

Rev. Proc. 2009-13, 2009-3 IRB, 12/29/2008, IRC Sec(s).

Headnote:

Reference(s):

Full Text:

1. Purpose

This revenue procedure sets forth the procedures for employers to follow to request to receive notification of their qualification to file Forms 944, Employer's ANNUAL Federal Tax Return, and also sets forth the procedures for employers who were notified that they should file Form 944, Employer's ANNUAL Federal Tax Return, who wish to request to file Forms 941, Employer's QUARTERLY Federal Tax Return, instead for tax year 2009.

2. Background

.01. Form 944, Employer's ANNUAL Federal Tax Return, was designed to reduce burden on small employers by permitting those employers to file one employment tax return to report their social security, Medicare, and withheld federal income taxes (referred to herein as their "employment tax liability") for the entire taxable year instead of four employment tax returns (one for each quarter).

.02. The Treasury Department and the Internal Revenue Service (IRS) published a temporary regulation (TD 9239) related to Form 944 in the Federal Register (71 FR 11) on January 3, 2006. A notice of proposed rulemaking (REG-148568-04) cross-referencing the temporary regulations was published in the Federal Register on the same day (71 FR 11). A correction to the temporary regulation was published in the Federal Register on March 17, 2006 (71 FR 13766). Revised temporary regulations (TD 9440) and proposed regulations (REG-148568-04) relating to Form 944 were published in the Federal Register (73 FR 79354 and 73 FR 79423) on December 29, 2008.

.03. For tax year 2009, employers are qualified to file Form 944 if their estimated annual employment tax liability is \$1,000 or less. See Treas. Reg. §§ 31.6011(a)-1T(a)(5)(i) and 31.6011(a)-4T(a)(4)(i). The IRS will notify employers in writing of their qualification to file Form 944. Id. Employers who continue to be eligible in subsequent years will not receive another notification. The IRS will notify employers in writing when they no longer qualify to file Form 944 and must file Forms 941 instead.

.04. Prior to the 2009 tax year, employers received written notification in one of three ways. Employers who had filed Forms 941 may have received a letter notifying them that the IRS had determined they were eligible based on the liability they reported on prior Forms 941. New employers may have received notification that they were eligible in the letter advising them of their employer identification number, depending on how they responded to lines 13 and 14 when they completed Form SS-4, Application for Employer Identification Number. Employers who did not receive notification to file Form 944 in

either of the two ways described above could call the IRS to determine if they were eligible and, if so, will receive a letter confirming their eligibility.

.05. Employers notified of their qualification to file Form 944 must file Form 944, Employer's ANNUAL Federal Tax Return, for tax year 2009 rather than Forms 941, Employer's QUARTERLY Federal Tax Return.

.06. Sections 31.6011(a)-1T(a)(5)(i)(B) and 31.6011(a)-4T(a)(4)(i)(B) of the temporary regulations provide that the IRS may establish procedures in published guidance for employers to follow to request to receive notification of their qualification to file Forms 944, Employer's ANNUAL Federal Tax Return, and for employers to follow to opt to file Forms 941, Employer's QUARTERLY Federal Tax Return, after receiving notification of their qualification to file Forms 944. This revenue procedure constitutes published guidance for purposes of Treas. Reg. §§ 31.6011(a)-1T(a)(5)(i)(B) and 31.6011(a)-4T(a)(4)(i)(B).

.07. Employers who file Forms 941 and 944 must deposit their employment tax liability in accordance with the rules in Treas. Reg. §§ 31.6302-1 and 31.6302-1T or, absent reasonable cause, the employers may be subject to the penalty for failure to deposit under section 6656. Generally, the same deposit rules apply to employers regardless of which form they file to report their employment tax liability; however, the de minimis deposit amount may be different. For more information on the deposit rules, see Publication 15 or the instructions to Forms 941 and 944 and the related Spanish-language returns or returns for U.S. possessions.

.08. For provisions relating to the time and place for filing returns, see Treas. Reg. §§ 31.6071(a)-1 and 31.6091-1, respectively.

3. Scope

This revenue procedure applies to employers who are notified by the IRS that they should file Form 944 rather than Forms 941 and to qualified employers who choose to file Forms 944 beginning in the 2009 tax year.

4. Procedures

.01. Employers eligible to opt out. For tax year 2009, employers who are notified that they should file Form 944 may opt out if they timely notify the IRS that they satisfy at least one of the following conditions:

- (1) The employer anticipates that its employment tax liability for tax year 2009 will be more than \$1,000; or
- (2) The employer wants to file electronically quarterly Forms 941 for tax year 2009.

Employers who received notification to file Form 944 in prior years and did not previously opt out of filing Form 944 are eligible to opt out for tax year 2009 if they satisfy one of the conditions listed above.

.02. Opt-out procedures. Employers who satisfy one of the conditions in section 4.01 must call or write the IRS stating that they want to opt out of filing Form 944 before the

applicable due date, as indicated below. Employers can find the appropriate IRS contact phone number and mailing address below.

(1) Due dates.

(a) Employers who have previously filed Form 941 or Form 944 or the related Spanish-language returns or returns for U.S. possessions. Employers who want to call to opt out of filing Form 944 must call the IRS on or before April 1, 2009. Employers who want to write to opt out of filing Form 944 must have their written correspondence postmarked on or before March 15, 2009.

(b) New employers. Businesses that recently received an employer identification number or had an employer identification number but were not previously required to file Form 941 or Form 944 or the related Spanish-language returns or returns for U.S. possessions who want to call to opt out must call the IRS on or before the first day of the month that their first required Form 941 is due (i.e., call made on or before April 1, 2009, July 1, 2009, October 1, 2009, or January 1, 2010). Employers who want to write to opt out of filing Form 944 must have their written correspondence postmarked on or before the 15 day of the month before their first required Form 941 is due (i.e., correspondence postmarked on or before March 15, 2009, June 15, 2009, September 15, 2009, or December 15, 2009). For any due date that falls on a Saturday, Sunday, or legal holiday, the last day employers may call the IRS or have their written correspondence postmarked is the next business day following that Saturday, Sunday, or legal holiday.

(2) Phone numbers. Employers can call the IRS to opt out of filing Form 944 by using the following phone numbers:

(a) Employers in the United States, including Puerto Rico and the U.S. Virgin Islands, can call 1-800-829-4933.

(b) Employers in Guam can call 671-472-7471.

(c) All other international callers can call 01-215-516-2000 or the nearest IRS office.

(3) Mailing Addresses. Employers can write the IRS to opt out of filing Form 944 by using one of the two following mailing addresses:

Department of Treasury, Internal Revenue Service Ogden, Utah 84201-0038 or
Department of Treasury, Internal Revenue Service Cincinnati, Ohio 45999-0038.

.03. Confirmation of opt-out of filing Form 944. The IRS will send written confirmation to employers that their filing requirement was changed to Form 941. Employers who are notified to file Form 944 and are not notified that their filing requirement was changed to Form 941 must file Form 944 rather than Forms 941.

.04. Requests for Notification to File Form 944. Beginning with the 2009 tax year, the IRS will send notification of eligibility to file Forms 944 only upon request by the qualified employer. Employers may request to receive such notification by calling the IRS at the telephone numbers identified in paragraph .02(2) above by the due dates identified in paragraph .02(1) above. Employers who previously received notification of their qualification to file Forms 944 must continue to file Forms 944 unless they opt out consistent with the procedures described above.

5. Effective Date

This revenue procedure is effective on January 1, 2009.

6. Drafting Information

The principal authors of this revenue procedure are Raymond Bailey and Audra Dineen of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure contact Raymond Bailey or Audra Dineen at (202) 622-4910 (not a toll free call).