

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Carol M. Landy, Director
Brookhaven Service Center M:M:W:LV

from: Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

subject: Significant Service Center Advice

This is in response to your correspondence, requesting consideration of your proposal to relieve the Service from having to receive new Reporting Agent Authorizations ("Authorizations") from a Reporting Agent seeking to file electronically Form 941, Employer's Quarterly Federal Tax Returns. This proposal is being treated as a request for Significant Advice.

Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in CCDM (35)2(13)3:(4)(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

Issue

May a Reporting Agent which seeks to electronically file Form 941 be relieved from obtaining, from its clients, and submitting, to the Service, new Reporting Agent Authorizations, when the Reporting Agent's current Authorizations only allow it to file Form 941 on magnetic tape?

Conclusion

After considering the proposal, in light of the legal authority and discussion below, a Reporting Agent whose current Authorization restricts it to filing Form 941 by

magnetic tape, must obtain and submit new Authorizations when that Reporting Agent seeks to file Form 941 electronically.

Facts

Specifically, when a Reporting Agent, who currently files Forms 941 on magnetic tape, and whose Authorization (Form 8655 or an equivalent) restricts it to filing on magnetic tape, converts to electronic filing, you propose to have such a Reporting Agent advise its clients that their Forms 941 may be filed electronically and have its clients reject or accept the electronic medium for their returns, in lieu of submitting new Authorizations. The proposal would have the Reporting Agent retain its clients' responses, attach those responses to their current Authorizations, but not have the Reporting Agent submit anything to the Service. Instead, the proposal would have the Reporting Agent certify to the Service which clients have authorized the Reporting Agent to file electronically. You have indicated that if your proposal is rejected, Reporting Agents will have to obtain or submit large numbers of Authorizations to comply with Rev. Proc. 97-47, 1997-42 I.R.B. 19 in order to file Form 941's electronically.

Discussion

Law

Section 31.6011(a)-7(a) of the Employment Tax Regulations sets forth, in part, that a return may be made by an Agent in the name of the person required to make the return if an *acceptable power of attorney is filed with the internal revenue office with which such person is required to file his returns.* (emphasis added)

Section 2.03 of Rev. Proc. 97-47 designates the Form 8655, Reporting Agent Authorization for Magnetic/Electronic Filers, as an acceptable power of attorney if prepared in accordance with the requirements set forth in Rev. Proc. 96-17, 1996-1 C.B. 633. Section 5.04 of Rev. Proc. 96-17 states that a new Authorization must be submitted for any increase or decrease in the scope of an authorization between an Agent and a taxpayer.

Relief for Non-Restrictive Authorizations

Your proposal would apply relief for Reporting Agents with restrictive Authorizations similar to the relief afforded Reporting Agents with non-restrictive Authorizations in our memo of 10/24/96 and incorporated into Section 5.05 of Rev. Proc. 97-47. Section 5.05 provides relief for Reporting Agents with non-restrictive Authorizations as follows:

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, provided that Authorization places no restriction on the medium for filing Form 941, and the Agent:

(1) advises its client that its Forms 941 may be filed electronically, and provides the client with the option of rejecting electronic filing as the medium for filing its Forms 941. An Agent may use the most efficient and timely method of clearly providing this notification to a client. A client's rejection of electronic filing for its Forms 941 must be submitted in writing to the Agent: and

(2) immediately removes any client from its electronic filing client base that rejects having its Forms 941 filed electronically.

The relief allowed for in section 5.05 of Rev. Proc. 97-47 is limited to situations where the Authorization placed no restrictions on the medium for filing Form 941. Section 22.02 of Rev. Proc. 97-47 states that section 5.05 modifies section 6.05 of Rev. Proc. 96-17 to provide relief from the requirement that all Reporting Agents submit new Authorizations. Previously, section 6.05 of Rev. Proc. 96-17 stated that

[t]he Service will not accept tax returns filed electronically by an Agent after December 31, 1996, unless the Service has received an Authorization on Form 8655 (with a revision date of October 1995 or later) or its equivalent that expressly permits the Agent to file tax returns electronically on behalf of the taxpayer.

The relief for Reporting Agent's with non-restrictive Authorizations extended by section 5.05 of Rev. Proc. 97-47 provides the only circumstances where new Authorizations would not be needed. Therefore, if the current Authorizations restrict the medium of filing, then the Reporting Agent must submit new Authorizations.

While we appreciate that the requirement to obtain and submit new Authorizations places a significant burden both on the Reporting Agent attempting to file electronically and the Service, there are no provisions under existing law that would allow the relief sought in your proposal. The requirement of section 5.04 of Rev. Proc. 96-17 to submit a new Authorization for any increase or decrease in the scope of the Authorization is not altered by the relief granted in section 5.05 of Rev. Proc. 97-47 regarding unrestricted Authorizations. However, changing the medium of filing while the current Authorization limits that medium would be a change in scope necessitating a new Authorization. This differing result is consistent with the intention of § 31.6011(a)-7(a) of the Employment Tax Regulations for the Service to have a proper Authorization on file.

The Proposal

The proposal fails to meet these legal requirements because: (1) it does not require a Reporting Agent to secure new Authorizations when it changes the scope of the Authorizations; and (2) it does not ensure that the Service will have an acceptable authorization on file.

A Reporting Agent whose current Authorizations only permit it to file on magnetic tape alters the scope of its Authorizations by converting to electronic filing. According to section 5.04 of Rev. Proc. 96-17, such a change in scope mandates the Reporting Agent to secure new Authorizations. However, the proposal fails to require the Reporting Agent to secure new Authorizations. Instead of new Authorizations, the proposal would have a Reporting Agent collect its clients' rejections and acceptance and attach those to its clients' current Authorizations. This collection and attachment of acceptances or rejections does not amount to having a Reporting Agent secure new Authorizations, though the effort required would certainly be the same.

Further, even if the clients' responses together with the current authorizations amounted to new Authorizations, the proposal fails to require a Reporting Agent to submit them to the Service. Section 31.6011(a)-7(a) mandates that the Service have on file acceptable powers of attorney. The proposal does not meet this requirement. The proposal would have a Reporting Agent retain the updated Authorization information, while the Service would only retain the Authorizations limited to magnetic tape.

Accordingly, the relief requested cannot be granted for restrictive Authorizations. Because a Reporting Agent must secure new Authorizations, we suggest that it use new Authorizations that place no limit on the reporting media. Then, as explained above, once these Authorizations are signed and secured, a Reporting Agent must submit them to the Service in order for them to take effect.

If you require further assistance, please do not hesitate to contact Charles A. Hall at (202) 622-4940.

JODY J. BREWSTER

By _____

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Counsel