

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 31.3504-1: Designation of Agent by Application

Rev. Proc. 2013-39

SECTION 1. PURPOSE

This Revenue Procedure describes and updates the procedure for requesting the IRS authorize a person to act as agent under section 3504 of the Internal Revenue Code (Code) and §31.3504-1 of the Employment Tax Regulations for purposes of Chapters 21, 22, 24, and 25 of the Code. Special instructions are also set forth for agents authorized to perform acts for purposes of Chapter 23 of the Code.

SECTION 2. BACKGROUND

.01 Chapters 21, 22, 23, 24, and 25 of the Code impose obligations on employers with regard to employment taxes. Specifically, Chapter 21 imposes Federal Insurance Contributions Act (FICA) tax, Chapter 22 imposes Railroad Retirement Tax Act (RRTA) tax, Chapter 23 imposes Federal Unemployment Tax Act (FUTA) tax,

Chapter 24 imposes Collection of Income Tax at Source on Wages (income tax withholding), and Chapter 25 provides general provisions relating to employment taxes.

.02 Section 3504 of the Code authorizes the Secretary to promulgate regulations to authorize a fiduciary, agent, or other person (“agent”) who has the control of, receives, has custody of, disposes of, or pays the wages of an employee or group of employees, employed by one or more employers, to perform certain specified acts required of employers. Under section 3504, all provisions of law (including penalties) applicable with respect to an employer are applicable to the agent and remain applicable to the employer. Accordingly, both the agent and employer are liable for the employment taxes and penalties associated with the employer’s employment tax obligations undertaken by the agent.

.03 Section 31.3504-1(a) as amended by T.D. 9649, effective December 12, 2013, provides that the Internal Revenue Service (IRS) may authorize a person who pays, controls, receives, has custody of, or disposes of (collectively “paid”) wages or compensation of an employee or group of employees employed by one or more employers as an agent. The regulation provides that applications for authorization to act as agent shall be signed by the agent and employer and made on the form prescribed by the IRS, and shall be filed with the IRS as prescribed in the instructions to the form and other applicable guidance. Generally this authorization is applicable to FICA tax, RRTA tax, and income tax withholding and relevant general employment tax provisions under the Code.

.04 Section 31.3504-1(b) as amended by T.D. 9649, effective December 12,

2013, permits an agent authorized for purposes of FICA tax and income tax withholding to perform acts required of an employer who is a home care service recipient to also be authorized for purposes of FUTA tax. Section 31.3504-1(b)(2) defines “home care services” to include health care and personal attendant care services rendered to the home care service recipient. Section 31.3504-1(b)(3) defines a “home care service recipient” as an individual who receives home care services while enrolled, and for the remainder of the calendar year after ceasing to be enrolled, in a program administered by a Federal, state, or local government agency that provides Federal, state, or local government funds to pay, in whole or in part, for home care services for that individual.

.05 Rev. Proc. 70-6, 1970-1 C.B. 420, sets forth procedures to be followed in requesting authorization to act as agent under section 3504 for purposes of FICA tax, RRTA tax, income tax withholding, and general provisions relating to employment tax. It provides that application for authorization should be made in writing by the agent, accompanied by Form 2678, Employer Appointment of Agent, executed by each employer for whom the agent is to act. The agent must file one return for each tax-return period, and maintain records that will disclose the full wages paid to each employee on behalf of, and identified by, each employer for whom the agent acts.

.06 Rev. Proc. 80-4, 1980-1 C.B. 581, sets forth the procedures to be followed by state and local health and welfare agencies wishing to act as agents under section 3504 for welfare recipients who become the employers of individuals furnished by the agencies to provide in-home domestic service for the welfare recipients. It provides that the state or local agency does not need to receive a Form 2678 from each welfare

recipient/employer, so long as its application to the IRS references the document that the welfare recipient/employer filed with the agency appointing the agency as agent. The guidance also provides that when a welfare recipient/employer is liable for FUTA tax, the IRS will interpose no objection if the state or local agency acting as an agent for FICA tax and income tax withholding, also acts as an agent for FUTA tax. However, Rev. Proc. 80-4 does not apply to state and local welfare agencies that contract with outside organizations to provide the in-home domestic services.

.07 Notice 95-18, 1995-1 C.B. 300, provides guidance to household employers on rules regarding federal employment taxes and income tax withholding under section 2 of the Social Security Domestic Employment Reform Act of 1994 (the Act), Pub. L. 103-387. The Act added section 3510 to the Code to provide that returns with respect to domestic service employment taxes be made on a calendar year basis, and amended the FICA provisions of the Code to establish an annual threshold for cash remuneration paid by an employer to an employee for domestic service in a private home of the employer in order to be subject to FICA tax. The notice explains the major changes made by the Act and has a series of questions and answers related to household employers.

Specifically, the notice provides that state and local government health and welfare agencies that act as agents pursuant to Rev. Proc. 80-4 should obtain a separate employer identification number (EIN) for use in reporting taxes with respect to individuals furnished by the agencies to provide household services for recipients of public assistance. It also provides that the IRS will waive penalties for these state and

local government health and welfare agencies for failure to deposit the FICA and FUTA taxes and withheld income taxes on wages paid to household employees during 1995, provided all taxes are deposited on or before the due date of the applicable return.

.08 Notice 2003-70, 2003-2 C.B. 916, proposes a revenue procedure giving updated guidance to state and local government agencies on how they can serve as agents (“state agents”) under section 3504 for disabled individuals and other welfare recipients (“service recipients”) who employ home-care service providers to assist them in their homes. The notice provides that until a final version of the proposed revenue procedure is issued, the IRS will not challenge the way a state meets the employment tax obligations with respect to home-care service providers employed in its in-home domestic services program if the employment taxes are being timely withheld, reported, and paid, and the procedures for reporting and paying the taxes are based on a reasonable, good faith interpretation of existing guidance, including on positions set forth in the proposed revenue procedure.

Notice 2003-70 proposes to modify Rev. Proc. 80-4 to apply not only to state and local agencies that furnish individuals to provide in-home domestic services, but also to state and local agencies that do not furnish the individuals who provide in-home domestic services. The notice allows the state agent to remit taxes with a timely filed return rather than make deposits according to the schedule that would otherwise be applicable under §31.6302-1. It also allows the service recipient to designate the state agent without having to obtain an EIN as he or she would otherwise be required to do in order to execute a Form 2678.

Notice 2003-70 also provides guidance on withholding and reporting rules for third parties acting either as a “reporting agent” of the state agent or as a “subagent” of the state agent. The notice explains that a reporting agent is an accounting service, franchiser, bank, service bureau or other entity authorized to perform one or more acts on behalf of an employer, including sign and file Forms 940, Employer’s Annual Federal Unemployment Tax Act (FUTA) Return, and 941, Employer’s QUARTERLY Federal Tax Return, and make federal tax deposits for the taxes reported on these forms. The notice defines a subagent as an individual or entity designated as an agent by a state agent in accordance with Rev. Proc. 70-6 and the notice. Notice 2003-70 provides that both a reporting agent and subagent of a state agent should use the special EIN of the state agent, and file one Form 940 using the name and special EIN of the state agent on behalf of all service recipients for whom it acts. The notice allows the reporting agent of the state agent to remit taxes with a timely filed return. The subagent of the state agent must follow the deposit schedule in §31.6302-1 that is otherwise applicable.

.09 The purpose of this revenue procedure is to update and consolidate the previously issued guidance discussed in this section and incorporate recently finalized rules related to home care service recipients (HCSRs). The updates to the prior guidance principally reflect changes already implemented in IRS administrative processes. For example, the IRS no longer requires an application for authorization to act as agent to accompany Form 2678. Also, Form 941-X, Adjusted Employer’s QUARTERLY Federal Tax Return or Claim for Refund, has replaced Form 941c, Supporting Statement To Correct Information, for correcting wages, and since 2010,

agents have been required to attach allocation schedules to their aggregate returns. Other changes that modify current procedures are noted.

.10 The term “wages” as used in this revenue procedure shall be construed to include compensation under the RRTA unless the context indicates otherwise.

SECTION 3. GENERAL RULES TO REQUEST AUTHORIZATION TO ACT AS AGENT

.01 To request that the IRS authorize an agent under §31.3504-1 to perform acts required of an employer, the parties must use Form 2678, Employer/Payer Appointment of Agent.

.02 The employer submits a properly executed Form 2678 to the person it wishes to appoint as agent, indicating on Form 2678 the acts for which it seeks to appoint the agent and whether the agent will be appointed with regard to some or all of the employer’s employees. If the employer anticipates paying any wages (such as taxable noncash fringe benefits or bonuses) to any of its employees, the employer must indicate on Form 2678 that the appointment of the agent is only for some of its employees. To accept the appointment, the agent files Form 2678 with the IRS as provided in the form instructions. If either the employer or the person the employer wishes to appoint as agent has not obtained an EIN prior to the filing of the Form 2678, the agent must include a properly executed Form SS-4, Application for Employer Identification Number, with the Form 2678 to request an EIN for the employer or agent as necessary.

.03 If the IRS approves the request, the IRS sends a letter of approval to the agent and employer, except as provided in section 10.03 of this revenue procedure.

The authorization to act as agent is effective on the date indicated in the letter of approval mailed by the IRS.

.04 If the IRS approves the request and the authorization is with respect to all the employer's employees, the employer may need to file a final return for any form the agent is authorized to file. Specifically, the employer enters its name and EIN in the spaces provided for the employer and indicates that it is a final return in the manner provided in the form instructions. If the agent was authorized for some employees only (including because the employer was expecting to pay some wages in accordance with section 3.02 of this revenue procedure), the employer does not file a final return, but must continue filing a return with regard to the other employees (or wages). The employer does not file a final return if the employer was not required to file a return prior to the agent's authorization, for example, because the employer had not previously paid wages to any employees.

.05 The provisions of law (including penalties) applicable with respect to an employer that are made applicable to the agent under section 3504 remain applicable to the employer and agent.

SECTION 4. FILING OF RETURNS BY AGENT WITH APPROVED FORM 2678

.01 The agent with an approved Form 2678 is required to file one return for each tax-return period reporting the wages and employment taxes on the wages paid to its employees, and the wages and employment taxes on the wages paid by the agent to the employees of each employer for whom the agent is authorized to act ("aggregate return").

.02 The agent's name and EIN are entered in the spaces provided for the employer on the returns, and the returns are to be executed in accordance with the form instructions.

.03 The agent must complete an allocation schedule and attach it to each aggregate return as described in the form instructions. On the allocation schedule, the agent lists the name and EIN of each employer for whom the agent is authorized to act and allocates the wages, taxes, and payments reported on the aggregate return to each employer. For example, the IRS has designated Schedule R (Form 941), Allocation Schedule for Aggregate Return Filers, as the allocation schedule to attach to an aggregate Form 941. The agent is responsible for maintaining records that show the wages paid by the agent to each employee on behalf of, and identified by, each employer for whom the agent is authorized to act. The employer is responsible for maintaining records that show the wages paid by the agent to its employees. See §§31.6001-1 through 31.6001-5.

.04 The wages paid to an employee are considered with respect to each employer separately, and not in conjunction with the wages paid to the employee by the agent as employer or by the agent on behalf of any other employer, for purposes of any dollar threshold or wage base applicable in determining the employment tax liability.

.05 Generally, the agent furnishes and files one Form W-2, Wage and Tax Statement, for each employee. The agent's EIN is entered in the spaces provided for the employer. The name of the agent, followed by "Agent for (name of employer)," is entered in the space provided for the employer. If the agent (a) is acting as an agent for

two or more employers or is an employer and is acting as an agent for another employer, (b) pays social security wages to an individual on behalf of more than one employer, and (c) the total of the individual's social security wages from these employers is greater than the social security wage base, the agent furnishes and files separate Forms W-2 for the affected employee reflecting the wages paid by each employer.

SECTION 5. DEPOSITS BY AGENT WITH APPROVED FORM 2678

Except as provided in section 10.05 of this revenue procedure, the deposit rules apply to the agent with an approved Form 2678 based on the total employment taxes accumulated by the agent for its own employees and on behalf of all employers for whom the agent is authorized to act. The deposit rules that would have applied to any employer for whom the agent acts, had the agent not been authorized, do not apply to the agent.

SECTION 6. CORRECTIONS OF WAGES BY AGENT WITH APPROVED FORM 2678

Wages erroneously reported by the agent must be corrected by the agent on behalf of the employer using the form that corresponds to the return being corrected. For example, the IRS has designated Form 941-X as the form to correct errors on a previously filed Form 941. The agent attaches an allocation schedule as prescribed in the instructions for the form being filed. The name and EIN of the agent are entered in the spaces provided for the employer as it appeared on the return being corrected. Generally, the agent's obligation to make the correction is not affected by a subsequent revocation of the authorization as discussed in section 9 of this revenue procedure.

However, an agent may not make corrections after its authorization to act as agent is revoked by the IRS under section 9.02 of this revenue procedure.

SECTION 7. USE OF REPORTING AGENT BY AGENT WITH APPROVED FORM 2678

.01 A reporting agent is an accounting service, franchiser, bank, service bureau, or other entity authorized to perform one or more acts on behalf of a taxpayer. See Rev. Proc. 2012-32, 2012-35 IRB 1, for rules related to reporting agent authorizations and a description of the acts that may be performed by reporting agents. An agent with an approved Form 2678 may designate a reporting agent to sign and file certain employment tax returns and make tax deposits on behalf of the agent.

.02 The reporting agent files only one return on behalf of the agent for each tax return period. The agent's name and EIN, not the reporting agent's name and EIN, are entered in the spaces provided for the employer on the returns. If the return instructions prescribe an allocation schedule, the reporting agent is required to enter the name and EIN of the agent as shown on the return, and list the name and EIN of each employer for whom the agent is authorized to act in the spaces provided for clients.

.03 The deposit rules that apply to the agent continue to apply with regard to deposits made by the reporting agent.

.04 The agent is responsible for maintaining records that show the wages paid by the agent to each employee on behalf of, and identified by, each employer for whom the agent is authorized to act. The employer is responsible for maintaining records that show the wages paid by the agent to its employees. See §§31.6001-1 through

31.6001-5.

.05 The provisions of law (including penalties) applicable with respect to an employer that are made applicable to the agent under section 3504 remain applicable to the employer and agent.

SECTION 8. USE OF SUBAGENT BY AGENT WITH APPROVED FORM 2678

.01 An agent with an approved Form 2678 (“first agent” for purposes of this section) may want to appoint an agent under section 3504 (“subagent”) using the procedures described in section 3 of this revenue procedure.

.02 If the subagent is authorized by the IRS, the rules described in section 4 related to filing of returns apply to the subagent as an agent. For example, the subagent is required to attach Schedule R (Form 941) with its own name and EIN entered as shown on the return, and list the name and EIN of each employer who appointed the first agent, and for whom the subagent is authorized to act, in the spaces provided for clients. Unless the subagent is appointed to deposit, pay, and file on behalf of the first agent in the agent’s capacity as employer, the first agent is not listed as a client on Schedule R (Form 941).

.03 The rules described in section 5 of this revenue procedure related to deposits and section 6 of this revenue procedure related to corrections of wages apply to the subagent as an agent.

.04 The subagent and agent are responsible for maintaining records that show the wages paid by the subagent to each employee on behalf of, and identified by, each employer for whom the subagent is authorized to act. The employer is responsible for

maintaining records that show the wages paid by the agent and subagent to its employees. See §§31.6001-1 through 31.6001-5.

.05 The provisions of law (including penalties) applicable with respect to an employer that are made applicable to the subagent and the first agent under section 3504 remain applicable to the employer, first agent, and subagent.

SECTION 9. REVOCATION OF AUTHORIZATION OF AGENT WITH APPROVED FORM 2678

.01 The employer or agent with an approved Form 2678 may request the IRS revoke an existing authorization using Form 2678, executed by the party seeking to revoke the appointment. Except as provided in section 10.07 of this revenue procedure, the IRS confirms the revocation by letter to the agent and employer, and the revocation is effective on the date indicated in the letter mailed by the IRS.

.02 The IRS may independently revoke an existing authorization if the facts and circumstances indicate such revocation is warranted. Except as provided in section 10.07 of this revenue procedure, the revocation is by notice to the agent and employer. The revocation of the authorization is effective when the IRS mails the notice.

.03 An agent files Form 2678 to revoke an authorization if there is no longer an agency relationship, for example, because the employer or agent goes out of business, the employer no longer exists due to a merger or acquisition, the employer is deceased, or the employer appoints another person on Form 2678 to act as agent for the same acts the agent is authorized to perform.

.04 If the agency relationship is being terminated because the employer appoints

another person to act as agent, the agent whose authorization is being revoked is liable to report, deposit, and pay taxes on behalf of the employer with regard to wages it paid during periods for which it was authorized to act as agent of the employer. It remains liable for such employment taxes even after the authorization is revoked as provided in this section.

SECTION 10. SPECIAL RULES FOR AGENTS OF HOME CARE SERVICE RECIPIENTS, INCLUDING FOR STATE AGENTS

.01 Except as otherwise provided in this section, the rules generally applicable to agents and employers described in sections 3, 4, 5, 6, 7, 8, and 9 of this revenue procedure shall apply to a person authorized to act as agent for an employer who is a home care service recipient (HCSR) as defined in §31.3504-1(b)(3). This section also sets forth special rules that apply to state agents. For purposes of this revenue procedure, a state agent is a state or local government agency administering a program to provide home care services, as defined in §31.3504-1(b)(2), which has been authorized by the IRS as agent for a HCSR. Only government agencies can be state agents. Third parties, whether nonprofit or for-profit, that are engaged by a government agency to administer all or some aspects of a home care services program are not state agents for purposes of this revenue procedure.

.02 Section 31.3504-1(b) provides that the IRS may authorize a person to act as agent on behalf of an employer who is a HCSR with respect to FUTA taxes imposed on wages paid for home care services, as defined in §31.3504-1(b)(2), provided that the person has been authorized to act as agent for the HCSR for income tax withholding

and FICA tax purposes under §31.3504-1(a).

.03 The general rules to request authorization to act as agent set forth in section 3 of this revenue procedure apply to request authorization to act as agent for a HCSR, including for FUTA tax purposes, except that the letter mailed by the IRS approving the request will only be sent to the agent. Sections 10.03(1) through 10.03(3), below, provide special rules for state agents when requesting authorization to act as agent of HCSRs.

(1) A state agent may request authorization from the IRS without filing Form 2678 on behalf of each HCSR for whom the state agent seeks to act. In lieu of Form 2678, the state agent may solicit appointment by each HCSR on the forms the individuals must complete in order to enroll in the program administered by the state agent. The state agent submits a letter to the IRS address to which it would have been required to submit the Forms 2678. The letter must reference the forms appointing the state agent and identify each HCSR for whom the state agent wishes to be authorized by either (a) including each HCSR's name and EIN on a list, or (b) including a properly executed Form SS-4 for the HCSR if the HCSR has not previously obtained an EIN, with its letter to the IRS. State agents were not previously required to notify the IRS of the HCSRs for whom they acted; however, notification is now necessary to ensure the IRS' records properly reflect the parties' filing requirements and to ensure the correct taxes are reported and paid by the agent on behalf of each HCSR. The notification procedures apply with respect to each HCSR who enrolls in the program and wishes to appoint the state agent. The state agent must also notify the IRS of each HCSR for

whom its authority to act as agent is revoked.

(2) Because Rev. Proc. 80-4 allowed HCSRs to appoint state agents without filing Form 2678, Notice 2003-70, Q&A 10, provided that HCSRs who appoint state agents do not need to obtain an EIN if an EIN is not required for any other purpose. The IRS now requires all agents to file allocation schedules which show information for each employer, identified by the employer's EIN. Therefore, all HCSRs, including those whose agents were authorized before the effective date of this revenue procedure, must now obtain an EIN so the state agent may fulfill its reporting obligations to the IRS. See also section 6109 and §31.6011(b)-1. As indicated in section 10.03(1) of this revenue procedure, if the HCSR has not previously obtained an EIN, the state agent may assist a HCSR in applying for an EIN by including a properly executed Form SS-4 on behalf of the HCSR with the state agent's request for authorization to act as agent. HCSRs whose agents were authorized before the effective date of this revenue procedure who do not have an EIN must apply for an EIN within a reasonable period of time after the effective date of this revenue procedure.

(3) All state agents should use Form SS-4 to request a special EIN for the state agent to report and pay taxes on behalf of the HCSRs for whom the state agent acts. The application for the special EIN should indicate the state agent is a government entity. The state agent may not use its special EIN to report or pay employment taxes for wages paid for services other than home care services, or for an employer who is not a HCSR.

.04 The filing of return procedures set forth in section 4 of this revenue

procedure apply to agents authorized to act on behalf of a HCSR for any returns the agent is authorized to file. For example, the agent with an approved Form 2678 for FUTA tax purposes files one aggregate Form 940 for each tax-return period reporting the FUTA tax liability related to wages it pays to its employees and to wages it pays for home care services to employees of each HCSR for whom the agent is authorized to act. The IRS has designated Schedule R (Form 940), Allocation Schedule for Aggregate Form 940 Filers, as the allocation schedule to attach to an aggregate Form 940. Sections 10.04(1) through 10.04(3), below, provide special rules for state agents filing returns on behalf of HCSRs.

(1) As indicated in section 10.03(3) of this revenue procedure, state agents should obtain a separate EIN to report and pay employment taxes on behalf of HCSRs. The state agent enters its own name and special EIN in the spaces provided for the employer.

(2) If the state agent designates a reporting agent, the reporting agent must use the state agent's name and special EIN to report and pay employment taxes on behalf of the HCSRs for whom the state agent is authorized to act.

(3) If the state agent appoints a subagent, the subagent must use its own name and EIN to report and pay employment taxes on behalf of the HCSRs for whom the state agent is authorized to act. Notice 2003-70, Q&A 27 permitted the subagent to use a state agent's special EIN in order to be able to report and pay FUTA taxes on behalf of HCSRs. However, now that §31.3504-1(b) provides that any person, not just a state agent, may be authorized as agent of a HCSR with respect to FUTA taxes owed for

home care services, it is no longer necessary for the subagent to use the state agent's special EIN in order to act as an agent for FUTA tax purposes. Furthermore, because the subagent is subject to normal deposit rules, and the deposit rules that apply to the state agent discussed in section 10.06 of this revenue procedure do not apply to the subagent, the use of the state agent's special EIN by the subagent is not appropriate.

.05 An agent authorized to act on behalf of a HCSR furnishes and files a Form W-2 for each employee on behalf of each HCSR, unless the compensation is excepted from both income tax withholding and FICA tax.

.06 The deposit procedures set forth in section 5 of this revenue procedure apply to an agent authorized to act on behalf of a HCSR for any deposits the agent is required to make. Sections 10.06(1) through 10.06(3), below, provide special rules for state agents when making deposits.

(1) A state agent may remit FICA tax, FUTA tax, and income tax withholding on behalf of a HCSR with a timely filed return, and the IRS will not assess any penalties for failure to deposit timely. Other penalties may apply, for example, if taxes are not paid or if a correct return is not timely filed.

(2) If the state agent uses a reporting agent, the reporting agent may deposit taxes with a timely filed return.

(3) If the state agent uses a subagent, the deposit rules apply to the subagent based on the total taxes accumulated by the subagent for its employees and on behalf of all employers, including HCSRs, for whom it is authorized to act. The deposit rules that would have applied to any employer, or to the state agent, had the subagent not

been appointed, do not apply to the subagent.

.07 The revocation procedures set forth in section 9 of this revenue procedure are generally followed to revoke an appointment of an agent authorized to act on behalf of a HCSR, except that the letter confirming the revocation will only be sent to the agent. Sections 10.07(1) through 10.07(4), below, provide special rules related to revocations for FUTA tax purposes.

(1) Under §31.3504-1(b), the agent may only act for FUTA tax purposes for a HCSR while the HCSR is enrolled, and for the remainder of the calendar year in which he or she ceases to be enrolled, in a government program. If a HCSR ceases to be enrolled in a government program during the year, an agent may report and pay FUTA taxes on behalf of that HCSR either for the entire calendar year, or for a portion of the calendar year, as described in sections 10.07(2) and 10.07(3) below.

(2) The agent may report and pay FUTA taxes on wages it paid for home care services for the HCSR for the entire calendar year in which the HCSR ceases to be enrolled, but not after such year. The agent files a Form 2678 to request the IRS to revoke the authorization with respect to FUTA taxes by the end of the calendar year in which the individual ceases to be a HCSR.

(3) The agent may report and pay FUTA taxes only for the portion of the year it paid wages for home care services for the HCSR. If the agent stops paying wages for home care services for the HCSR before the end of the calendar year, the agent must file a Form 2678 to request the IRS to revoke the authorization for FUTA taxes when the agent stops paying wages or otherwise stops acting as agent with respect to the

HCSR's FUTA taxes.

(4) Under either sections 10.07(2) or 10.07(3), above, the agent may still act as agent with respect to the individual's FICA tax and income tax withholding responsibilities.

SECTION 11. EXAMPLES

The rules provided in this revenue procedure are illustrated by the following examples.

Example 1. *Final return.* Employer B and Agent W complete and file Form 2678 to request the IRS authorize Agent W to file Form 941 with respect to all of Employer B's employees. The IRS approves the authorization effective April 1, 2014. Employer B files a Form 941 for the first quarter of 2014, indicating that it is a final return by checking the appropriate box and entering that it stopped paying wages as of March 31, 2014. For periods beginning on and after April 1, 2014, Agent W pays wages to all of Employer B's employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941. Agent W attaches Schedule R (Form 941) listing Employer B as a client.

Example 2. *No final return.* Same facts as Example 1, except that Employer B is a new business that has not paid wages to any employees prior to the effective date of the authorization. Therefore, Employer B does not file a final Form 941.

Example 3. *Authorization for some employees.* Employer C and Agent V complete and file Form 2678 to request the IRS authorize Agent V to file Form 941 with respect to some of Employer C's employees. The IRS approves the authorization

effective April 1, 2014. For periods beginning on and after April 1, 2014, Agent V pays wages to some of Employer C's employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941. Agent V attaches Schedule R (Form 941) listing Employer C as a client. Employer C continues to pay wages for some employees, make related employment tax deposits, and report the wages and taxes on its Form 941.

Example 4. *HCSR and other employer.* Agent Y is authorized to file Form 941 for Employer S and for Employer T, who is a home care service recipient (HCSR) as defined in §31.3504-1(b)(3). Agent Y is also authorized to file Form 940 for Employer T.

Agent Y pays wages to all of Employer S's and Employer T's employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941. Agent Y attaches Schedule R (Form 941) listing Employer S and Employer T as clients. Agent Y also reports wages and taxes with respect to home care services provided to Employer T on an aggregate Form 940. Agent Y attaches Schedule R (Form 940) listing Employer T as a client. Employer S files Form 940 with respect to wages paid to its employees.

Example 5. *State agent.* State K funds a program to provide home care services to eligible individuals. Department H administers the home care services program, including disbursing the funds to pay for the services. Each of the individuals enrolled in the program is a HCSR, as defined in § 31.3504-1(b)(3).

As part of the enrollment process, each HCSR completes a form to appoint Department H as agent under section 3504 of the Code to file Form 940 and Form 941

for the HCSRs. Department H sends a letter to the IRS stating it is a government agency that wishes to become a state agent. Department H attaches to the letter a sample copy of the form it uses to be appointed by a HCSR, a list of the names and EINs of each HCSR that has appointed Department H as agent, and a Form SS-4 with respect to each HCSR named in its letter that does not have an EIN. Department H also attaches a Form SS-4 to apply for a special EIN for it to use as state agent of the HCSRs enrolled in its home care services program that have appointed Department H as agent. Department H receives a letter from the IRS authorizing it as agent for each HCSR.

Department H pays wages to the HCSR's employees and reports the wages and taxes on an aggregate Form 941, with its name and special EIN entered in the space provided for the employer. Department H attaches Schedule R (Form 941), listing each HCSR as a client. Because Department H is a state agent, it remits payment with its timely filed aggregate Form 941.

Department H also reports wages and taxes with respect to the HCSRs on an aggregate Form 940 with its name and special EIN entered in the space provided for the employer. Department H attaches Schedule R (Form 940), listing each HCSR as a client. Because Department H is a state agent, it remits payment with its timely filed aggregate Form 940.

Example 6. *State agent designates reporting agent.* Same facts as Example 5. The following year (Year 2) Department H designates reporting agent R with respect to HCSRs for whom Department H is authorized as state agent, by following the

procedures described in Rev. Proc. 2012-32. Reporting agent R enters Department H's name and special EIN in the space provided for the employer on the aggregate employment tax returns and on the attached allocation schedules. Reporting agent R lists each HCSR as a client on each allocation schedule. Reporting agent R also remits payment for employment taxes with the timely filed employment tax returns.

Example 7. State agent appoints subagent. Same facts as Example 5, except in Year 2, Department H appoints S as its subagent on Form 2678 with respect to the HCSRs for whom Department H is authorized as state agent. The IRS approves the authorization.

Subagent S pays wages to the HCSRs' employees, makes related employment tax deposits and payments, and reports the wages and taxes on an aggregate Form 941, with its name and EIN entered in the space provided for the employer. Subagent S attaches Schedule R (Form 941), listing each HCSR as a client. Subagent S also reports wages and taxes with respect to the HCSRs on an aggregate Form 940 with its name and EIN entered in the space provided for the employer. Subagent S attaches Schedule R (Form 940), listing each HCSR as a client.

Example 8. Form 940 revocation – end of year. Individual A, a HCSR as defined in §31.3504-1(b)(3), has only home care service employees. Individual A and Agent X complete and file Form 2678 to request the IRS to authorize Agent X to file Form 941 and Form 940 with respect to the employees providing home care services to Individual A. The IRS approves the authorization effective January 1, 2014.

On July 31, 2014, Individual A ceases to be enrolled in the government program

but continues to receive home care services which Agent X pays for with private funds provided by Individual A. Under §31.3504-1(b)(3), Individual A continues to be a HCSR for the remainder of the calendar year after ceasing to be enrolled in the government program.

Agent X reports the wages and taxes with respect to Individual A for the entire year on an aggregate Form 940. Agent X attaches Schedule R (Form 940) listing Individual A as a client.

The IRS approves Agent X's request, filed on Form 2678, to revoke its authorization to file Form 940 for Individual A, effective December 31, 2014. Agent X remains authorized to file Form 941 for Individual A.

Example 9. Form 940 revocation – before end of year. Same facts as Example 8, except that the IRS approves Agent X's request, filed on Form 2678, to revoke its authorization to file Form 940 for Individual A, effective August 1, 2014.

Agent X reports the wages and taxes accrued with respect to Individual A on or before July 31, 2014, on an aggregate Form 940. Agent X attaches Schedule R (Form 940), listing Individual A as a client. Individual A is responsible for reporting wages and taxes accrued with respect to wages paid for home care services on or after August 1, 2014.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Notice 95-18, 1995-1 C.B. 300, is modified in part. Rev. Proc. 70-6, 1970-1 C.B. 420, Rev. Proc. 80-4, 1980-1 C.B. 581, and Notice 2003-70, 2003-2 C.B. 916, are modified and superseded. This document does not affect authorizations in effect under

Rev. Proc. 70-6, Rev. Proc. 80-4, or by reasonable reliance on Notice 2003-70, as of the effective date of this revenue procedure. However, agents must follow the rules of this revenue procedure after its effective date to make requests for authorization to act as agent and, with regard to all authorizations, to make employment tax payments and deposits, and to file and correct employment tax returns.

SECTION 13. EFFECTIVE DATE

This revenue procedure is effective on and after December 12, 2013.

SECTION 14. DRAFTING INFORMATION

The principal author of this revenue procedure is Michelle R. Weigelt of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

For further information regarding this revenue procedure contact Michelle R. Weigelt at 202-317-6798 (not a toll free call).