

# CAF Unit Entering Form 2848 As Modified

## Preventing Tax Pros From Getting Transcripts

**Summary:** In 2018 the IRS started to require tax pros to check a box on Forms 8821 and 2848 if the tax pro used third party software to download transcripts. Downloading transcripts is a high-volume affair. Tax pros downloaded more than one billion transcripts using ISPs<sup>i</sup> since January of 2022. The IRS in 2022 started inputting Form 2848 (and on rare occasions the Form 8821) as “Modified” in its CAF system, preventing tax pros from requesting and downloading transcripts using third party software (known as ISP), or from the IRS website directly. A conflict between form instructions and the IRM causes the “Modified” status, which prevents many tax professionals from timely accessing the information they need to represent their taxpayers<sup>ii</sup> and needs to be resolved.

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**Issue:** In 2017, the IRS designated a software that retrieves, stores, and displays a taxpayer’s IRS transcripts as an Intermediate Service Provider (ISP). ISP examples are Tax Help Software (THS), Intuit, and Canopy Tax.

The IRS e-Services User Agreement requires a tax pro to notify clients if she/he uses an ISP to access their transcripts<sup>iii</sup>. The instructions for Form 8821 (Tax Information Authorization (TIA)) and Form 2848 (Power of Attorney and Declaration of Representative (POA)) specify a tax pro must check the box in Section 5 of Form 2848 or Section 3 of Form 8821 granting authority to “Access my IRS records via an Intermediate Service Provider.”

### Exhibit 1: Forms 2848 and 8821 Checkboxes

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#### Line 5a. Additional Acts Authorized

Use line 5a to modify the acts that your named representative(s) can perform. Check the box for the additional acts authorized and provide details in the space provided (if applicable).

**Authority to access electronic IRS records via Intermediate Service Providers.** Your representative is not authorized to use an Intermediate Service Provider to retrieve your confidential tax information indirectly from the IRS **unless you check the box on line 5a**. If you do not authorize the use of an Intermediate Service Provider, your representative can obtain your tax information directly from the IRS by using the IRS e-Services Transcript Delivery System.

**Authority to access electronic IRS records via Intermediate Service Providers.** Your designee is not authorized to use an Intermediate Service Provider to retrieve your confidential tax information indirectly from the IRS **unless you check the box on line 3**. If you don't authorize the use of an Intermediate Service Provider, your designee can obtain your tax information directly from the IRS by using the IRS e-Services Transcript Delivery System. Intermediate Service Providers are privately owned companies that offer subscriptions to their software and/or services that your authorized designee can use to retrieve, store, and display your tax return data (personal or business) instead of obtaining your tax information directly from the IRS through the IRS e-Services Transcript Delivery System. Intermediate Service Providers are independent of, and not affiliated in any way with, the IRS. The IRS has no involvement in your designee's choice to obtain your tax information directly from the IRS or use an Intermediate Service Provider to indirectly obtain your tax information from the IRS.

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**5a Additional acts authorized.** In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):  Access my IRS records via an Intermediate Service Provider;  Authorize disclosure to third parties;  Substitute or add representative(s);  Sign a return; \_\_\_\_\_

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**3 Tax information.** Each designee is authorized to inspect and/or receive confidential tax information for the type of tax, forms, periods, and specific matters you list below. See the line 3 instructions.

By checking here, I authorize access to my IRS records via an Intermediate Service Provider.

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In 2020, the IRS launched a Transcript Delivery System (TDS) API. The agency forced all ISPs to use the API; without the API, ISPs would lose access to the IRS servers holding the transcripts. The IRS API team also required tax pros using the ISP to check the ISP box on both Forms 8821 and 2848. The scale of transcript use is extraordinary: tax pros have downloaded more than one billion transcripts using ISPs<sup>iv</sup>.

In 2022, the Prairie State Legal Services Low Income Tax Clinic (LITC) (the Clinic) discovered that checking the ISP box on their Forms 2848 caused the IRS to input some of the forms into the IRS CAF System as “Modified.” Because the POAs were marked “Modified,” the Clinic could not request and download transcripts through its ISP or directly from the IRS website. Clinic staff was forced to call the IRS and request the transcripts be placed in the clinic’s e-Services Secure Object Repository (SOR), which is commonly referred to as the e-Services Mailbox. This manual process can take from 30 minutes to 2 hours-plus based on hold times and identity validation processes. The Clinic filed a Systemic Advocacy Management System (SAMS) case (SAMS Issue 56796) and notified THS of the issue because the firm donates its product to all LITC offices in the country.

The Clinic pointed out to the assigned IRS Stakeholder Liaison that IRS IRM 21.3.7.5.2(17)a (08-22-2023) states as below in Exhibit 2:

***Exhibit 2: Form 2848 and Form 8821 Screening, Coding and Editing IRM***

- (17) Form 2848, Line 5a, Additional acts authorized and Line 5b, Specific acts not authorized may limit, or give additional, authority to the taxpayer’s representative(s).
- a. If Form 2848, Line 5a, grants any authorization other than disclosure to third-party, substitute/add representative(s) or sign a return, or limits any authorization as notated on line 5b, Specific acts not authorized on the Form 2848, code an **"M"** (Modified) in the left margin next to box 5a. Otherwise, code a **"U"** (unmodified) in left margin next to box 5a.

These three checkbox authorizations IRM 21.3.7.5.2(17)a (see Exhibit 1) have been on the Form 2848 for at least 10 years.

In 2018 the IRS added the ISP Authorization box, but did not add it to IRM 21.3.7.5.2(17)a (see Exhibit 2). **NOTE: The Form 8821 is not mentioned other than in the IRM’s title; there are no instructions anywhere in the IRM that refer to the Form 8821 being “Modified”.**

This leads us to an internal conflict among IRM sections—and in intent. To use an ISP to request and download transcripts the tax pro must check a box, but by checking the box it prevents the transcripts from being requested and downloaded electronically. IRS IRM 3.42.8.5 (2) (09-09-2021) E-Services specifies tax pros must have an “unmodified” Power of Attorney on file (No mention of a Form 8821 or Tax Information Authorization).

### Exhibit 3: E-Services IRM

#### 3.42.8.5 (09-09-2021)

##### E-Services

- (1) E-Services is available 24 hours a day, 7 days a week from any computer with an Internet connection. The e-help Desk assistors must provide quality service to external customers who encounter problems or need information about e-Services.
- (2) The e-help Desk assistors provide support for the following e-Services products:
  - **IRS e-file Application** - permits users to submit a new or revised IRS e-file Application to become an Authorized IRS *e-file* Provider and to update their application as needed. See IRM 3.42.10, Authorized IRS e-file Providers, for information on adding a new location, closing an office, etc.
  - **Taxpayer Identification Number (TIN) Matching Application** - allows payers of income subject to backup withholding to apply for the TIN Matching Program.
  - **TIN Matching Program** - allows authorized users to match TINs and names directly against IRS records.
  - **Transcript Delivery System (TDS)** - allows users to electronically request and receive transcripts, wage and income documents for a taxpayer's account, and verification of non-filing. Tax preparers using TDS must have an unmodified Power of Attorney (POA) on file.

A tax pro cannot have an unmodified POA if she/he checks the ISP box on Line 5a (as she/he is required to do).

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**Conclusion:** The IRS requires a tax pro to check a box that allows her/him to use the IRS TDS API using an ISP, but checking that box prevents the access to that system. This Catch 22 surely cannot be the IRS' intent. Considering this situation from outside of the agency—and that the simplest solution is often the right one—it seems the IRS added the ISP Authorization check box to the other three, pre-existing checkboxes in Section 5a of the Form 2848 without adding the new checkbox language that would allow a Form 2848 with the ISP Authorization box checked to be entered as “unmodified” to IRM 21.3.7.5.2(17)a. The second step allows the system to be used as intended and designed<sup>v</sup>.

THS has started to advise tax pros if they need to file a Form 2848 and use an ISP they should leave the Box ISP Authorization blank and ask the taxpayer to also sign an IRS Form 8821 with the same information and check the ISP Authorization Box. Both forms should be submitted (separately, not together). THS understands this will cause more work for both the tax pro and the IRS, but cannot see any other options until the IRS updates IRM 21.3.7.5.2(17)a.

As noted earlier, the IRS Stakeholder Liaison attempted to get this issue addressed earlier this year, but all IRS parties contacted either declined to get involved or advised the system works as intended and there are no issues<sup>vi</sup>. At this writing, THS is receiving an increasing number of complaints from tax pros who are encountering this issue. That said, THS sees two likely, growing problems:

- Tax pros using the newly upgraded Tax Pro Account are able to see if a “modified” designation has been assigned to their POAs and social media tax groups are now openly discussing the issue. Given social media behavior, it seems likely the issue will deteriorate until it is addressed.
- The “modified” POAs will hamper tax pros from providing timely representation to taxpayers, who are guaranteed that specific right, and cause a non-trivial uptick in IRS call volume.

Please swiftly modify IRM 21.3.7.5.2(17)a, addressing what must be an inadvertent oversight and allowing for efficient, speedy taxpayer representation and for efficient use of IRS resources.

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<sup>i</sup> Statistic based on IRS 2022 SOI and internal user data for Tax Help Software.

<sup>ii</sup> Contrary to a Taxpayer Bill of Rights (TBOR) provision providing for the right to representation.

<sup>iii</sup> The e-Services User Agreement does not specify how to notify taxpayers.

<sup>iv</sup> Statistic based on IRS 2022 SOI and internal user data for Tax Help Software.

<sup>v</sup> The IRS apparently spent \$14.8 million (IRS Contract PIID TIRNO11D000240012) on upgrading the IRS TDS and adding an API. Surely the IRS would not expend those resources and then intentionally block usage of that platform.

<sup>vi</sup> See SAMS Issue 56796 for details.