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SUBJECT: Authorizations for Electronic Fund Transfers Made on Behalf of the Taxpayer

### **QUESTION(S) PRESENTED**

Does the Franchise Tax Board's Power of Attorney Form 3520 ARCS allow a representative to authorize Electronic Fund Transfers on behalf of an authorizing taxpayer?

### **CONCLUSION**

Franchise Tax Board Form 3520 ARCS represents the authority given to a taxpayer's representative to authorize Electronic Fund Transfers if the "Acts Authorized" indicated on that Form indicate a "General Authorization."

### **ANALYSIS AND DISCUSSION**

A power of attorney ("POA") is a legal document that proves that one person has permission to represent another. The "principal" (the taxpayer for FTB's purposes) is the person giving permission and the permission is granted to the "agent" or "representative. Commonly, a taxpayer will sign a power of attorney form to let the Franchise Tax Board (FTB) know that it can discuss the taxpayer's account or return with a representative, and that the representative may perform certain acts on the taxpayer's behalf.

The general law of agency applies to the interpretation of POAs, except for durable POAs (See Probate Code section 4120- 4124) and POAs that specify that they are statutory form powers of

attorney under Probate Code sections 4401- 4465. The general law of agency is contained in California Civil Code, Division 3, Part 4, Title 9 (beginning with Section 2295), and in case law. The portions of the Revenue and Taxation Code administered by FTB do not contain provisions specific to POAs, nor does FTB have its own regulations specific to POAs. However, the statutory scheme under the Civil Code provides that an agent may be authorized to do any acts that the principal, the taxpayer, might do.

FTB has various Forms that can be used to establish that such a relationship exists, including 3520 C1, 3520BD PASS, and 3520 PASS (rev 10-2002). Form 3520 ARCS allows the taxpayer to indicate the authority that is granted to the agent in Section 3. That section explains that the form represents that the agent is authorized to receive confidential tax information. It further notifies the taxpayer that they may allow the agent general authority to perform any and all acts on the taxpayer's behalf with regard to state tax matters if the designation entitled "General Authorization" is marked.

Thus, an agent whose authority is indicated by the taxpayer to be a "General Authorization" on Form 3520 ARCS, has the authority to execute electronic fund transfers as that act falls within the parameters of "any and all acts on the taxpayer's behalf with regard to state tax matters".

Tax Counsel