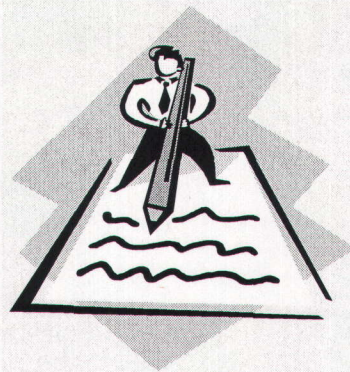


## IRS Will No Longer Issue Separate Tax ID Numbers to Fiscal/Employer Agents

The Internal Revenue Service (IRS) has announced that it will no longer accept applications for separate Federal Employer Identification Numbers (FEINs) from Vendor Fiscal/Employer Agents operating under Section 3504 of the IRS code and IRS Revenue Procedure 70-6, IRS regulations governing home-care service providers. A separate FEIN is necessary for a Vendor Fiscal/Employer Agent to file and pay certain federal tax forms on behalf of service recipients who hire their own support service workers directly and therefore are considered their common law employers by the IRS. Vendor Fiscal/Employer Agents who currently have separate FEINs may continue to use them for filing certain federal tax forms on behalf of service recipients for whom they act as agent. The IRS will, however, accept applications for separate FEINs from state and local government agencies who wish to be a Government Fiscal/Employer Agent under section 3504 of the IRS code and Revenue Procedures 80-4 and 2003-70.

The recent change will have an impact on states provide fiscal intermediary services to individuals with developmental disabilities who hire in-home support service workers directly. State and local government entities essentially will have two options available to them to implement Fiscal/Employer Agent ISO services at this time, according to Susan Flanagan, principal of Westchester Consulting. A state or county may become a Government Fiscal/Employer Agent in accordance with IRS Revenue Procedures 80-4 and specifically 2003-70. IRS Rev. Proc. 2003-70 allows a state or local Government Fiscal/Employer Agent to either perform the payroll function itself or contract with a subagent or reporting agent to perform the payroll function on its behalf (see *Directors Alert Bulletin 01-2004*, "IRS to Clarify Policies Governing



the Use of Employer Agents"). Under either method, the Government Fiscal/Employer Agent is not considered the common law employer of support service workers hired directly by service recipients.

To pursue this option, the state or county must file a written application to be an Employer Agent as indicated on IRS

form 2678 to the Director of the IRS Center with whom it will file returns upon approval of the application. Unlike vendors, Government Fiscal/Employer Agents do not have to submit to the IRS for approval signed IRS forms 2678 for each service recipient they represent. Rather, they must keep a signed IRS Form 2678, or a signed informed consent statement using language approved by the appropriate IRS Director, for each service recipient they represent on file for IRS review and reference the forms' existence in their agent application to the IRS. In addition, the county or state must apply for and receive a separate FEIN for the sole purpose of filing certain federal employment tax forms. Once the state or county has received a FEIN, Flanagan points out, it may "perform the Fiscal/Employer Agent tasks itself or delegate the agent tasks to a reporting agent (e.g., a payroll company such as ADP or Paychex) or a subagent (an entity that is willing and able to perform the delegated agent tasks)." Reporting agents, defined in IRS Notice 2003-70 as "an accounting service, franchiser, bank, service bureau, or other entity authorized to perform one or more acts on behalf of an employer," assume no tax liability with the IRS, leaving the state and the service recipient fully liable for any unfulfilled employment tax obligations. A subagent, described as "an individual or entity designated as an agent by a state agent," does share liability with both the state agent and the service recipient.

(Tax ID Numbers continued on page 7)