



Fiscal/Employer Agents: Tax Issues You Should Know

Panelists from:

Administration on Aging

Centers for Medicare and Medicaid Services

Health and Human Services, Assistant Secretary for Planning and
Evaluation

Internal Revenue Service

National Resource Center for Participant-Directed Services

Panelists

- **Pamela Doty**, Senior Analyst, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services
- **Judith Davis**, Analyst, Employment Tax, Internal Revenue Service
- **Mollie Grotpeter**, Consultant, National Resource Center for Participant-Directed Services
- **Mary Sowers**, Technical Director, HCBS Waivers, Division of Community and Institutional Services, Centers for Medicare and Medicaid Services
- **Linda Velgouse**, Aging Services Program Specialist, Administration on Aging



Today

- Overview of Federal Agency Involvement
- Panel Discussion
 - Where are we?
 - Where are we going?
- Audience Questions



DHHS Office of Assistant Secretary for Planning and Evaluation

- 1994: began funding research and technical assistance to states regarding tax and labor law issues for CD/PAS
- 2000 – 2004: part of IRS Interdepartmental Workgroup to improve and disseminate written guidance for F/EAs
- 2004 – present: continued active involvement



Centers for Medicare and Medicaid Services

- Stayed close to the Fiscal/Employer Agent tax issues, offering insight as applicable.
- Encouraged state compliance in recognizing participants' workers as employees.
- Required implementation of Financial Management Services to support compliance with tax and labor laws.



Administration on Aging

- Stayed close to the Fiscal/Employer Agent tax issues, offering insight as applicable.
- Promoted IRS review of Fiscal/Employer Agent management of both public and private funds on a participant employer's behalf.



Where Are We Now?

Models of Financial Management Services

- Fiscal/Employer Agent
 - Government Fiscal/Employer Agent
 - Using a sub-agent
 - Using a reporting agent
 - Vendor Fiscal/Employer Agent
 - Using a reporting agent
- Agency with Choice

Independent Contractors versus Household Employees

- Over the last twenty years, some programs that allowed participants to hire their own workers paid the workers as independent contractors. Currently, workers that are directly hired by participants are generally classified as household employees. **Why are these workers generally classified as employees and not independent contractors?**

Section 3504 of the Internal Revenue Code

- Fiscal/Employer Agents operate under this section of the Internal Revenue Code by filing IRS Form 2678, *Employer Appointment of Agent*.
- Employers and Agents are jointly liable for employment taxes.
- **Can you explain what this means for Fiscal/Employer Agents?**



Government Fiscal/Employer Agents: Preferred By the IRS?

- Proposed Notice 2003-70 includes paperwork reduction and other cost and time saving economies for Government Fiscal/Employer Agents; the Notice does not apply to Vendor Fiscal/Employer Agents. **Can you explain the distinction?**



Freedom of Choice of Provider

- Proposed Notice 2003-70 applies to states that use a Government Fiscal/Employer Agent model. The Government Fiscal/Employer Agent can engage a Reporting Agent or Sub-Agent, but a single program cannot have multiple Government, Reporting or Sub-Agents. **Mary, can you discuss the difference between a state using a Fiscal/Employer Agent as a service or an administrative function and how that is impacted by Proposed Notice 2003-70?**



Aggregate Tax Filing and Payment

- Proposed Notice 2003-70 specifies that Government Fiscal/Employer Agents file and deposit all federal taxes in the aggregate using the agent's separate Federal Employer Identification Number. These federal employment taxes include: Federal Income Tax Withheld, FICA (Social Security and Medicare taxes) and FUTA (Federal Unemployment Tax).



Aggregate Tax Filing and Payment:


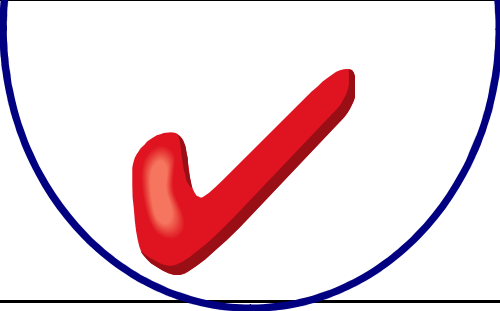
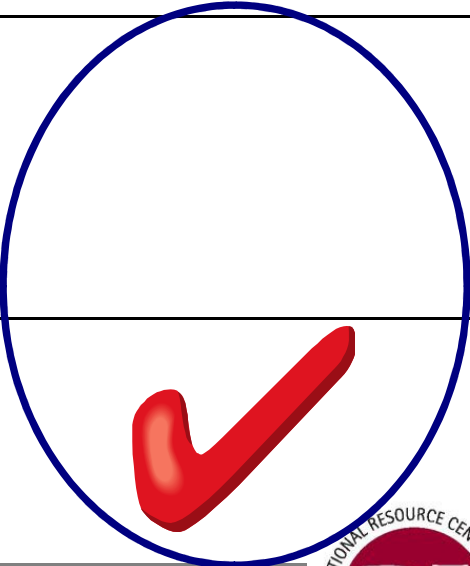

- Vendor Fiscal/Employer Agents, however, are to use Revenue Procedure 70-6. This Revenue Procedure instructs Vendor Fiscal/Employer Agents to file and pay Federal Withholding Tax and FICA in the aggregate using a separate Federal Employer Identification Number for that purpose. However, Revenue Procedure 70-6 instructs these agents to file and pay FUTA on behalf of each individual participant employer*.

State Unemployment Tax

- States generally require any agent, Government or Vendor, to file and pay State Unemployment Tax for each participant individually, using the participant's State Unemployment Tax account number. Agents generally cannot file or pay State Unemployment Tax in the aggregate.



Link FICA to FUTA

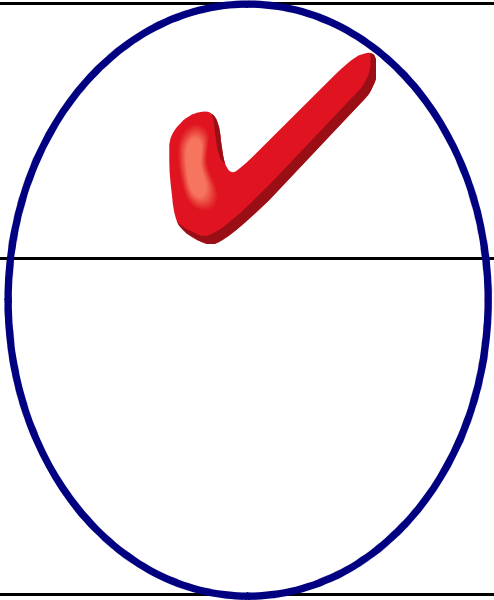
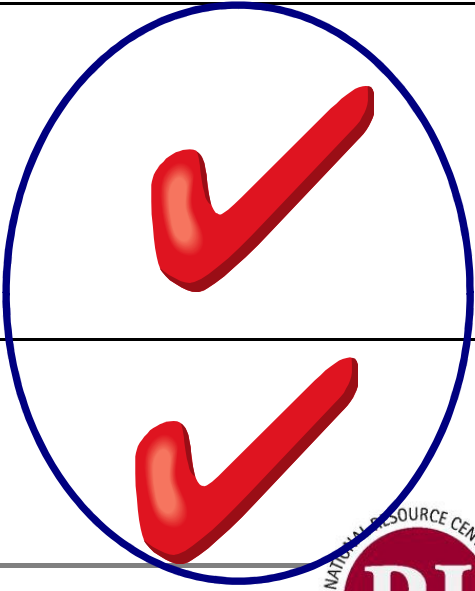
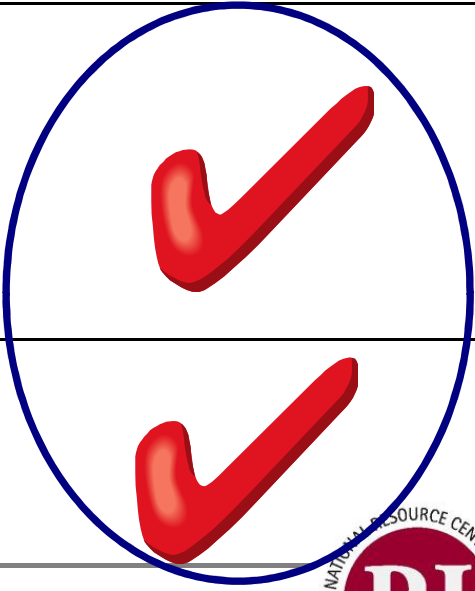
	Aggregate Filing & Payment	Individual Filing & Payment
FICA Social Security & Medicare		
FUTA Federal Unemployment Tax		
SUTA State Unemployment Tax		

Challenges

- The previous chart shows how Proposed Notice 2003-70 instructs Government Fiscal/Employer Agents to file and deposit. However, as recently as the late 1990s when vendor agents used this method, problems arose when the IRS tried to link FUTA to SUTA. **Why does the IRS link FUTA to SUTA and why doesn't the link work when FUTA is filed in the aggregate?**



Match FUTA to SUTA

	Aggregate Filing & Payment	Individual Filing & Payment
FICA Social Security & Medicare		
FUTA Federal Unemployment Tax		
SUTA State Unemployment Tax		

Challenges

- The previous chart shows how Revenue Procedure 70-6 instructs Vendor Fiscal/Employer Agents to file and deposit. However, as recently as 2005 when vendor agents used this method, problems arose when the IRS tried to link FICA to FUTA. Since 2005, the IRS no longer links FICA to FUTA for participants, so this should not be a problem in the future. **Judy, can you comment on this?**

Slide 18

SVB4

This slide should read:

The previous chart shows how Revenue Procedure 70-6 instructs Vendor Fiscal/Employer Agents to file and deposit. However, as recently as 2005 when vendor agents used this method, problems arose when the IRS linked FICA to FUTA. The IRS no longer links FICA to FUTA for participants, and so this should not be a problem in the future.

S. Boominathan, 9/17/2009

What's Next?

- The IRS has been working diligently with support from ASPE, CMS, and AoA to develop solutions for the challenges outlined on the previous pages.
What are some of the processing and technical challenges involved? What can Fiscal/Employer Agents expect from the IRS?



Fiscal/Employer Agent Management of Public and Private Funds

- Some program participants wish to supplement their publicly funded services with private funding. We have seen this especially in the Administration on Aging Community Living Programs. **Linda, could you talk to us about this in the Community Living Program?**



Can a Fiscal/Employer Agent Manage both Public and Private Funds?

- **Can a Fiscal/Employer Agent manage both public and private funds? What are the parameters? What are complications?**

Challenges: Transferring Participants Between Fiscal/Employer Agents

- Mid-year transfers can cause tax complexity.
- FICA Refunding
- Issuing Forms W-2
- **What guidance do you have for states that permit participants to transfer between Fiscal/Employer Agents during the tax year?**

Questions & Answers

