

Frequently Asked Questions about Using a Fiscal/Employer Agent

Prepared by the National Resource Center for Participant-Directed Services

1. *What is a Fiscal/Employer Agent?*

A Fiscal/Employer Agent (F/EA) provides Financial Management Services (FMS) by performing payroll and administrative functions for self-directing individuals. Just like a regular payroll provider, an F/EA makes sure workers get paid on time and that taxes are handled correctly. However, in order to fully protect participants from financial risk, an F/EA takes on full liability for each participant-employer's tax responsibilities related to participation in a self direction program.

2. *How is a Fiscal/Employer Agent different from a payroll provider?*

Every Fiscal/Employer Agent operates under Section 3504 of the Internal Revenue Code, which requires the agent to take on joint federal tax liability with every participant to whom the agent provides FMS. (Regular payroll providers do not share their clients' tax liabilities.) The F/EA is financially responsible for making sure each participant's tax payments, filing, and reporting are done correctly.¹ If an F/EA makes a tax mistake while providing FMS, tax authorities will always hold the F/EA—*not the participant*—financially liable for the mistake. This protects program participants from personal financial risk.

3. *What are the benefits of using a Fiscal/Employer Agent?*

Programs that use the Fiscal/Employer Agent model of FMS allow participants to have maximum control over the services they receive while being protected from financial risk. Unlike in the Agency with Choice model of FMS, participants using an F/EA can hire workers directly and perform all employer duties themselves. However, the F/EA still bears tax liability for each participant-employer.

4. *As a participant-employer who uses a Fiscal/Employer Agent, what is my status at the IRS?*

¹ Required F/EA federal tax procedures and responsibilities are set forth in IRS Revenue Procedure 2013-39.

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The IRS has a special tax classification designed specifically for self-directing individuals who hire workers and use an F/EA. The IRS officially classifies these individuals as “Home Care Service Recipients”, a special type of household employer. The Internal Revenue Manual, which instructs IRS agents on how to enforce tax regulations, has detailed instructions in place for Home Care Service Recipients. The Manual directs IRS agents to handle participants’ tax matters with the greatest possible sensitivity. The Manual also makes clear to IRS agents that an F/EA is responsible for handling wages and taxes related to Home Care Service Recipients, and the F/EA should be the only point of contact about tax issues related to participants’ program activity. Therefore, the F/EA handles and is liable for all issues related to a participant’s tax matters relating to the participant’s activity in a self direction program.

In the event of a tax problem related to participation in a self direction program, the IRS has stated publicly that they would pursue the F/EA, ***not the participant***, for any taxes and penalties due. The IRS internal databases also reflect this position, as the IRS has reported that upon establishment as a Home Care Service Recipient in the IRS systems, the participant-employer’s individual filing requirements and opportunity to get notices, liens and levies from the IRS are *removed* and instead those filing requirements and opportunities for notices, liens and levies are connected to the Fiscal/Employer Agent who has submitted an IRS Form 2678, *Employer Appointment of Agent* on the participant-employer’s behalf.

5. ***What happens if my Fiscal/Employer Agent goes out of business and there are unpaid taxes? Would I be liable then?***

The IRS has stated publicly that they would pursue the funding source, that is, the Medicaid program, for unpaid taxes. If a Fiscal/Employer Agent in a Medicaid-funded program went out of business with unpaid taxes, the IRS policy would be to recover the amount due from the state Medicaid program, ***NOT*** from participants. The IRS recognizes that self direction programs are publicly funded, and their tax procedures and requirements for Fiscal/Employer Agents are designed so that participants are always shielded from personal financial risk. Participants are fully protected even when an F/EA goes out of business.

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