

# From the Horse's Mouth: Exploring IRS Guidance for Fiscal/Employer Agents

Kate Murray, Director of Policy

# Agenda for Today: Let's Hit The Books

- Review foundational tax guidance for Fiscal/Employer Agents
  - Revenue Procedure 2013-39
  - Publication 15/Household Employer's Tax Guide
- Explore the Internal Revenue Manual
- Time for Q&A



# Why We Created This Session

- Historically, IRS guidance for F/EAs was issued on a sporadic basis as the role of the F/EA evolved over time
- Some of this guidance was *ad hoc*, issued via telephone call or email that was passed on to agents all over the country
- Luckily, in 2019, we have near-comprehensive tax guidance and can rely less on oral tradition
- Unfortunately, IRS staff are not always familiar with their agency's own rules regarding F/EAs
- This session is designed to boost attendees' familiarity with existing IRS guidance for use in their own operations and when working with IRS staff

# Revenue Procedure 2013-39: A Crash Course



# Revenue Procedure 2013-39: Where It All Begins

- Issued in 2013, this Revenue Procedure is specifically targeted for Fiscal/Employer Agents operating under Section 3504 of the Internal Revenue Code
  - Consolidates and updates decades of previous IRS guidance applicable to Fiscal/Employer Agents
- Reiterates that when an employer appoints a Section 3504 agent, “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.”
- Employers appoint Section 3504 agents via IRS Form 2678 if using a Vendor Fiscal/Employer Agent

# Revenue Procedure 2013-39: Key Takeaways

- Each employer served by an agent must have an Employer Identification Number (EIN)
- An employer who is actively paying wages via his/her EIN for reasons unrelated to self-direction can continue to use that EIN for that purpose while self-directing
  - Must indicate on Form 2678 that the appointment of agent is for SOME employees
  - State taxes must be considered
- Authorization to Act as Agent is effective on the date indicated in the letter of approval mailed by the IRS
- Agents must issue Forms W-2 to employers' employees at year-end

# Revenue Procedure 2013-39: Key Takeaways

- Agents must file one tax return for each tax return period—referred to as an “aggregate return” in Rev. Proc. 2013-39
- Agents must include an allocation schedule and attach it to the aggregate return—i.e., Schedule R for Form 941 and Schedule R for Form 940
- Wages paid to an employee are considered for each employer separately for purposes of dollar threshold or wage base applicable in determining employment tax liability—NOT per agent
  - Important for FICA threshold and FUTA taxable wage base calculations
- If the employer appoints a new agent, the new agent does not take on the old agent’s liabilities
  - The liabilities remain with the old agent even after agent authorization is revoked

**Pub. 15 (Circular E) and  
Pub. 926, *Household  
Employer's Tax Guide***





# Publication 15, Employer's Tax Guide (Circular E)

- Contains information on FICA/FUTA exemptions for family employees
- Domestic service by a spouse, child under 21 years of age, or most parents are exempt from FICA and FUTA
- Parents employed by children must pay FICA taxes if:
  - ❑ The son or daughter (the employer) has a child or stepchild (including an adopted child) living in the home
  - ❑ The son or daughter (the employer) is a widow or widower, divorced and not remarried, or living with a spouse who, because of a mental or physical condition, can't care for the child or stepchild for at least 4 continuous weeks in the calendar quarter in which the service is performed
  - ❑ The child or stepchild is either under age 18 or requires the personal care of an adult for at least 4 continuous weeks in the calendar quarter in which the service is performed due to a mental or physical condition

# Publication 15, Employer's Tax Guide (Circular E)

- Remember: FICA/FUTA exemptions are mandatory
- Affected workers cannot opt out of the exemption to pay into Social Security and Medicare

# Publication 926, Household Employer's Tax Guide

- Contains info on FICA thresholds for household employees
  - ❑ Employees who do not meet the FICA wage threshold (\$2,100 in 2019) must receive a refund of their share of FICA taxes paid
  - ❑ FICA refunding for employees who did not meet the FICA wage threshold is not optional!
- The employer's share of FICA may be refunded to the participant's budget or to the state
  - ❑ Check with your program administrator for guidance
- FUTA must be paid on the first \$7,000 of wages paid to each household employee once an employer pays total cash wages of \$1,000 or more in any calendar quarter of 2018 or 2019 to household employees

# Internal Revenue Manual: Behind the Curtain



# Exploring the Internal Revenue Manual (IRM)

- The IRM instructs IRS staff on how to enforce the nation's tax code
- Over the years, the IRM has accumulated a sizable body of procedures related to Fiscal/Employer Agents and participant-employers in self-direction
- For F/EAs, the IRM is exceptionally useful when working with IRS staff who may be unfamiliar with F/EA rules and requirements
- Complete compilation resource available for members



*“That’s gold, Jerry! Gold!”*

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**Q: When on the phone with IRS staff, how should we (the agent) refer to participants we serve in a way that the IRS will understand? How can we explain that they are not “regular” household employers?**

# A: “HCSR” is an IRS term for individuals who self-direct.

- “Home care service recipients (HCSR) are individuals enrolled in government programs under which they receive health care and personal attendant care that usually constitute domestic services for employment tax purposes. They are generally the employer of the home care service providers for employment tax purposes. A HCSR may designate an agent under IRC 3504, *Acts to Be Performed by Agents*, to perform acts required of them as an employer. Generally, IRC 3504 agents for HCSRs file aggregate Forms 941, attaching Schedule R (Form 941), to report FICA taxes and withheld income taxes, and file aggregate Forms 940, attaching Schedule R (Form 940), to report FUTA taxes. See Rev. Proc. 2013-39, 2013-52 I.R.B. 830 for special rules that apply to state and local government agencies that act as agent for HCSRs.” ([4.23.10.10.5](#), #6)

# A: “HCSR” is an IRS term for individuals who self-direct.

- “HCSRs are often unable to handle their own affairs and [EIN] requests must be handled with sensitivity. Many times, the SS-4 is submitted by the fiscal agent and they may list him/herself as a third party designee (TPD). The fiscal agent for a HCSR must have an EIN for the HCSR before they can file Form 2678, *Employer/Payer Appointment of Agent*, and begin paying employment and FUTA taxes and filing those returns on behalf of the HCSR.” ([21.7.13.5.15](#), #2)



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**Q: One of our participants wants to apply for an HCSR EIN as a business entity rather than as an individual. Is this allowed?**

# A: No; only an individual can apply for an HCSR EIN.

- “These taxpayers [HCSRs] are **always individuals**; never a business. These taxpayers are referred to as Home Care Service Recipients (HCSRs) and will not be treated as regular household employers. The acronym **HCSR** will always be placed on the primary name line behind a closing bracket.” ([3.13.2.16.3](#), #6)
- **Note:** It is possible to assign HCSR status to an EIN linked to an existing business, but it is not allowable to get a new EIN as an HCSR if registering as a business entity

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**Q: How does IRS assign filing requirements to HCSRs?**

# A: When a new EIN is assigned to an HCSR, it is established with no filing requirements.

- “Using the information provided on Form SS-4 establish the account:
  - As a sole proprietor **with no filing requirements.**
  - Add "HCSR" to the primary name line.
  - **Example:**  
JOHN]DOE]HCSR

**Caution:** Do **not** treat them as you would normally treat household employers (do not input Return ID Code ZZ on CC ESIGN), even if box 13 is checked indicating they have household employees. The agent will file employment and FUTA tax returns on behalf of these HCSRs.
- If a previously established sole proprietorship EIN is located:
  - Do not update the primary name line.
  - **Do** update Integrated Data Retrieval System using the following information from Form SS-4:
    - In care of name (Home care agent/provider)
    - Mailing address (Lines 4a/b)
    - Location address (Lines 5a/b)
  - Notate the existing EIN on Form SS-4 followed by PA (previously assigned)
  - Prepare 0147C letter and send to new mailing address.” ([21.7.13.5.15](#), #4-5)

# A: But it also depends on whether you check for ALL employees or for SOME employees on Form 2678, Line 5.

- “After determining the completeness of Form 2678, remove the Filing Requirement Codes indicated in Part 2, Item 5 of Form 2678 from the employer/payer's EIN. If the boxes in Part 2, Item 5 are marked for **some employees**, do not delete the Filing Requirement Codes from the Employer/Payer's EIN.
- If the HCSR/FUTA box is checked below Item 5 of Form 2678, delete the 940 FRC from the Employer/Payer's EIN and ensure "HCSR" is added to the Employer/Payer's primary nameline.”  
([3.13.2.16.3](#),#2)

5 Forms for which you want to appoint an agent or revoke the agent's appointment to file. (Check all that apply.)	For ALL employees/ payees/payments	For SOME employees/ payees/payments
Form 940, 940-PR (Employer's Annual Federal Unemployment (FUTA) Tax Return)*	<input type="checkbox"/>	<input type="checkbox"/>
Form 941, 941-PR, 941-SS (Employer's QUARTERLY Federal Tax Return)	<input type="checkbox"/>	<input type="checkbox"/>
Form 943, 943-PR (Employer's Annual Federal Tax Return for Agricultural Employees)	<input type="checkbox"/>	<input type="checkbox"/>
Form 944, 944(SP) (Employer's ANNUAL Federal Tax Return)	<input type="checkbox"/>	<input type="checkbox"/>
Form 945 (Annual Return of Withheld Federal Income Tax)	<input type="checkbox"/>	<input type="checkbox"/>
Form CT-1 (Employer's Annual Railroad Retirement Tax Return)	<input type="checkbox"/>	<input type="checkbox"/>
Form CT-2 (Employee Representative's Quarterly Railroad Tax Return)	<input type="checkbox"/>	<input type="checkbox"/>

\*Generally you cannot appoint an agent to report, deposit, and pay tax reported on Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, unless you are a home care service recipient.

Check here if you are a home care service recipient, and you want to appoint the agent to report, deposit, and pay FUTA tax for you. See the instructions.

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**Q: We are enrolling a participant who already has an EIN but doesn't know what it is. The IRS won't give us the EIN over the phone. What can we do?**

# A: Third Party Designee status only applies to new EINs. At minimum, IRS will send the EIN in the mail.

- “If the caller is a Third Party Designee or unauthorized third party, and during research you find an EIN has already been assigned for the taxpayer, *do not* disclose this to the caller. Advise the caller you have all of the information you need and will respond to the taxpayer directly. Third Party Designee authority applies to newly assigned EINs only.” ([21.7.13.3.5.4](#), #4)
- Need at least an executed Form 8821 or even 2848 with the participant’s SSN
  - In reality, this may not be enough

# A: IRS will send the EIN in the mail via a 147C letter.

- If [*when receiving a Form SS-4 for an HCSR individual who already has an EIN*], a previously established sole proprietorship EIN is located:
  - ❑ Do not update the primary name line.
  - ❑ **Do** update IDRS using the following information from Form SS-4:
- In care of name (Home care agent/provider)
- Mailing address (Lines 4a/b)
- Location address (Lines 5a/b)
  - ❑ Notate the existing EIN on Form SS-4 followed by PA (previously assigned)
  - ❑ Prepare 0147C letter and send to new mailing address ([21.7.13.5.15](#), #4)



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**Q: Can we permit use of electronic signatures or stamps on IRS forms?**

# A: Form 2678 requires original signatures.

- “Former Commissioner Steven T. Miller issued a memorandum dated September 23, 2011. The memorandum contains the following information: Preparer/taxpayer signature stamps will **not** be permitted when signing other documents such as S-elections, applications for change in accounting method, powers-of-attorney, consent forms, revenue agent reports, and other case inquiry/resolution related documents requiring signature.”  
([3.13.2.16](#), #14)
  - Form 2678 is included as a consent form

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**Q: Is an F/EA required to obtain a second EIN for purposes of acting as an agent under Section 3504 of the Internal Revenue Code?**

# **A: A Government F/EA must obtain a second EIN. A Vendor F/EA is not required to do so, but may choose to do so.**

- “A government entity acting as Section 3504 agent for HCSRs must request a second EIN to be used exclusively for acting on behalf of HCSRs. Non-government agents are not encouraged to obtain a second EIN to file employment taxes on behalf of HCSRs. The Section 3504 Agent should file aggregate employment tax returns that include taxes for all of their own employees and for the employees of the HCSRs. However, if requested, non-governmental agents may obtain a second EIN to file employment taxes on behalf of HCSRs.” ([21.7.13.5.14](#), #3)

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**Q: We got the EIN for a new participant, who ended up leaving the program before ever hiring employees. Do we need to cancel that EIN, or will there be problems if we leave the EIN open?**

# A: EINs cannot be canceled, and the HCSR EIN has no filing requirements assigned to it.

- According to IRM [21.7.13.5.15](#), HCSR EINs do not have any filing requirements established
- EINs cannot be revoked or canceled for any reason once they are assigned
- Revoking the 2678 is sufficient to “close” the account

# Questions?

[kate@appliedselfdirection.com](mailto:kate@appliedselfdirection.com)



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