



Fundamentals of F/EA Forms: Enrolling Participants as Employers

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Today

- Review the basics of F/EA forms, with a focus on Forms for participants to become employers
- Review the basics of Federal forms that F/EAs file
- Review some key information on Notice 2014-7

Categories of Fiscal/Employer Agent Tax Forms

- Participant Forms
 - Forms for a participant to be established as an employer
 - Forms for a participant to delegate duties to the F/EA
- Forms for F/EAs
- Forms to Avoid
 - When and Why
- Miscellaneous Forms

Participant Forms

- IRS Form SS-4, *always required*
- IRS Form 2678, *always required for Vendor F/EA*
- IRS Form 8821, *no longer required?*
- IRS Form 2848, *optional*
- State POA Forms, *use per state rules*
- IRS Form 8822, *optional*

IRS Form SS-4: Gets the Party Started

- Always required due to Schedules R & 2013-39
- Who is the employer? Participant or representative?
- Mailing address: F/EA's!
- Third Party Designee (plan for turnover)
- Minor employer: it's allowed
- Guardian paperwork
- Apply for participant EINs online! (Can also apply by fax, but why do that?)
- Eighteen digit identifier with IRS

IRS Form 2678: Most Important Form for Vendor F/EAs

- Always required for Vendor F/EA
- Not required for Government F/EA, but a good idea
- Simple form, big meaning
- If you have participants hiring workers who have not executed this form with a Vendor F/EA, you have a big problem
- Makes F/EA jointly liable for federal employment taxes
- Same form for revocation, but no need for participant signature
- “Some Employees/Payees” can be checked,

IRS Form 8821: Not Used Often, but a Lifesaver

- Not required any more?
- Shouldn't have to use it, but can be useful for getting EINs or resolving issues
- Even the best program has problems
- Up to three:
 - Appointees
 - Tax Years
- Remember to renew
- Submit to IRS within 60 days of participant signature



IRS Form 2848: Power of Attorney

- Optional
- The Gold Card with the IRS
- Representative must not be designation “H”
 - Need an attorney, CPA or “enrolled agent” on staff at F/EA
- Benefits of IRS 2848:
 - Can fully represent the participant before the IRS for employment tax purposes
 - Not really necessary any more: a sign of progress!



State Power of Attorney or Appointment of Representative Forms

- Use as applicable per state rules and regulations
- State Income Tax
- State Unemployment Tax
- Workers' Compensation
 - Refund checks to Agent instead of Participant

IRS Form 8822-B: Change of Address Form

- Optional
- Can be used for an F/EA to change a participant's mailing address from the participant's physical address to the F/EA's address
- Use the 8822-B for business
- Must be signed by participant employer

IRS Form 2678: F/EA uses to Appoint a Sub-Agent

- Thanks to 2013-39 government and non-government F/EAs can use a 2678 to appoint a Sub-Agent
- Sub-Agent fully takes on joint liability for employment taxes with the primary agent
- If using Sub-Agent, get informed consent from participants
- Government F/EA **MUST HAVE** a separate EIN
- All Returns (941, 940, W-2) must use Sub-Agent's EIN

IRS Form 8655: Any F/EA uses to Appoint a Reporting Agent

- Reporting Agent can be really helpful to perform some or all of the payroll and tax duties
- Reporting Agent does not have any liability for employment taxes, per IRS
- Both Government and Vendor F/EAs can use a Reporting Agent
- Complete form per instructions with F/EA info in “Taxpayer” and Reporting Agent info in “Reporting Agent”

Participant Informed Consent for Sub-Agent or Reporting Agent

- Ensure participant is aware of and agrees to the following:
 - F/EA Using a Sub-Agent
 - F/EA using a Reporting Agent
- Include an Informed Consent form in the employer package

Forms to Avoid

- Participant Executing an IRS Form 8655, *Reporting Agent Authorization*
- IRS Form 944, *Employer's Annual Federal Tax Return*
- A single IRS Form 941, *Employer's Quarterly Tax Return*, for each participant employer

Never Execute an IRS Form 8655, *Reporting Agent Authorization*, with a Participant Employer

- IRS Form 8655, *Reporting Agent Authorization*, should only ever be used between a Fiscal/Employer Agent and a Reporting Agent
- If a participant executes an IRS Form 8655 with a Reporting Agent, the participant has sole liability for employment taxes and must rely on the reporting agent to file and pay them correctly
- Executing an IRS Form 8655 between a participant and a Reporting Agent puts the participant in a very risky situation

Never Complete and Submit an IRS Form 944, *Employer's Annual Federal Tax Return*, for a Participant Employer

- A Fiscal/Employer Agent must be serving a participant, even if that F/EA is using a Sub-Agent or Reporting Agent
- Therefore, individual Federal Tax Returns should NEVER be completed for participant employers
- The IRS Form 944, like the 941, should never be completed for a single employer
- Doing so can make the participant personally liable for unfulfilled Federal tax obligations

Miscellaneous Forms

- IRS Form SS-8
 - Worker and Payer answer questions about a worker's job duties
 - Submit to IRS to make a determination about whether worker is an employee or independent contractor
 - Useful if a participant or worker insist that a worker is mis-categorized
 - IRS will review SS-8 and respond about whether worker should be paid as an employee or independent contractor
 - Remember: IRS classification has no bearing on DOL classification

Forms that F/EAs Should Always Complete

- IRS Form 941, Employer's Quarterly Federal Tax Return
 - Complete in aggregate for all participant employers served by F/EA. Filed quarterly with a Schedule R.
- IRS Form 940, Employer's Annual FUTA Return
 - Complete in aggregate for all participant employers served by F/EA. Filed annually with a Schedule R.
- IRS/SSA Form W-2, Wage and Tax Statement
 - Complete one Form W-2 for each employer/employee relationship. Agent completes own information in "Employer" section, but participant's state information on line 15.
 - If 250 or more produced, file with SSA electronically.

Forms that Participants should NEVER Complete

- IRS Form 8655, *Reporting Agent Authorization*
 - ❑ Leaves the participant alone in a storm if the payroll company makes a mistake.
- IRS Form 944, *Employer's Annual Federal Tax Return*
 - ❑ Participant Employer Federal Taxes should be filed and paid in aggregate by F/EA. This form is not ever necessary.
- IRS Form 941, *Employer's Quarterly Federal Tax Return*
 - ❑ Participant Employer Federal Taxes should be filed and paid in aggregate by F/EA. This form should never be completed for just a single participant employer. It should always represent all participant employers served by the Agent.

IRS Notice 2014-7

- Recent IRS guidance that impacts workers who live full-time with the care recipient
 - In most cases, care recipient will be the employer
 - But whether the care recipient is the employer or has authorized a representative doesn't matter for the Notice
- Workers in Medicaid-funded HCBS programs who live full-time with care recipients are now considered to receive “difficulty of care payments”, not wages

IRS Notice 2014-7 and Difficulty of Care Payments

- Difficulty of care payments differ from regular wages in that unlike wages, difficulty of care payments are not counted as part of federal income
- Because difficulty of care payments are not federal income, they are not subject to Federal Income Tax
- Workers can submit a signed statement to their FMS provider certifying that they meet IRS criteria for difficulty of care payments

If you receive a signed statement about IRS Notice 2014-7...

- Make changes in your payroll system to ensure that worker does not have Federal Income Tax withheld going forward
- Do not include difficulty of care payments on Box 1 of the worker's Form W-2 if they are an employee
 - If worker is also FICA/FUTA exempt, their W-2 may show all zeros

Thank You!

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