



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR: MICHAEL L. PUPILLO
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FROM: Jerry E. Holmes
Chief, Employment Tax Branch 2
CC:TEGE:EOEG:ET2

SUBJECT: Household Employer Agent Reporting

This Chief Counsel Advice responds to your memorandum dated June 15, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

Whether an authorized agent under section 3504 of the Internal Revenue Code ("Agent") filing returns reporting employment taxes on wages paid to choreworkers should use the Agent's Employer Identification Number (EIN) on Forms 941, 940, W-2 and W-3.

CONCLUSIONS

An Agent filing returns reporting employment taxes on wages paid to choreworkers should list the Agent's EIN on Forms 941, 940, in box "b" of Form W-2, and in box "e" of Form W-3. The employer/welfare recipient's EIN should be reported in box "h" of Form W-3.

FACTS

Programs for providing support services for persons with disabilities are administered through the health and welfare agencies of various states, and local governments of states, which receive funds pursuant to Titles XIX and XX of the Social Security Act, as amended. Under these programs, workers are paid with funds from such state and local agencies to perform services in the homes of welfare recipients. These workers, commonly referred to as "choreworkers", are in

some instances considered the employees of the welfare recipients for whom they perform services. The state and local agencies serve as household employer agents under section 3504 of the Internal Revenue Code for the employer/welfare recipients for the purpose of reporting and paying employment taxes related to the services performed by the choreworkers. Advice has been requested as to the proper procedure for these agencies to report employment taxes on Forms 941, 940, W-2 and W-3.

LAW AND ANALYSIS

Under section 3504 of the Internal Revenue Code (the Code), and the Regulations thereunder, in certain circumstances, an authorized agent may perform all acts required of an employer under the Code and Regulations relating to taxes imposed on wages or compensation.

The procedures to be followed in applying for authorization to act as an agent to perform the acts required by an employer with regard to employment taxes are set forth in Rev. Proc. 70-6, 1970-1 C.B. 420. The request for authorization to appoint an agent is made by completing Form 2678.

Under section 3.04 of Rev. Proc. 70-6, an application for authorization to act as an agent covering more than one employer must be accompanied by a properly executed Form 2678 from each employer.

Rev. Proc. 70-6 was amplified by Rev. Proc. 80-4, 1980-1 C.B. 581. Section 3.01 of Rev. Proc. 80-4 states: "The large number of welfare recipient/employers who receive in-home domestic services paid for with funds supplied by state and local governments makes it impractical to comply with the requirement that each employer submit a Form 2678. Accordingly, the Internal Revenue Service will not enforce the requirement that each employer must submit that form to the state or local government."

Section 3.02 of Rev. Proc. 80-4 states: "In order for a state or local welfare agency to secure the authorization to act as an agent under section 3504 of the Code for welfare recipient/employers, it is sufficient for the agency to include with its application to the Service a reference to the document that the welfare recipient/employers have filed (or will file) with the agency appointing the agency to act as a collection agent. The state or local agency may include such appointment to act as an agent in the application form required to be signed and filed by welfare recipient/employers in order to receive in-home domestic service. The execution of the application by a welfare recipient/employer constitutes an authorization by the employer and becomes (by reference) a part of the agency's application to the Service."

When a state or local government health and welfare agency assumes the responsibility for paying and reporting FICA and FUTA taxes and any withheld income tax, the agency must report FICA taxes and withheld income taxes quarterly on Form 941 and report FUTA taxes annually on Form 940. Notice 95-18, 1995-1 C.B. 300, Q&A 5.

To facilitate proper processing, state and local government health and welfare agencies acting as agents pursuant to Rev. Proc. 80-4 should obtain a separate EIN for use in reporting employment taxes. Notice 95-18, Q&A 5.

Pursuant to Rev. Proc. 70-6, a tax return filed by an agent should contain the agent's name and identifying number and the following statement should be attached to each return: "This return is filed under authorization granted in accordance with section 3504 of the Internal Revenue Code of [1986]."

The "2001 Instructions for Forms W-2 and W-3" state: "Generally, an agent that has an approved Form 2678, Employer Appointment of Agent, should enter his or her name as the employer in box c of Form W-2... Each Form W-2 should reflect the EIN of the agent in box b. In addition, the employer's EIN should be shown in box h of Form W-3."

Section 21.7.2.4.19.6.2.1 of the Internal Revenue Manual (IRM) states that in completing Form W-2, an agent should enter the agent's EIN in box b and the agent's name and address and the notation "agent for____" in box c. Section 21.7.2.4.19.6.2.1 of the IRM also states that the employer's EIN should be entered in box h of form W-3.

You have requested advice regarding the "procedures for properly using the Fiscal Agent identification number on all employment tax documents." Based on the foregoing, we conclude that a state or local governmental health and welfare agency acting as an agent for a welfare recipient/employer pursuant to section 3504 of the Code should use its EIN number on Form 941 and Form 940. The following statement should be attached to each return: "This return is filed under authorization granted in accordance with Section 3504 of the Internal Revenue Code of 1986." The state or local agency acting as an agent should enter its EIN in box b of form W-2 and its name and address as employer acting as "agent for____" in box c of Form W-2. The state or local welfare agency acting as an agent should enter its EIN in box e of form W-3 and its name and address as employer acting as "agent for____" in box f of Form W-3. The identification number of the welfare recipient/employer should be entered in box h of Form W-3.

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.

Please call if you have any further questions.

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