfortunately, the corporation in question did not have traditional officer titles or a traditional management structure. However, the individuals signing federal Form SS-10 were identified as Members of Senior Management. The IRS ruled that the persons signing the form were authorized to do so.

Other guidance can be seen in Arizona statutes. For example, A.R.S. § 10-1622(A)(4) provides that the names and business addresses of its directors and principal officers must be disclosed in a corporation’s annual report. Those officers have been taken to include the president (including a chief executive officer (“C.E.O.”)), secretary, treasurer and vice-president. In addition, A.R.S. § 43-307 requires a corporate return to be signed by the president, treasurer or any other principal officer of the taxpayer, implying that a principal officer includes president and treasurer.

While there is “...general agreement that ... powers are greatest in the case of the chief executive of the firm, usually the president or general manager...,”¹⁷ other officers of a corporation do not generally have the same powers. Duties of such officers vary between

¹⁵ Arizona Form 285 instructions indicate that it should be signed by “a principal corporate officer as that term is defined in A.R.S. § 42-2003”; however, “principal corporate officer” is not defined in Title 42.

¹⁶ This form is the Consent to Extend the Time to Assess Employment Taxes.

¹⁷ See Inherent Powers of Corporate Officers: Need for a Statutory Definition 61 Harv. L. Rev. 867 at 869.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 13

corporations, even those of the same size and in the same industry. As such, it is impossible to delineate all the powers associated with each specific office of a corporation. What is important here is that the officer normally be authorized to bind the corporate taxpayer and additionally must have sufficient management authority and knowledge to be considered a principal corporate officer.

Based on the above guidelines, the following officers are considered principal corporate officers: C.E.O., president, secretary, treasurer and vice-president.¹⁸ Consequently, confidential information may be disclosed to those corporate officers who may sign an authorization. In addition to those corporate officers, the board of directors or other governing board may sign an authorization authorizing the disclosure of taxpayer confidential information to third party appointees.¹⁹ Significantly, the chief financial officer ("C.F.O.") is not considered a principal corporate officer. Therefore, the C.F.O., chief operating officer ("C.O.O.") and other secondary officers may only sign an authorization if authorized by a principal corporate officer, board of directors or other governing board.

Partnerships

A.R.S. § 42-2003(A)(3) provides that confidential information relating to a partnership may be disclosed to any partner. However, that information is limited to information related to the partnership and not to any individual partner unless otherwise authorized. There is no indication in the statute whether "any" partner means any general partner or any limited partner.

Under A.R.S. § 29-1021(1) of the Arizona Uniform Partnership Act dealing with general partners, each general partner is an agent of the partnership for the purpose of its ordinary business. In other words, the general partner is authorized to conduct the partnership's business and generally manage the affairs of the partnership. A.R.S. § 29-1021(2) provides that a general partner who is not acting on behalf of the partnership in the ordinary course of business is not authorized to act on behalf of the partnership in the absence of authority from the other partners. Under A.R.S. § 29-319 of the Arizona Limited Partnership Act, a limited partner is not permitted to control the business of the partnership the way a general partner may. So while any general partner may bind a partnership, a limited partner may not.

In keeping with the policy of authorizing only those persons with management responsibility to receive confidential information about a taxpayer, any general partner is authorized to receive such information. A limited partner will only be authorized to receive information

¹⁸ Including a vice-president of a corporate department.

¹⁹ See A.R.S. § 42-2003(A)(2).

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 14

on showing that he was properly authorized by a general partner. Similarly, only the general partner is allowed to sign an authorization authorizing a third party to represent the partnership. If the authorization is not signed by a general partner, there must be clear documentation showing authorization from a general partner.

Limited Liability Companies

A.R.S. § 42-2003 does not indicate who is authorized to receive confidential tax information in the case of a limited liability company (L.L.C.). In fact, the statute does not mention an L.L.C. at all. This is further complicated by the fact that for federal income tax purposes, under the “check the box” regulations,²⁰ an L.L.C. is able to elect out of its default classification.²¹ The federal classification of an L.L.C. is also valid for state income tax purposes. So, at least for state income tax purposes, an L.L.C. may be taxed as a division of its owner, a sole proprietorship, a partnership, an S corporation or a C Corporation.

Despite the lack of specific guidance for an L.L.C., who may receive confidential information relating to an L.L.C. may nevertheless be resolved with reference to A.R.S. § 42-2003(A)(1). A.R.S. § 42-2003(A)(1) specifically indicates that confidential information may be disclosed to a taxpayer or his designee authorized in writing. So who may receive confidential information relating to an L.L.C. must be determined with reference to who the taxpayer is. In a situation where the taxpayer is the individual, for example, if the L.L.C. is disregarded for federal income tax purposes and its income reported on federal Form 1040 Schedules C, E or F of an individual’s income tax return, then the appropriate person to sign relating to the income tax return is the individual since the individual is the taxpayer.

Even where an L.L.C. elects to be taxed as corporation or prefers its default classification as a partnership for income tax purposes, it is unlikely to have similar entity structures like those entities. So reference may not be made to the structures relating to those entities. For example, an L.L.C. taxed as a partnership will likely only have members and managers but no general or limited partners. Likewise, an L.L.C. taxed as a C or S corporation will not likely have officers such as a treasurer, president etc. However, the general principles examined previously relating to officers with sufficient management authority and knowledge with the ability to bind the L.L.C. must be consulted.

²⁰ The “check-the-box” regulations permit certain entities to choose their classification for federal tax purposes under an elective regime. See IRC section 7701 and the related regulations.

²¹ For example, under these regulations the default classification for a single member L.L.C. is as a disregarded entity; the default classification for a multiple member L.L.C. is as a partnership.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 15

The Arizona Limited Liability Companies Act²² permits an L.L.C. to be member-managed or manager-managed. However, a manager need not be a member of the L.L.C.²³ A.R.S. § 29-654(A) provides that unless the articles of organization of an L.L.C. provide that management is vested in one or more managers, each member is an agent of the L.L.C. for the purpose of carrying on its business in the usual way. In other words, the default rule is that in a member-managed L.L.C., each member has the ability to act on the L.L.C.'s behalf in conducting its ordinary activities. In relation to manager-managed L.L.C.s, A.R.S. § 29-654(B)(1) provides that where the L.L.C. is manager-managed then a member is **not** an agent of the L.L.C. unless that authority has been delegated to the member by the sole manager or managers or by the provisions of an operating agreement. So where the L.L.C. is manager-managed, each manager is an agent of the L.L.C. for the purpose of carrying on its day to day business activities and a member does not have the authority to manage the L.L.C. or act on its behalf.

Where the L.L.C. activity is taxed at the entity level so that the entity is the taxpayer, then the appropriate person to sign an authorization is either a member or manager depending on how the L.L.C. is structured. In a member-managed L.L.C., any member may sign the authorization; and in a manager-managed L.L.C., any manager may sign the authorization. If either the manager or member authorizes a third-party to sign on the L.L.C.'s behalf, that person (the signor) must present proper documentation of such authorization.

Example 4.1:

DEF, L.L.C. ("DEF") has multiple members (D, E, and F) and elects to be taxed as a C-Corporation for income tax purposes. DEF further elects to be managed by its managers G and H. DEF is in the business of selling widgets and has several employees. For income, employment and TPT tax purposes, either G or H is authorized to receive confidential information or sign a disclosure authorization.

Example 4.2:

Same facts as in example 4.1, except that DEF elects to be member-managed. For income, employment and TPT tax purposes, any of D, E or F is authorized to receive confidential information or sign a disclosure authorization.

²² A.R.S. § 29-601 *et. seq.*

²³ See A.R.S. § 29-681(B).

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 16

Example 4.3:

Same facts as in example 4.1, except that DEF accepts its default classification as a partnership. For income tax flow through items (*i.e.* items reported on the individual member's return), D, E, or F would be authorized to receive confidential information but only in relation to flow through items that are reported on their respective individual income tax returns. For TPT or employment tax purposes either G or H is authorized to receive confidential information. If DEF elected to be structured as a member-managed L.L.C., then only D, E, or F would be authorized to receive confidential information.

Example 4.4:

Same facts as in example 4.1, except that DEF elects to be taxed as an S-Corporation. For income tax flow through items (*i.e.* items reported on the individual member's return), D, E, or F would be authorized to receive confidential information but only in relation to flow through items that are reported on their individual income tax returns. For TPT or employment tax purposes, either G or H is authorized to receive confidential information.

Trustees & Receivers

Under A.R.S. § 42-2003(A)(4) confidential information relating to an estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the Department finds that the heir, next of kin or beneficiary has a material interest which will be affected by the confidential information.

Under A.R.S. § 42-2003(A)(5) confidential information relating to a trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the Department finds that the grantor or beneficiary has a material interest that will be affected by the confidential information.

From the above provisions then, a personal representative may sign an authorization on behalf of the estate; in relation to a trust, a trustee may sign. Interestingly, in both A.R.S. § 42-2003(A)(4) and (A)(5) there is reference to a "material interest" of a beneficiary, next of kin or grantor in relation to estates and trusts for the purposes of disclosure of confidential information. However, there is no reference in the statute as to what constitutes a material interest. Nonetheless, as a policy matter, a material interest is taken to mean that the interested person (*i.e.* next of kin, heir, beneficiary or grantor) has more than a ten percent (10%) financial interest in the income or principal of the estate or trust. Where that is the case, those interested persons would be authorized to receive confidential information and to sign an authorization.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 17

A.R.S. § 42-2003 does not specifically address bankruptcies or receiverships. Thus, further consideration is required. When a bankruptcy proceeding is commenced, all property of the debtor passes to the bankruptcy estate and the estate is represented by the trustee (provided one is appointed).²⁴ The estate created by the filing of a bankruptcy petition is an entity distinct from the debtor. So, not everything that belongs to the debtor becomes part of the bankruptcy estate over which the trustee has control. It only includes the legal or equitable interests of the debtor in property as of the commencement of the case. Furthermore, “the trustee has standing only to represent the interests of the estate.”²⁵ The bankruptcy trustee is not an agent of the debtor; he acts as a representative of the estate, managing the estate's funds for the benefit of creditors of the estate. *In re Obie Elie Wrecking Co., Inc.*, Bkrtcy.N.D.Ohio 1983, 35 B.R. 114.

A receiver plays a similar role at the state level as the bankruptcy trustee does at the federal level. The receiver manages the property of the debtor for the benefit of the creditors and is appointed by a court. Like the bankruptcy trustee, his rights and powers are governed by the appointment documents. A bankruptcy trustee is an officer of the court as fully under its control as a receiver would be. *Freeman Coal Min. Corp. v. Burton*, Ill.1944, 58 N.E.2d 589, 388 Ill. 604, certiorari denied 65 S. Ct. 1196, 325 U.S. 859, 89 L. Ed. 1978.

Under the Bankruptcy Code, the duties of a bankruptcy trustee are detailed.²⁶ Among those duties is the trustee's general responsibility to represent the bankrupt estate and the responsibility to file a tax return on behalf of the estate. The Bankruptcy Code, however, does not address whether and under what circumstances the disclosure of a debtor's confidential tax information to the trustee is permitted. However, the Internal Revenue Code addresses this issue. Under 26 U.S.C. § 6103(e)(4) and (e)(5) dealing with Title 11 cases and receiverships, where an **individual** debtor is involved, his tax returns for the current and prior years are open to inspection by or disclosure to a trustee upon written request. However, this applies only in a voluntary case.²⁷ If the case is involuntary, disclosure of the debtor's confidential tax information cannot be made before relief is granted unless the trustee can show that disclosure is required in order to determine

²⁴ See 11 U.S.C. §§ 323, 541.

²⁵ See 8A C.J.S. Bankruptcy § 28 at 45.

²⁶ See for example 11 U.S.C. § 704 (duties of Chapter 7 Trustee); 11 U.S.C. § 1106 (duties of Chapter 11 Trustee); 11 U.S.C. § 1202 (duties of Chapter 12 Trustee); 11 U.S.C. § 1302 (duties of Chapter 13 Trustee).

²⁷ 26 U.S.C. § 6103(e)(5); see also IRS Publication 908.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 18

whether relief is appropriate.²⁸ In cases where an individual is not involved, confidential tax information is not permitted to be inspected by or disclosed to a trustee unless the IRS finds that the trustee has a material interest that will be affected by the information on the return. Material interest is generally defined as a financial or monetary interest, not limited to the trustee's responsibility to file a return on behalf of the bankruptcy estate.²⁹

As noted, A.R.S. § 42-2003 does not specifically address bankruptcies or receiverships. However, as a policy matter and since bankruptcy trustees and receivers are under the full control of the court, for the purpose of determining whether a receiver or bankruptcy trustee is authorized to receive confidential information, reference should be made to the court document appointing them to determine the scope of their responsibility and any limitations thereon. If properly authorized, a trustee may receive confidential information or sign an authorization authorizing an appointee to act on behalf of the debtor's estate. That authorization is applicable only to the bankruptcy/receivership years.

Government Agencies

A.R.S. § 42-2003(B) *et. seq.* outlines the circumstances under which confidential information may be disclosed to governmental agencies, and to other state and federal tax officials. Those circumstances do not require the authorization of a taxpayer. Generally speaking, any request to the Department for confidential information must be in writing and indicate the purposes for which the information will be used. Any release of information will be limited to the information reasonably required to comply with the request.

In addition to requests made to the Department by other governmental agencies and officials for taxpayer information, there may be circumstances where a governmental agency requests information in relation to its own tax account (for example, where an agency remits withholding taxes to the Department). In such a case, the question becomes who is authorized to sign an authorization on behalf of the agency. A.R.S. § 42-2003 provides that confidential information may be disclosed to a designee of a taxpayer in writing. Where the taxpayer is a governmental agency, the proper person authorized to sign an authorization on behalf of the agency would be the agency head or someone authorized by him.

²⁸ 26 U.S.C. § 6103(e)(5)(C); see also IRS Publication 908.

²⁹ 26 U.S.C. § 6103(e)(4); see also IRS Publication 908.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 19

5. Completion and Validity of Form 285

To be effective, a Form 285³⁰ must be properly completed. Section 1, dealing with taxpayer information,³¹ Section 2 detailing the appointee information and the tax matters information included in Section 3 must always be completed on Form 285.³² The sections dealing with additional acts that may be performed on behalf of a taxpayer (Section 4)³³ and the power of attorney section (Section 5)³⁴ should be completed only if additional acts are required by the taxpayer. Section 6³⁵ (dealing with revocation of prior authorizations) must be completed where a prior authorization is being revoked; and Section 7³⁶ should be completed only where the taxpayer corporation has controlled subsidiaries.

To be valid, every Form 285 must be signed by a taxpayer or by a person authorized by the taxpayer. Where an appointee is authorized to perform additional acts or is granted a power of attorney, that appointee must sign Section 9³⁷ declaring that he complies with Rule 31. Without that signature, an appointee will only be able to receive confidential information, nothing more. Of course, Section 9 need not be signed where a taxpayer only wants information to be disclosed to an appointed person. Form 285 operates for the tax period(s) specified on the form, but remains valid until revoked.

³⁰ Not all forms in the Form 285 series have the same information requirement. To the extent possible, the differences are listed.

³¹ If using Form 285**UP**, Section 1 is the claimant information section.

³² Section 4 on Forms 285**P** (Centrally Valued Property tax matters) and 285**UP** (unclaimed property matters) similarly deals with disclosure tax matters, but for only a particular year(s) but is labeled "Release of Confidential Information."

³³ A similar Section 4 is not included on Forms 285**A** and 285**B** as those forms are for disclosure only.

³⁴ Likewise Section 5 is not included on Forms 285**A** and 285**B**.

³⁵ This is Section 4 on Forms 285**A** and 285**B**, and Section 5 on Form 285**I**.

³⁶ This is included only on Forms 285, 285**P** and 285**UP**.

³⁷ This section is not included on Forms 285**A** and 285**B** and is listed as Section 7 on Form 285**I**.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 20

6. Copy or Facsimile Transmission

The Department will accept either the original or a copy of a Form 285. A copy of a Form 285 received by facsimile transmission (FAX) also will be accepted (see "Procedure for Public/Practitioner Use of Department of Revenue Facsimile Machines", GTP 94-4).

7. Notices and Communications

Any notice or other written communication required or permitted to be given to a taxpayer in any matter before the Department will be given to the taxpayer. Copies of such notices or written communications may also be given to the appointee designated in the authorization, unless restricted by the taxpayer.

8. Delegation of Powers under Authorization

An appointee may delegate some or all of his authority to represent the taxpayer to one or more appointees. An appointee may do this by checking the appropriate box under the additional authorization section or by giving the appointee a full power of attorney (if he has one). Those appointee(s) must be qualified to act under Rule 31 or meet one of its exceptions. Additionally, the appointee(s) to whom such power is delegated may only perform those acts specifically granted and those acts cannot in any event be greater than the powers granted by the taxpayer to the original appointee. An appointee to whom power was delegated by the original appointee is only authorized to act as long as the original powers remain unrevoked.

9. Revocation or Withdrawal of Appointee

(a) By the Taxpayer

(1) If the revocation of earlier authorizations box is checked when the taxpayer is appointing a new appointee, all prior authorizations will be revoked for all previous forms. Any exceptions to this blanket revocation must be specifically noted on the form.

(2) A taxpayer may revoke a power of attorney without authorizing a new appointee by filing a statement of revocation with the Department or by submitting the a copy of the original form with the word REVOKED written across the top and signed and dated by the taxpayer.

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 21

Example 9.1:

A Form 285 is received by the Department on October 1, 2014, which indicates that the authorization applies to Arizona individual income tax for periods 2010 through 2013. The taxpayer appoints John Smith to represent him before the Department and gives him a full power of attorney by checking the appropriate box. The taxpayer is later audited by the Department for the 2011 to 2013 tax years. The taxpayer files a new Form 285 on January 31, 2016, in which it appoints Joan Samuel to represent it for all open periods. The revocation box is not checked on the new form. Because the revocation box is not checked, the Form 285 filed in 2014 remains valid, as does the new Form 285 filed. So John Smith may still represent the taxpayer for the 2010 to 2013 tax periods and Joan Samuel may represent the taxpayer for all years still open.

Example 9.2:

A Form 285 is received by the Department on October 1, 2014, which indicates that the authorization applies to Arizona corporate income tax for periods from January 1, 2010 through December 31, 2030. The taxpayer appoints Jamal Smith to represent it before the Department and gives him a full power of attorney by checking the appropriate box. The form is accepted by the Department and remains valid until December 31, 2030 unless revoked. The taxpayer is later audited by the Department for TPT taxes for the 2011 to 2013 tax years. The taxpayer files a Form 285 on January 31, 2016, in which it appoints Annika Samuel to represent it for the 2011 to 2013 audit years for TPT taxes. The revocation box is checked on the new form. Only Annika Samuel may represent the taxpayer as the prior Form 285 was revoked. The taxpayer will need to issue a new Form 285 to appoint a new appointee for matters it wants handled by appointees other than Annika.

Example 9.3:

A taxpayer is being audited by the Department and a Form 285A (for audit disclosure) is received by the Department on November 1, 2014. The form indicates that the authorization applies to Arizona corporate income tax for tax years 2010 to 2013 (the audit years). The taxpayer's Form 285A appoints John Smith to receive confidential information on behalf of the taxpayer. Prior to November 1, 2014, the taxpayer had previously filed a Form 285, a Form 285A and Form 285UP for some other matters with other persons before the Department. Those forms remained valid at the time the November 2014 Form 285A was filed. The November 2014 Form 285A

ARIZONA GENERAL TAX PROCEDURE

GTP 15-2

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 22

checked the revocation box, however, the taxpayer noted that the prior Form 285**UP** was to remain in effect. Both John Smith and the appointee appointed under the previous Form 285**UP** are authorized to receive confidential tax information on behalf of the taxpayer. The other forms, Form 285 and prior Form 285**A**, were revoked as of November 1, 2014.

(b) By the Appointee.

An appointee may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with the Department. The statement must be signed by the appointee and must identify the name and address of the taxpayer(s) and the matter(s) from which the appointee is withdrawing.

David Raber, Director

Signed: May 23, 2015

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to department personnel. A tax procedure is a written statement issued by the department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. **Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.

ARIZONA GENERAL TAX PROCEDURE**GTP 15-2**

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 23

<u>Taxpayer</u>	<u>Who may sign an authorization</u>
Individuals - Single	<ul style="list-style-type: none">• Individual
Individual - Joint	<ul style="list-style-type: none">• Both sign same document for the same representative.• Each signs separate document for two representatives.
Sole Proprietorship Business (Federal Form 1040 Schedules C, E, F income) This includes where there is no entity or where entity is disregarded for income tax purposes	<ul style="list-style-type: none">• The individual owner of business.
Corporations	<ul style="list-style-type: none">• A principal corporate officer (president, CEO, vice president, secretary or treasurer), his designee or any person authorized by the Board of Directors or other governing body.
Partnerships (general or limited partnerships)	<ul style="list-style-type: none">• Any general partner of the partnership; designee of general partner.
Limited Liability Company (L.L.C.) (if taxation is at the entity level) See above where L.L.C. treated as disregarded entity or where tax relates to flow through items on individual return	<ul style="list-style-type: none">• Member in a member-managed L.L.C.; manager in a manager-managed L.L.C.; designee of member or manager.
Trust	<ul style="list-style-type: none">• Any trustee; a beneficiary or grantor only if he has a material interest that will be affected by the confidential information.
Bankruptcy estate/receivership	<ul style="list-style-type: none">• Refer to court document appointing bankruptcy trustee to ensure disclosure is authorized.
Estate	<ul style="list-style-type: none">• Personal representative.• Any heir, next of kin or beneficiary, only if he has a material interest that will be affected by the confidential information.

ARIZONA GENERAL TAX PROCEDURE**GTP 15-2**

(This Procedure supersedes and rescinds
GTP 95-2 and GTP 95-2A)

Page 24

<u>FORM</u>	<u>Use</u>	<u>Disclosure/Representation</u>	<u>Signature(s) Required</u>
Form 285	<ul style="list-style-type: none">Any tax matter	Disclosure & representation	<ul style="list-style-type: none">Taxpayer/authorized person, <u>and</u>Rule 31 qualified representative where one appointed
Form 285A	<ul style="list-style-type: none">Audit matters	Disclosure ONLY	<ul style="list-style-type: none">Taxpayer/authorized person ONLY
Form 285B	<ul style="list-style-type: none">Any tax matter	Disclosure ONLY	<ul style="list-style-type: none">Taxpayer/authorized person ONLY
Form 285C	<ul style="list-style-type: none">Any tax matterTo show authorization to receive confidential tax information or sign a Form 285	Disclosure and certification of taxpayer authorization ONLY	<ul style="list-style-type: none">Appointed person or person normally recognized as authorized by taxpayer
Form 285I	<ul style="list-style-type: none">Any tax matterTo be used only by individuals	Disclosure & representation	<ul style="list-style-type: none">Taxpayer/authorized person, <u>and</u>Rule 31 qualified representative where one appointed
Form 285P	<ul style="list-style-type: none">Centrally Valued Property matters	Disclosure & representation	<ul style="list-style-type: none">Taxpayer/authorized person, <u>and</u>Rule 31 qualified representative where one appointed
Form 285UP	<ul style="list-style-type: none">Unclaimed property matters	Disclosure & representation	<ul style="list-style-type: none">Taxpayer/authorized person, <u>and</u>Rule 31 qualified representative where one appointed