

Rev. Proc. 2007-38

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SECTION 1. PURPOSE

.01 This revenue procedure provides the requirements for completing and submitting Form 8655, *Reporting Agent Authorization* (Authorization). An Authorization allows a taxpayer to designate a Reporting Agent to perform the following acts on behalf of a taxpayer:

(1) Sign and electronically file Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*; Form 941, *Employer's QUARTERLY Federal Tax Return*; Form 944, *Employer's ANNUAL Federal Tax Return*; and those forms set forth in section 4.02(1) of this revenue procedure.

(2) Sign and file on paper the tax returns set forth in section 4.02(2) of this revenue procedure.

(3) Make federal tax deposits (FTDs) and other federal tax payments (FTPs) and

submit FTD information and FTP information electronically as described in section 4.02(3) of this revenue procedure.

(4) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information as described in section 4.02(4) of this revenue procedure.

(5) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information with respect to FTDs and FTPs as described in section 4.02(5) of this revenue procedure.

.02 The technical specifications for filing Authorization information are published separately in Publication 1474, *Technical Specifications Guide For Reporting Agent Authorization and Federal Tax Depositors*.

SECTION 2. BACKGROUND

.01 Section 1.6011-1 of the Income Tax Regulations and § 31.6011(a)-7 of the Employment Taxes and Collection of Income Tax at Source Regulations (Employment Tax Regulations) provide that each return required under the regulations, together with any prescribed copies or supporting data, must be filled in and disposed of in accordance with applicable forms, instructions, and regulations. Section 31.6011(a)-7 provides that the return may be made by an agent authorized by the person required to make the return.

.02 Section 31.6061-1 of the Employment Tax Regulations provides that a return may be signed for the taxpayer by an agent duly authorized in accordance with § 31.6011(a)-7 to make the return. Section 1.6061-1 of the Income Tax Regulations provides that a return may be signed

by an agent who is duly authorized under § 1.6012-1(a)(5) or (b) to make the return.

.03 Section 31.6302-1 of the Employment Tax Regulations provides the rules for depositing employment taxes. Section 31.6302-1(h) implements section 6302(h) of the Internal Revenue Code, which requires the use of an electronic fund transfer system for the collection of federal depository taxes. The Electronic Federal Tax Payment System (EFTPS) is the electronic fund transfer system developed to collect these taxes. Rev. Proc. 97-33, 1997-2 C.B. 371, provides general information about EFTPS, and Rev. Proc. 98-32, 1998-1 C.B. 935, provides information about EFTPS programs for Reporting Agents making FTDs and FTPs on behalf of multiple taxpayers.

.04 The Service has prescribed Form 8655 as the appropriate authorization form for a taxpayer to use to designate a Reporting Agent to perform the actions set forth in section 4.02 of this revenue procedure.

.05 All references in this revenue procedure to forms and publications include all future revisions and successor forms and publications.

SECTION 3. SIGNIFICANT CHANGES TO REV. PROC. 2003-69

.01 This revenue procedure modifies and supersedes Rev. Proc. 2003-69, 2003-2 C.B. 403, by making the following changes to Rev. Proc. 2003-69.

(1) Form 8655 may now be used to authorize Reporting Agents to:

(a) Sign and file Form 944, *Employer's ANNUAL Federal Tax Return*; Forma 944-PR, *Planilla Para La Declaración ANUAL Del Patrono*; Forma 944(SP), *Declaración Federal ANUAL de Impuestos del Patrono o Empleador*; Form 944-SS, *Employer's Annual Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)*; additional forms set forth on Form 8655; and amended forms and any successor forms that replace those listed.

(b) Make FTDs and FTPs and submit FTD and FTP information electronically for the tax deposits and payments reported on Form 944.

(c) Receive confidential taxpayer information from the Service to assist in responding to notices relating to Form W-2

and Form 1099 Series information returns filed by the Reporting Agent on behalf of the taxpayer.

(2) Section 5.09 has been added to provide that a Reporting Agent must provide the taxpayer with a complete copy of any return filed by the Reporting Agent.

(3) Section 6.01 has been revised to provide that an Authorization must be made on a Form 8655 with a revision date of May 2005 or later, or on an approved substitute form.

(4) Section 6.02 has been revised to provide that an Authorization may be signed and submitted electronically under procedures promulgated by the Service.

(5) Sections 8 through 11 set forth reasons for suspending a Reporting Agent from the Reporting Agent program, the administrative review process for proposed suspensions, the effect of a suspension, and the procedures for administratively appealing a suspension.

(6) Section 13 (former section 9) updates the list of other related documents.

SECTION 4. DEFINITIONS

.01 *Reporting Agent.* A Reporting Agent is an accounting service, franchiser, bank, service bureau, or other entity authorized to perform on behalf of a taxpayer one or more of the acts described in this revenue procedure.

.02 *Authorization.* An Authorization allows a taxpayer to designate a Reporting Agent to:

(1) Sign and file electronically Form 940, Form 941, Form 944; and those forms set forth on Form 8655, and amended and any successor forms.

(2) Sign and file on paper Form 944, Forma 940-PR, *Planilla Para La Declaración ANUAL Del Patrono—La Contribución Federal Para El Desempleo (FUTA)*; Forma 941-PR, *Planilla Para La Declaración Federal Trimestral Del Patrono—La Contribución Federal Al Seguro Social Y Al Seguro Medicare*; Form 941-SS, *Employer's QUARTERLY Federal Tax Return*; Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*; Forma 943-PR, *Planilla Para La Declaración Anual De La Contribución Federal Del Patrono De Empleados Agrícolas*; Forma 944-PR, *Planilla Para La Declaración ANUAL Del Patrono*; Forma 944(SP), *Declaración Fed-*

eral ANUAL de Impuestos del Patrono o Empleador; Form 944-SS, *Employer's Annual Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)*; Form 945, *Annual Return of Withheld Federal Income Tax*; Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*; and Form CT-1, *Employer's Annual Railroad Retirement Tax Return*, and any amended and successor forms.

(3) Make FTDs and FTPs and submit FTD information and FTP information electronically for the taxes deposited and payments reported on applicable returns set forth on Form 8655.

(4) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information with respect to the tax returns described in section 4.01(1) or (2) of this revenue procedure.

(5) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information with respect to FTDs and FTPs.

.03 *Reporting Agent's List.* A Reporting Agent's List (Agent's List) identifies all taxpayers for whom a Reporting Agent will file tax returns, make FTDs and FTPs, or submit FTD information and FTP information electronically. A separate Authorization must be submitted for each taxpayer on the Agent's List.

SECTION 5. SCOPE OF REPORTING AGENT AUTHORIZATION

.01 The scope of an Authorization for the filing of returns listed on Form 8655 is as follows:

(1) A taxpayer may authorize a Reporting Agent to sign and file on the taxpayer's behalf any or all of the returns listed on Form 8655 and any amended and successor forms. A Form 8655 that authorizes a Reporting Agent to sign and file a Form 941, Form 941-SS, Forma 941-PR, Form 944, Form 944-SS, Forma 944(SP), or Forma 944-PR also authorizes the Reporting Agent to sign any other form in the Form 941 or 944 series of returns.

(2) A taxpayer may authorize a Reporting Agent to receive duplicate copies of notices, correspondence, deposit requirements, transcripts, or other information

with respect to the returns filed by the Reporting Agent.

(3) A taxpayer may authorize a Reporting Agent to receive confidential taxpayer information from the Service to assist in responding to notices relating to the Form W-2 or Form 1099 series of information returns.

(4) An Authorization that permits a Reporting Agent to make returns also permits a Reporting Agent to request information from the Service or submit information to the Service about the returns filed by the Reporting Agent. This authority extends to any information concerning penalties that may arise from the returns, including information that may assist the Service in determining whether it would be appropriate to grant relief from any penalties arising from the returns. This authority continues regardless of a change in filing requirements. For instance, if a Reporting Agent, pursuant to an Authorization, made and filed a Form 941 on behalf of a taxpayer prior to the Service notifying the taxpayer that the taxpayer's filing requirements was changed from Form 941 to Form 944, the Reporting Agent has authority to continue to request information from the Service or submit information to the Service about the previously-filed Form 941, assuming the Reporting Agent's authorization remains in effect.

(5) An Authorization, however, does not permit the Reporting Agent to request the abatement of any penalties that may arise from the returns filed by the Reporting Agent or to perform in any other way any acts that constitute representation of the taxpayer within the meaning of § 601.501(b)(13) of the Statement of Procedural Rules.

.02 The scope of an Authorization for making FTDs and FTPs and submitting FTD information and FTP information electronically is as follows:

(1) A taxpayer may authorize a Reporting Agent to make FTDs and FTPs for any taxes reported on any of the returns listed on Form 8655 and to submit FTD information and FTP information electronically on the taxpayer's behalf. A Form 8655 that authorizes a Reporting Agent to prepare and make FTDs and FTPs on Form 990-C, *Farmers' Cooperative Association Income Tax Return*, also authorizes a Reporting Agent to prepare and make FTDs

and FTPs on Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*.

(2) A taxpayer may authorize a Reporting Agent to receive duplicate copies of notices and correspondence for FTDs and FTPs made by the Reporting Agent for the taxpayer.

(3) Regardless of the method designated by the taxpayer, a Reporting Agent must make FTDs and submit FTD information through the EFTPS for a taxpayer that is required to make FTDs and submit FTD information through the EFTPS pursuant to section 6302(h).

(4) An Authorization that permits a Reporting Agent to make FTDs and FTPs also permits the Reporting Agent to request information from the Service or submit information to the Service on the FTDs and FTPs submitted by the Reporting Agent. It further permits the Reporting Agent to submit any information concerning penalties that may arise from the returns, including information that may assist the Service in determining whether it would be appropriate to grant relief from penalties. This authority continues regardless of a change in forms. For instance, if a Reporting Agent had authority to make FTDs and FTPs in connection with Form 990-C and did so, and the Service later replaces Form 990-C with Form 1120-C, absent a change to the Authorization, the Reporting Agent has authority to make FTDs and FTPs on behalf of the taxpayer in connection with Form 1120-C. The Reporting Agent also retains authority to request information from the Service or submit information to the Service about the FTDs and FTPs relating to Form 990-C.

(5) An Authorization does not permit the Reporting Agent to request the abatement of any penalties that may arise from the FTDs or FTPs made by the Reporting Agent or to perform in any other way any acts that constitute representation of the taxpayer within the meaning of § 601.501(b)(13) of the Statement of Procedural Rules.

.03 An Authorization becomes effective for the tax period(s) designated by the Reporting Agent and taxpayer and remains in effect for subsequent periods until revoked by the taxpayer or terminated by the Reporting Agent or the Service, subject to the following:

(1) The Service must accept the Authorization and Agent's List before the Reporting Agent may file a return on behalf of a taxpayer.

(2) The Reporting Agent must comply with the requirements of Rev. Proc. 98-32, 1998-1 C.B. 935, before the Reporting Agent may make electronic FTDs or FTPs on behalf of a taxpayer or submit FTD information or FTP information electronically.

(3) See section 13 of this revenue procedure for a list of other applicable guidance.

.04 A new Authorization must be submitted to the Service for any increase or decrease in the scope of the authority of a Reporting Agent to act on behalf of the taxpayer, or if the taxpayer appoints a new Reporting Agent. Receipt by the Service of an Authorization designating a new Reporting Agent terminates the authority of the prior Reporting Agent for all purposes for tax periods beginning on or after the effective date of the new Authorization. An Authorization designating a new Reporting Agent also terminates the authority of the prior Reporting Agent to receive duplicate copies of notices. For the tax periods beginning before the effective date of the new Authorization, the prior Reporting Agent retains the authority specified in the prior Authorization unless the taxpayer explicitly revokes the prior Authorization.

.05 An Authorization does not relieve the taxpayer of the responsibility (or from liability for failing) to ensure that all tax returns are filed timely and that all FTDs and FTPs are made timely.

.06 A Reporting Agent may use an Authorization to file paper returns listed on Form 8655 on behalf of a taxpayer only if:

(1) The late receipt of payroll information from a taxpayer has jeopardized the timely electronic filing of the taxpayer's return;

(2) The paper return amends Form 940 filed under the magnetic tape or electronic filing programs referenced in section 13 of this revenue procedure;

(3) The Service's rejection of an electronic filing has jeopardized the timely filing of the taxpayer's return;

(4) The returns are listed in section 4.02(2) of this revenue procedure; or

(5) The electronic filing coordinator for a Reporting Agent participating in an electronic filing program referenced in section

13 of this revenue procedure has requested paper returns.

.07 A Reporting Agent authorized by Form 8655 may prepare a paper tax return for the taxpayer's signature.

.08 Each paper tax return must be signed by the taxpayer, by the taxpayer's authorized representative, or by a Reporting Agent permitted in section 5.06 of this revenue procedure to file paper returns on behalf of the taxpayer.

.09 The Reporting Agent must provide the taxpayer with a complete copy of any returns filed by the Reporting Agent. This information may be provided on a replica of an official form or in any other format that provides all of the return information and references the line numbers of the official form.

.10 A Reporting Agent must keep a copy of each Authorization designating that Reporting Agent as an agent for a taxpayer at the Reporting Agent's principal place of business and make it available for examination by the Service until the period of limitations for assessment of tax for the last return filed pursuant to the Authorization expires.

SECTION 6. COMPLETING AN AUTHORIZATION

.01 An Authorization must be submitted on Form 8655 with a revision date of May 2005 or later or on an approved substitute form as described in Publication 1167, *General Rules and Specifications for Substitute Forms and Schedules*. When completing Form 8655, a taxpayer may strike out any non-applicable portions of the form. Once completed, a Reporting Agent may fax the Authorization to the Service.

.02 An Authorization must be signed by the taxpayer or an authorized representative holding a power of attorney that specifically authorizes the representative to sign returns on behalf of the taxpayer. If the Authorization provides that the Reporting Agent is authorized to receive tax return notices, correspondence, deposit requirements, 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 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. The Authorization may be signed and submitted electronically under procedures promulgated by the Service.

.03 Except to the extent provided in section 6.04 of this revenue procedure, an Authorization will remain in effect until the Service receives a revocation of the Authorization or a new Authorization or a Reporting Agent is suspended.

.04 A new Authorization is not required to replace an Authorization made on Form 8655 with a revision date before October 1995 (or made on an equivalent substitute) that was previously submitted to the Service by a Reporting Agent if the Authorization places no restriction on the medium for filing Forms 940 or 941 and the Reporting Agent advises the taxpayer that its Forms 940 and 941 may be filed electronically and that the taxpayer has the option to reject electronic filing. A Reporting Agent may use whatever method the Reporting Agent deems the most efficient and timely method to convey the advice. A taxpayer's rejection of electronic filing of Forms 940 or 941 must be submitted in writing to the Reporting Agent, and upon receipt the Reporting Agent must immediately remove the taxpayer from the Agent's List or database of taxpayers for which the Reporting Agent files returns electronically.

SECTION 7. SUBMITTING A REPORTING AGENT AUTHORIZATION

.01 A Reporting Agent that intends to use an Authorization to electronically file Forms 940, Forms 941, or Forms 944, or make FTDs or FTPs (and submit related information) electronically must formally apply to the Service for these privileges. The application process for permission to electronically file Forms 940, 941, and 944 and for participation in EFTPS is contained in the documents (or their successors) listed in section 13 of this revenue procedure. Applications must be accompanied by individual Authorizations, signed as provided in section 6.02 of this revenue procedure, and an Agent's List (if required by the applicable guidance document).

.02 An Agent's List must contain each taxpayer's employer identification number. Agent's Lists may be filed electroni-

cally, as appropriate, but if the number of taxpayers/clients exceeds 100, the Agent's List must be filed electronically. For specific information concerning the requirements for filing and updating Agent's Lists, see Publication 1474 and the documents listed in section 13 of this revenue procedure. The Service contacts listed in section 13 of this revenue procedure may also be contacted for this information.

SECTION 8. SUSPENSION

.01 The Service reserves the right to suspend a Reporting Agent from the Reporting Agent program for the following reasons (this list is not all inclusive):

(1) Failing to perform the acts described in section 4.02 of this revenue procedure or Publication 1474.

(2) Submitting payment information on behalf of taxpayers for which the Reporting Agent did not receive Authorizations.

(3) Failing to comply with the requirements of any regulation, revenue procedure, or other published guidance applicable to Reporting Agents.

(4) Failing to cooperate with the Service's efforts to monitor Reporting Agents and investigate abuse in the Reporting Agent program.

(5) Receiving significant complaints about the Reporting Agent's performance in the Reporting Agent program.

.02 If the Service informs a Reporting Agent that a certain action is a reason for suspension and the action continues, the Service may send the Reporting Agent a notice proposing suspension of the Reporting Agent from the Reporting Agent program. A notice proposing suspension, however, may be sent without a warning if the Reporting Agent's actions indicate an intentional disregard of the rules. A notice proposing suspension will describe the reasons for the proposed suspension, the length of the suspension, and the conditions that need to be met before the suspension will terminate.

SECTION 9. ADMINISTRATIVE REVIEW PROCESS FOR PROPOSED SUSPENSION

.01 A Reporting Agent that receives a notice proposing suspension from the Reporting Agent program, as described in section 8.02 of this revenue procedure,

may request an administrative review prior to the suspension taking effect.

.02 The request for an administrative review must be in writing and contain detailed reasons, with supporting documentation, for withdrawal of the proposed suspension.

.03 The written request for an administrative review and a copy of the notice proposing suspension must be delivered to the address designated in the notice within 30 days of the effective date on the notice.

.04 If a written request for administrative review is timely submitted, the Service will, after consideration of the request, either issue a suspension letter or notify the Reporting Agent in writing that the proposed suspension is withdrawn.

.05 Failure to submit a timely written request for an administrative review irrevocably terminates the Reporting Agent's right to an administrative review of the proposed suspension, and the Service will issue a suspension letter.

SECTION 10. EFFECT OF SUSPENSION

.01 The Reporting Agent's suspension will continue for the length of time specified in the suspension letter, or until the conditions for terminating the suspension have been met, whichever is later. If a Reporting Agent is suspended, the Service's subsequent determination of whether a reason for suspension has been corrected is not subject to administrative review or appeal.

.02 After suspension, a Reporting Agent may not perform the acts described in this revenue procedure. As an exception, a Reporting Agent may submit an FTD if the FTD is due not more than 30 days after the effective date on the suspension letter. A Reporting Agent, however, cannot submit FTPs during the suspension period.

.03 A Reporting Agent must provide written notification of a suspension from the Reporting Agent program to each taxpayer in the program within 10 days from the date on the suspension letter. This notification must be provided irrespective of the length of the suspension or how quickly the Reporting Agent believes it may meet the conditions for terminating the suspension.

.04 A Reporting Agent will be able to perform the acts described in section 4.02 of this revenue procedure without re-registering in the Reporting Agent program after the stated suspension period expires; and the reason(s) for suspension are corrected.

SECTION 11. APPEAL OF A SUSPENSION

.01 If a Reporting Agent receives a suspension letter from the Service, the Reporting Agent is entitled to appeal, by written protest, to the Service. The written protest must be delivered to the address designated on the suspension letter. During the appeals process, the suspension remains in effect.

.02 The written protest must be received by the Service within 30 days of the effective date on the suspension letter. The written protest must contain detailed reasons, with supporting documentation, for withdrawal of the suspension.

.03 Failure to appeal within the 30-day period described in section 11.02 of this revenue procedure irrevocably terminates the Reporting Agent's right to appeal the suspension under section 11.01.

SECTION 12. INTERNAL REVENUE SERVICE CONTACTS

Publication 1474 and Publication 1167 may be obtained electronically via the Service's website at <http://www.irs.gov>. In addition, requests for Publication 1474 and questions regarding this revenue procedure may be addressed to the Service at:

Internal Revenue Service
Accounts Management Service Center
MS 6748 RAF Team
1973 N Rulon White Blvd
Ogden, UT 84201

SECTION 13. OTHER RELATED DOCUMENTS

These documents describe programs that require an Authorization as a prerequisite to participation:

(1) For rules regarding Form 944, see §§ 31.6011(a)-1T, 31.6011(a)-4T, and 31.6302-1T of the Employment Tax Regulations.

(2) For electronic filing of Form 940 and 941, see Rev. Proc. 2005-60, 2005-2 C.B. 449.

(3) For participation in EFTPS, see Rev. Proc. 98-32, 1998-1 C.B. 935.

(4) For the Service's e-file program generally, see Publication 3112, *IRS e-file Application and Participation*.

SECTION 14. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2003-69, 2003-2 C.B. 403.

SECTION 15. EFFECTIVE DATE

This revenue procedure is effective June 18, 2007.

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Hara of the Office of Associate Chief Counsel (Procedure and Administration). Mr. Hara may be contacted at (202) 622-4910 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.
(Also Part I, § 102.)

Rev. Proc. 2007-39

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2007-3, 2007-1 I.R.B. 108, which sets forth areas of the Internal Revenue Code in which the Internal Revenue Service will not issue letter rulings or determination letters.

SECTION 2. BACKGROUND

Section 3 of Rev. Proc. 2007-3 sets forth a list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure