

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 31.6011(a)-1: Returns under Federal Insurance Contributions Act; 26 CFR 31.6011(a)-4: Returns of income tax withheld.
(Also: Part 1, § 6011; 26 CFR 31.6071(a)-1, 31.6091-1, and 31.6302-1)

Rev. Proc. 2009-51

SECTION 1. PURPOSE

This revenue procedure sets forth the procedures for employers to follow to request to file Form 944, Employer's ANNUAL Federal Tax Return (*i.e.*, to opt in). In addition, this revenue procedure sets forth the procedures for employers who previously were notified to file Form 944 to follow to request to file Forms 941, Employer's QUARTERLY Federal Tax Return, instead (*i.e.*, to opt out).

SECTION 2. BACKGROUND

.01 Form 944 was designed to reduce burden on small employers by permitting those employers to file one employment tax return to report their social security, Medicare, and withheld federal income taxes (referred to herein as their "employment

tax liability”) for an entire taxable year instead of four employment tax returns (one for each quarter).

.02 The Treasury Department and the Internal Revenue Service (IRS) published temporary regulations (TD 9239) related to Form 944 in the Federal Register (71 FR 11) on January 3, 2006. A notice of proposed rulemaking (REG-148568-04) cross-referencing the temporary regulations was published in the Federal Register on the same day (71 FR 11). A correction to the temporary regulations was published in the Federal Register on March 17, 2006 (71 FR 13766). Revised temporary regulations (TD 9440) and proposed regulations (REG-147440-08) relating to Form 944 were published in the Federal Register (73 FR 79354 and 73 FR 79423) on December 29, 2008. A correction to the revised temporary regulations was published in the Federal Register on January 1, 2009 (74 FR 3421).

.03 Sections 31.6011(a)-1T(a)(5)(ii) and 31.6011(a)-4T(a)(4)(ii) of the revised temporary regulations provide that the IRS may establish procedures in published guidance for employers to follow to request to file Form 944 or to request to file Forms 941 (after receiving notification of their qualification to file Form 944).

.04 For tax year 2009, the IRS issued the procedures for employers to follow for purposes of Treas. Reg. §§ 31.6011(a)-1T(a)(5)(ii) and 31.6011(a)-4T(a)(4)(ii) on December 29, 2008, in Revenue Procedure 2009-13 (2009-3 IRB 323).

.05 A new revenue procedure for tax years beginning on or after January 1, 2010, is necessary to allow employers to opt out of filing Form 944 for any reason. Under the prior rules for tax years 2006, 2007, 2008, and 2009, employers who were qualified to

file Form 944 could only opt out (*i.e.*, request to file Forms 941 instead) if they estimated that their employment tax liability would exceed the \$1,000 threshold or if they wanted to e-file Forms 941 quarterly instead. Beginning in tax year 2010, employers will be able to opt out of filing Form 944 for any reason if they follow the procedures set forth in this revenue procedure. This revenue procedure constitutes published guidance for purposes of Treas. Reg. §§ 31.6011(a)-1T(a)(5)(ii) and 31.6011(a)-4T(a)(4)(ii).

.06 Employers who file Forms 941 and 944 must deposit their employment tax liability in accordance with the rules in Treas. Reg. §§ 31.6302-1 and 31.6302-1T or, absent reasonable cause, the employers may be subject to the penalty for failure to deposit under section 6656. Generally, the same deposit rules apply to employers regardless of which form they file to report their employment tax liability; however, the de minimis deposit amount may be different. For more information on the deposit rules, see Publication 15, (Circular E), Employer's Tax Guide, the Instructions for Form 941, the Instructions for Form 944, and the instructions for the related Spanish-language returns or returns for U.S. possessions.

.07 For provisions relating to the time and place for filing returns, see Treas. Reg. §§ 31.6071(a)-1 and 31.6091-1, respectively.

SECTION 3. SCOPE

This revenue procedure applies to qualified employers, as defined in section 4.01.

SECTION 4. PROCEDURES

.01 Qualified employers. Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld Federal income

taxes) of \$1,000 or less for the entire calendar year, except employers required to make a return on Form 943, Employer's Annual Federal Tax Return For Agricultural Employees, or on Schedule H (Form 1040), Household Employment Taxes. The IRS may increase the amount of the estimated annual employment tax liability that qualifies employers to file Form 944 through a revenue procedure, notice, or other IRS guidance published in the Internal Revenue Bulletin.

.02 Requests to File Form 944 (i.e., opt in to filing Form 944). Upon request by qualified employers, the IRS will notify employers in writing of their qualification to file Form 944. Employers may request to file Form 944 by contacting the IRS at the appropriate telephone number or mailing address identified in subsections .05 and .06 below, respectively, by the applicable due date identified in subsection .04 below. Employers must not file Form 944 unless they receive notification that they are eligible to do so. Employers who previously received notification of their qualification to file Form 944 must continue to file Form 944 unless the IRS notifies the employer that the employer no longer qualifies to file Form 944 or the employer opts out consistent with the procedures described below.

.03 Requests to File Forms 941 (i.e., opt out of filing Form 944). Employers who previously were notified to file Form 944 but want to file Forms 941 instead must call or write the IRS stating that they want to opt out of filing Form 944 before the applicable due date, as indicated in subsection .04 below. Employers can find the appropriate IRS telephone number and mailing address in subsections .05 and .06 below, respectively. The IRS will send written notification to employers that their filing requirement was

changed to Forms 941. Employers who were notified of their qualification to file Form 944 but do not receive notification that their filing requirement was changed to Forms 941 must file Form 944 rather than Forms 941.

.04 Due dates.

(1) Employers who have previously filed Form 941 or Form 944 or the related Spanish-language returns or returns for U.S. possessions. Employers who want to call to request to opt in or out of filing Form 944 for the current tax year must call the IRS on or before April 1st of the current tax year (e.g., April 1, 2010 for returns for tax year 2010). Employers who want to write to request to opt in or out of filing Form 944 for the current tax year must have their written correspondence postmarked on or before March 15th of the current tax year (e.g., March 15, 2010 for returns for tax year 2010).

(2) New employers. Businesses that recently received an employer identification number or had an employer identification number but were not previously required to file Forms 941 or Form 944 or the related Spanish-language returns or returns for U.S. possessions who want to call to request to opt in or out of filing Form 944 for the current tax year must call the IRS on or before the first day of the month that the first required Form 941 for the current tax year is due (e.g., for returns for tax year 2010, call on or before April 1, 2010, July 1, 2010, October 1, 2010, or January 1, 2011). Employers who want to write to request to opt in or out of filing Form 944 for the current tax year must have their written correspondence postmarked on or before the 15th day of the month before their first required Form 941 for the current tax year is due (e.g., for returns for tax year 2010, correspondence postmarked on or before March 15, 2010,

June 15, 2010, September 15, 2010, or December 15, 2010).

(3) Saturday, Sunday, or legal holiday. For any due date that falls on a Saturday, Sunday, or legal holiday, the last day employers may call the IRS or have their written correspondence postmarked is the next business day following that Saturday, Sunday, or legal holiday.

.05 Phone numbers. Employers can call the IRS to opt in or out of filing Form 944 by using the phone numbers specified in the Instructions for Form 944, Instructions for Form 944-SS, Instructions for Form 944(SP), or the Instructions for Form 944-PR, as applicable. At publication, the following phone numbers have been identified for this purpose:

(a) Employers in the United States, including Puerto Rico and the U.S. Virgin Islands, can call 1-800-829-4933. TTY/TDD users can call 1-800-829-4059.

(b) Employers in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and international callers can call 215-516-2000.

.06 Mailing Addresses. Employers can write the IRS to opt in or out of filing Form 944 by using one of the mailing addresses specified in the Instructions for Form 944, Instructions for Form 944-SS, Instructions for Form 944(SP), or the Instructions for Form 944-PR, as applicable. At publication, the following mailing addresses have been identified for this purpose:

Department of Treasury, Internal Revenue Service Ogden, Utah 84201-0038 or
Department of Treasury, Internal Revenue Service Cincinnati, Ohio 45999-0038.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on January 1, 2010.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Audra M. Dineen of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure contact Audra M. Dineen at (202) 622-4910 (not a toll-free call).