

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Reporting Agent File Unit
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from: Mark H. Howard
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subject: Need for a new Form 8655 when EIN merges occur

You asked us to provide an opinion on whether the reporting agent needs to obtain a new Form 8655 when an EIN merge occurs.

DISCLOSURE

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUES

Does a reporting agent need to obtain a new Form 8655 when the IRS has merged Employer Identification Numbers of the taxpayer?

CONCLUSIONS

We conclude that the Form 8655 continues to serve as a valid authorization for a reporting agent to work with the IRS as provided in Rev. Proc. 2003-69, 2003-34 I.R.B. 403, and for disclosure even after an EIN merge has occurred and that the reporting agent need not obtain a new Form 8655.

FACTS

For our opinion in this matter, we have relied on the facts set out below. If you believe that we have misstated the facts or that we have omitted important facts, please let us know as this could affect our opinion.

The Internal Revenue Service has established a Reporting Agent Team at the IRS Campus in Ogden, Utah. This team deals with reporting agents throughout the United States. The team maintains the reporting agent file or RAF. In the RAF, the IRS keeps a record of reporting agents and the clients who have given the reporting agent an executed Form 8655 giving a limited authorization to work with the IRS.

Reporting agents acting under authorization provided by a Form 8655 signed by a taxpayer transmit taxes and tax returns to the IRS through electronic means. Rev. Proc. 2003-69, 2003-34 I.R.B. 403 (August 25, 2003) provides the requirements for completing and submitting Form 8655, Reporting Agent Authorization for Magnetic Tape/Electronic Filers ("Authorization") and specifies the acts which the reporting agent can perform on behalf of the taxpayer. Sections 6 and 7 of Rev. Proc. 2003-69 set out the procedures for filling out and submitting the Form 8655. Those sections state:

SECTION 6. COMPLETING A REPORTING AGENT AUTHORIZATION

.01 An Authorization may be submitted on Form 8655 or any other document that clearly contains the same information required to be provided on Form 8655. The taxpayer may strike out the nonapplicable portions of the Form 8655. An Agent may fax the Authorization to the Service.

.02 An Authorization must be signed by the taxpayer, an authorized representative holding a power of attorney that specifically authorizes the representative to sign returns on behalf of the taxpayer, or a person who is duly authorized in accordance with section 31.6011(a)-7 of the Employment Tax Regulations. If the Authorization provides that the Agent is authorized to receive tax return notices, correspondence, deposit requirements, tax rates and transcripts from the Service, or discuss taxpayer account information with Service representatives and is signed by a person other than the taxpayer, the authorized representative or other duly authorized person signing the Authorization must be authorized both to receive, and to designate others to receive, tax return information (as defined in section 6103(b)(2)) of the taxpayer.

.03 An Authorization executed after December 31, 2001, must be made on Form 8655 (with a revision date of July 2000 or later) or its equivalent.

.04 Except to the extent provided in section 6.05 of this revenue procedure, an Authorization will remain in effect until the Service receives a new Authorization.

.05 A revised Authorization is not required to replace an Authorization made on

Form 8655 with a revision date before October 1995 (or its equivalent) that was previously submitted to the Service by an Agent if the Authorization places no restriction on the medium for filing Forms 941 and 940, and the Agent advises the taxpayer/client that its Forms 941 and/or 940 may be filed electronically and that the taxpayer/client has the option to reject electronic filing for Forms 941 and 940. An Agent may use the most efficient and timely method of clearly providing this notification to the taxpayer/client. A taxpayer/client's rejection of electronic filing for Form 941 or 940 must be submitted in writing to the Agent, and the Agent must immediately remove any taxpayer/client that rejects electronic filing for Form 941 or 940 from its electronic filing taxpayer/client base.

SECTION 7. SUBMITTING A REPORTING AGENT AUTHORIZATION

.01 An Agent that wishes to use an Authorization to file on magnetic tape or electronically Form 940 and Form 941, or make FTDs or FTPs, and submit FTD information or FTP information electronically, must formally apply to the Service for these privileges. Currently, the required information for the applications for magnetic tape or electronic filing of Form 940 and Form 941 and participation in EFTPS are contained in the documents listed in section 9 of this revenue procedure. The applications covered in these documents must be accompanied by the individual Authorizations, signed as provided in section 6.02 of this revenue procedure, and an Agent's List (if required by the applicable revenue procedure).

.02 The Agent's List must contain each taxpayer's employer identification number. Agent's Lists may be filed on magnetic tape or electronically, if appropriate, but if the number of taxpayer/clients exceeds 100, the Agent's List must be filed on magnetic tape. For specific information concerning the requirements for submitting and updating Agent's Lists, see Publication 1474, the Service contacts listed in section 8 of this revenue procedure, and the documents listed in section 9 of this revenue procedure.

The RAF team often encounters circumstances where an EIN merge takes place. In the case of an account merge, the RAF portion is not merged with the account. The RAF data must be deleted from the bad EIN and input on the good EIN.

Merges occur quite frequently whether by taxpayer or IRS error. Following are some of the scenarios seen by the Reporting Agent Team:

1. Several taxpayers were assigned EINs beginning with 69 and 70. These numbers are invalid and were assigned in error by the IRS. Upon identification of the error, the IRS issued a new EIN to the taxpayer and the invalid number merged to the new number.
2. During processing of the Form 8655, the RAF Team often finds that the EIN provided has been merged with another EIN. This information is clearly found on the EIN the

taxpayer or reporting agent provided. The RAF Unit does not have to research for the new EIN.

The RAF Teams asks whether the team needs to require the reporting agent to obtain a new Form 8655 in these cases or whether the team can update the RAF with the new EIN since the two numbers are cross-referenced?

ANALYSIS

Limited power of attorney

A Form 8655 authorizes the named reporting agent to perform certain acts on behalf of the taxpayer. The Form 8655 permits the reporting agent to perform a limited number of actions on behalf of the taxpayer including:

1. signing and filing Federal employment tax returns transmitted electronically and/or submitted on magnetic tape;
2. making Federal tax deposits;
3. receiving copies of notices, correspondence, transcripts, or other information with respect to employment tax returns filed by the reporting agent; and/or,
4. receiving copies of notices, correspondence, transcripts deposit frequency information or other information with respect to federal tax deposits made by the reporting agent.

The Form 8655 functions as a limited power of attorney. As such, the rules applicable to powers of attorney under Treas. Reg. § 601.503 give guidance as to the proper course of action. Requirements for a power of attorney listed in Treas. Reg. § 601.503(a) include the, “. . . identification number of the taxpayer (i.e., social security number and/or employer identification number). . .” In the cases described by the RAF Team, the reporting agent has obtained a Form 8655 authorization signed by the taxpayer and with an employer identification number given to the taxpayer by the IRS. The IRS clearly knows the identity of the taxpayer through the cross-referencing of the EIN's in the IRS records. We believe that under these circumstances, the taxpayer and the reporting agent have substantially complied with the requirements of Rev. Proc. 2003-69 and Treas. Reg. § 601.503. Accordingly, we conclude that under these facts, the reporting agent need not obtain a new Form 8655 from the taxpayer.

Disclosure authorization

However, we should also consider whether the Form 8655 operates as a valid disclosure authorization under these facts. The IRS may make disclosures as authorized in I.R.C. § 6103(c) which provides that:

The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer or return information

with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

Treas. Reg. § 301.6103(c)-1(b) provides, in pertinent part, that:

The taxpayer's request for information or assistance must be in the form of a letter or other written document signed and dated by the taxpayer. The taxpayer must also indicate in the written request -- (1) The taxpayer's taxpayer identity information described in section 6103(b)(6); (2) The identity of the person to whom disclosure is to be made; and (3) Sufficient facts underlying the request for information or assistance to enable the Service to determine the nature and extent of the information or assistance requested and the returns or return information to be disclosed in order to comply with the taxpayer's request.

As noted above, the Form 8655 contains language authorizing disclosures of notices and correspondence regarding employment tax returns and federal tax deposits. A properly filled out Form 8655 signed by a taxpayer authorizes disclosure to the reporting agent pursuant to I.R.C. § 6103(c) and Treas. Reg. § 301.6103(c)-1(c)(1). Does the ambiguity regarding the EIN make the Form 8655 invalid as a disclosure authorization? We do not think so. Again, the taxpayer has provided an identifying number. Through the cross referencing in the IRS system, the IRS clearly knows which taxpayer gave the authorization. We conclude that the Form 8655 should continue to provide a valid disclosure authorization despite the EIN merge.

If you have any questions, you can contact me at telephone number

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