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tem of Form 941, Employer's Quarterly Federal Tax Return. For further information, see Publication 1264, File Specifications, Process Criteria, and Record Layouts for Magnetic Tape Filing of Form 941, Employer's Quarterly Federal Tax Return. This revenue procedure amplifies, clarifies, modifies, and supersedes Rev. Proc. 96-19, 1996-1 C.B. 644.

SECTION 2. BACKGROUND

.01 Section 6011(a) of the Internal Revenue Code provides that any person liable for any tax imposed by this title, or for the collection thereof, must make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement must include therein the information required by such forms or regulations.

.02 Section 31.6011(a)-4 of the Employment Tax Regulations provides in general that every person required to make a return of income tax withheld from wages pursuant to § 3402 must make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter until the person has filed a final return. Except as otherwise provided, Form 941 is the form prescribed for making the return.

.03 Section 31.6011(a)-7 provides that each return, together with any prescribed copies or supporting data, must be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the Internal Revenue Service office with which such person is required to file returns and if such a return includes all taxes required to be reported by such person on such return. Form 8655, Reporting Agent Authorization for Magnetic Tape/Electronic Filers, is an acceptable power of attorney, if prepared in accordance with the requirements set forth in Rev. Proc. 96-17, 1996-1 C.B. 633, as modified by section 22.02 of this revenue procedure.

.04 Section 31.6061-1 provides that the return may be signed for the taxpayer by an agent that is fully authorized in accordance with § 31.6011(a)-7 to make such return. An Agent may sign the Form 941 on behalf of a taxpayer that has a valid Form 8655 on file with the Service.

SECTION 1. PURPOSE

This revenue procedure sets forth the requirements of the Form 941 ELF Program under which a taxpayer that is a Reporting Agent ("Agent" as defined in section 4.07 of this revenue procedure) may electronically file Form 941, Employer's Quarterly Federal Tax Return. The technical specifications for filing Form 941 electronically are published separately in Publication 1855, Technical Specifications Guide for the Electronic Filing Sys-

26 C.F.R. 601.602: Tax forms and instructions.
(Also Part I, Sections 3504, 6011, 6061, 6071;
31.3504-1, 31.6011(a)-7, 31.6061-, 301.6061-1,
31.6071(a)-1.)

Rev. Proc. 97-47

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.05 Section 301.6061-1 of the Regulations on Procedure and Administration provides that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method for signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. The Service has prescribed in the electronic filing instructions to Form 941 that an electronically filed Form 941 is signed by the entry of the Electronic Filer's Personal Identification Number ("PIN").

.06 Section 31.6071(a)-1 generally provides that each return required to be made under § 31.6011(a)-1 for taxes imposed by the Federal Insurance Contributions Act, or required to be made under § 31.6011(a)-4 for withheld income taxes, must be filed on or before the last day of the first calendar month following the period for which it is made. However, under § 31.6071(a)-1 a return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under § 6302(c) and the regulations thereunder have been made in full payment of such taxes due for the period.

.07 Procedures for the magnetic filing of Form 941 are in Rev. Proc. 96-18, 1996-1 C.B. 637, and the specifications are in Publication 1264.

.08 The submission of federal tax deposit ("FTD") information on magnetic tape is addressed in Rev. Proc. 89-48, 1989-2 C.B. 599. For taxpayers that are required to make FTDs by electronic funds transfer pursuant to § 6302(h), the submission of the FTD information along with the transfer of funds is addressed in Rev. Proc. 97-33, 1997-30 I.R.B. 10.

.09 This revenue procedure updates Rev. Proc. 96-19. The updates include changes in the 941 ELF Program, clarifications of prior Form 941 ELF Program statements, and additional guidance derived from other Service documents that relate to the Form 941 ELF Program. Some of the updates are:

(1) the signature provisions for an electronically filed Form 941 have been modified, amplified, and clarified to require use of a PIN instead of filing a Form 4996, Electronic/Magnetic Media Filing Transmittal for Wage and Withholding Tax Returns (sections 2.05, 4.05, 5.02, 6.06, 8.02, 10.02, 10.03, and 10.04);

(2) the definition of an Electronic Filer:

(a) is prospectively limited to Reporting Agents whose applications (received after the effective date of this revenue procedure) include an Agent's List containing 10 or more taxpayers (sections 4.02, 5.03, and 23.02); and

(b) has been expanded to include Software Developers (sections 4.02, 5.02, 5.04, 6.04, 6.05, and 10.05); and

(3) a Reporting Agent is not required to replace a previously submitted Authorization under certain circumstances (section 5.05).

SECTION 3. SCOPE

.01 The Form 941 ELF Program accepts electronically filed Forms 941 in Electronic Data Interchange ("EDI") format developed by the American National Standards Institute that meets the requirements of this revenue procedure and Publication 1855.

.02 An Electronic Filer in the Form 941 ELF Program must use asynchronous communications protocols to transmit electronic returns. See Publication 1855 for further information regarding communications and formatting requirements.

.03 The Form 941 ELF Program accepts timely current returns that are zero balance, refund, or limited balance due returns. For the current limitations on balance due returns, refer to Publication 1855. For the due dates of returns under the Form 941 ELF Program, see section 8.01 of this revenue procedure. The Form 941 ELF Program will not accept the electronic filing of the following returns:

- (1) amended returns;
 - (2) corrected returns;
 - (3) returns containing attachments;
- or
- (4) untimely returns.

A violation of any of these restrictions will cause a Processing Interruption (as defined in section 4.06 of this revenue procedure).

SECTION 4. DEFINITIONS

.01 *Authorized Signatory.* The "Authorized Signatory" is the person who is authorized to use the PIN for returns filed by an Electronic Filer under the Form 941 ELF Program or during software development testing.

.02 *Electronic Filer.* After acceptance

in the Form 941 ELF Program, as described in section 6 of this revenue procedure, a participant is referred to as an "Electronic Filer." An Electronic Filer may be:

(1) an Agent that files Forms 941 electronically; or

(2) a "Software Developer" that develops software for the purposes of (a) formatting returns according to the Service's electronic return specifications in Publication 1855; and/or (b) transmitting electronic returns directly to the Service. A Software Developer may also sell its software.

.03 *Electronic Filing Help Desk.* The Electronic Filing Help Desk ("ELF Help Desk") is responsible for the administration of the Form 941 ELF Program. See section 21 of this revenue procedure for the address and telephone number of the ELF Help Desk.

.04 *Error Rate.* The "Error Rate" is the percentage of the total volume of tax data records that are identified by the Service's computer program as containing errors (as defined in Publication 1855).

.05 *Personal Identification Number.* A Personal Identification Number ("PIN") is a number assigned by the Service to the Authorized Signatory of an Electronic Filer for purposes of signing an electronically filed Form 941.

.06 *Processing Interruption.* A "Processing Interruption" is an abnormal termination of a program run caused by the electronic data submitted by an Electronic Filer.

.07 *Reporting Agent.* A Reporting Agent ("Agent") is an accounting service, franchiser, bank, or other person that complies with Rev. Proc. 96-17, as modified by section 22.02 of this revenue procedure, and is authorized to prepare and electronically file a Form 941 for a taxpayer.

.08 *Reporting Agent Authorization.* A Reporting Agent Authorization ("Authorization") allows a taxpayer to designate an Agent. The Authorization may be submitted on Form 8655, or any other instrument that complies with Rev. Proc. 96-17, as modified by section 22.02 of this revenue procedure. An Authorization must be submitted for each taxpayer on the Reporting Agent's List.

.09 *Reporting Agent's List.* For purposes of the Form 941 ELF Program, a

Reporting Agent's List ("Agent's List") identifies all taxpayers for whom an Agent will file Forms 941 electronically. As separate Authorization must be submitted for each taxpayer on the Agent's List. The Agent's List must contain each taxpayer's employer identification number ("EIN").

.10 *User identification/password.* The user identification/password ("userid/password") consists of an identification number (userid) issued by the Service and a confidential set of characters (password) that, when used in conjunction with each other, permit an Electronic Filer access to the Form 941 ELF Program.

.11 *Validated Reporting Agent's List.* A Validated Reporting Agent's List ("Validated Agent's List") is the source of the EIN and name control to be used as an identification of each taxpayer by an Electronic Filer that is an Agent. A Validated Agent's List is a list of taxpayers and their EINs prepared by an Agent that is confirmed and assigned name controls by the Service. Once the Service returns a Validated Agent's List, the Agent must use it to fill in certain required fields (for example, the name control field) of the electronic transmission. See Publication 1855.

SECTION 5. APPLICATION FOR THE FORM 941 ELF PROGRAM

.01 A prospective Electronic Filer ("Applicant") must first submit a Letter of Application ("Application") to participate in the Form 941 ELF Program.

.02 All Applications must contain the following:

(1) the name, address, and EIN of the Applicant;

(2) the name, title, and telephone number of the person to contact regarding the Application;

(3) the first tax period for which the Applicant plans to file Forms 941 electronically or to have Form 941 software available to the public;

(4) a representation that the Applicant will comply with section 10 of this revenue procedure regarding responsibilities of an Electronic Filer;

(5) a listing of any suspension from any of the Service's magnetic tape or electronic filing programs;

(6) the name and title of the Authorized Signatory; and

(7) the signature of the Applicant's Authorized Signatory for electronically

filing Forms 941 or for software development testing.

.03 An Application of an Agent must also contain the following:

(1) the estimated volume of returns the Applicant plans to file under the Form 941 ELF Program;

(2) the brand name of the software translation package and the EDI version to be used;

(3) a statement that the Applicant will keep a copy of all the Authorizations on file at the Applicant's principal place of business for examination by the Service upon request;

(4) a representation that the Applicant will comply with section 3.03 of this revenue procedure regarding the types of returns accepted under the Form 941 ELF Program;

(5) an Agent's List containing the names of 10 or more taxpayers (except as provided in the grandfather rule in section 23.02 of this revenue procedure); and

(6) except as provided in section 5.05 of this revenue procedure, an Authorization made on Form 8655 with a revision date of October 1995 or later (or its equivalent) for each taxpayer included on the Agent's List. See Rev. Proc. 96-17, as modified by section 22.02 of this revenue procedure, for general instructions on preparing Form 8655.

See Exhibit 1 in the APPENDIX of this revenue procedure for a sample Application to Participate in the Form 941 ELF Program as an Agent.

.04 An Application of a Software Developer must also contain the following:

(1) the brand name of the software translation package, or the development name if no brand name exists, and the EDI version to be used; and

(2) whether the software is stand-alone or interfaces with a named payroll package.

See Exhibit 2 in the APPENDIX of this revenue procedure for a sample Application to Participate in the Form 941 ELF Program as a Software Developer.

.05 A revised Authorization is not required to replace an Authorization made on Form 8655 with a revision date before October 1995 (or its equivalent) that was previously submitted to the Service by an Agent, provided that Authorization places no restriction on the medium for filing Form 941, and the Agent:

(1) advises its client that its Forms 941 may be filed electronically, and provides the client with the option of rejecting electronic filing as the medium for filing its Forms 941. An Agent may use the most efficient and timely method of clearly providing this notification to a client. A client's rejection of electronic filing for its Forms 941 must be submitted in writing to the Agent; and

(2) immediately removes any client from its electronic filing client base that rejects having its Forms 941 filed electronically.

.06 To allow sufficient time for the approval process, the Applicant should submit its Application by the Application due dates preceding the quarter ending dates, as follows:

<i>Application Due Date</i>	<i>For Quarter Ending</i>
December 15 (prior year)	March 31
March 15	June 30
June 15	September 30
September 15	December 31

.07 The Application must be submitted to the Service at the address provided in section 21 of this revenue procedure.

.08 An Application *may not* include a request to file Forms 941, 940, and 945 on magnetic tape or make FTD payments and submit FTD information to the Service on magnetic tape or electronically. An Applicant interested in participating in these programs should submit an Application in accordance with the following revenue procedures: Rev. Proc. 96-18 (magnetic tape filing of Forms 941, 940, and 945); Rev. Proc. 97-33 (electronic transmission of FTDs); and Rev. Proc. 89-48 (magnetic tape filing of FTD information).

SECTION 6. ACCEPTANCE IN THE FORM 941 ELF PROGRAM

.01 In the case of an Applicant that is an Agent, the Applicant will receive a Validated Agent's List within 45 days of the Service receiving the Agent's Application. Failure to use the names and EINs provided on the Validated Agent's List may delay processing.

.02 An Applicant must contact the ELF Help Desk, at the number listed in section 21 of this revenue procedure (unless instructed to use a different number), to notify the Service that the Applicant is ready

to begin the testing process. In the case of an Applicant that is an Agent, the Agent must contact the ELF Help Desk after receiving the Validated Agent's List.

.03 An Applicant must transmit an initial test electronic transmission of Form 941 ("test file") by the test file due dates preceding the corresponding quarter due dates, as follows:

<i>Initial Test File Due Date</i>	<i>For Quarter Ending</i>
April 10	March 31
July 10	June 30
October 10	September 30
January 10	December 31

To transmit subsequent test files, contact the ELF Help Desk. Transmission of a test file does not constitute the filing of a tax return. See Publication 1855 for specific testing procedures.

.04 After evaluating the test file, the Service will notify an Applicant in writing of approval or denial of electronic filing privileges. An approval remains in effect unless the Electronic Filer:

(1) that is an Agent fails to comply with the Authorization requirements of sections 5.03(6) and 5.05 of this revenue procedure;

(2) that is a Software Developer fails to comply with the requirements of section 10.05 of this revenue procedure; or

(3) is suspended from the Form 941 ELF Program. See section 16 of this revenue procedure for the effect of a suspension.

.05 The acceptance by the Service of a Software Developer as an Electronic Filer:

(1) establishes only that the test electronic transmission(s) are formatted properly and may be processed by the Service;

(2) is not an endorsement by the Service of the software or the quality of services provided by the Software Developer; and

(3) does not entitle the Software Developer to electronically file Forms 941 unless the Software Developer is also accepted in the Form 941 ELF Program as an Agent.

.06 If an Application is approved, the Service will send the Electronic Filer the following two documents:

(1) a notification of approval that will contain the userid/password, and information and procedures regarding sign-

ing onto the system for filing electronic Forms 941; and

(2) a PIN that may be used only by the Electronic Filer's Authorized Signatory named in the Application.

.07 Upon receipt of each document referenced in section 6.06 of this revenue procedure, the Electronic Filer must return the following documents to the Service:

(1) an acknowledgement signed by each employee recipient of the userid/password indicating possession of, and responsibility for, the userid/password; and

(2) an acknowledgement signed by the Electronic Filer's Authorized Signatory indicating possession of, and responsibility for, the proper use of the PIN for signing tax returns (pursuant to § 301.6061-1) filed in the Form 941 ELF Program.

See Exhibit 3 in the APPENDIX of this revenue procedure for a sample userid/password and PIN receipt.

.08 The Service will activate the userid/password and the PIN upon receiving the Electronic Filer's acknowledgements of the receipt of the two documents referenced in section 6.06 of this revenue procedure.

.09 If an Applicant's test file fails to meet the evaluation criteria, the Applicant must, within 15 days of the Service's notification of the failure, transmit a new test file or contact the ELF Help Desk to make other arrangements.

.10 If an Applicant that is an Agent is denied, or does not receive, approval for participating in the Form 941 ELF Program before the end of the tax quarter for which the Forms 941 will be filed, the Applicant should file the returns on paper Forms 941 (or on magnetic tape if the Applicant meets the requirements of Rev. Proc. 96-18).

.11 If an Applicant is denied acceptance into the Form 941 ELF Program, the Applicant may reapply for a subsequent tax quarter by resubmitting an Application and test file in accordance with sections 5 and 6 of this revenue procedure.

SECTION 7. ADDING AND DELETING TAXPAYERS BY A REPORTING AGENT

.01 After an Electronic Filer that is an Agent is notified that the application for electronic filing of Forms 941 has been

approved, the Agent may want to add and delete taxpayers from the Form 941 ELF Program.

.02 To add taxpayers, the Agent must submit the added names and EINs (Add List) and an Authorization, in accordance with sections 5.03(6) and 5.05 of this revenue procedure, for each taxpayer added to the Form 941 ELF Program. The Service must validate the Add List and return it to the Agent before the Agent can electronically file returns for these taxpayers. The Service will generally validate and mail the Add List to the Agent within 10 business days of receiving the Add List.

.03 To delete taxpayers, the Agent must submit a list of those taxpayers to be deleted (Delete List) and, if known, a short statement indicating which taxpayers will not remain in business.

SECTION 8. ELECTRONIC FILING OF FORM 941

.01 An Electronic Filer that is an Agent must ensure that an electronic Form 941 is filed on or before the due date of the return. The due dates prescribed for filing paper Forms 941 with the Service also apply to returns filed under the Form 941 ELF Program. Forms 941 are due on or before the last day of the first calendar month following the period for which the return is made. However, a return for which all tax deposits were made when due for the quarter may be filed by the 10th day of the month following the due date. In no case may one electronic transmission include returns with more than one due date.

.02 An electronically filed Form 941 is not considered filed until it has been acknowledged as accepted for processing by the Service. If an electronically filed Form 941 is transmitted on or before the due date, the return will be deemed timely filed. If an electronically filed Form 941 is initially transmitted on or shortly before the return due date and is ultimately rejected, but the Electronic Filer complies with section 8.03 of this revenue procedure, the return will be deemed timely filed.

.03 An electronic transmission that causes a Processing Interruption or that has an Error Rate exceeding 5 percent may not be accepted, and the Electronic Filer will be asked to resubmit the return(s). If the electronic transmission is

acknowledged as rejected by the Service, the Electronic Filer should correct the error(s) and retransmit the return(s) on the same calendar day. If the Electronic Filer chooses not to have the previously rejected return retransmitted, or if the return still cannot be accepted for processing, a paper Form 941 (or a Form 941 on magnetic tape if the Electronic Filer meets the requirements of Rev. Proc. 96-18) must be filed by the later of: (1) the due date of the return; or (2) within five calendar days of the rejection or notice that the return cannot be retransmitted, with an explanation of why the return is being filed after the due date. For the penalty for failure to file a timely return, see section 18 of this revenue procedure.

SECTION 9. ADJUSTMENTS TO FORM 941

Forms 941 filed under the Form 941 ELF Program must not contain adjustments other than adjustments resulting from rounding fractions of cents or from third-party sick pay for which an employer is not responsible. Returns with other adjustments must be filed on magnetic tape or on paper.

SECTION 10. RESPONSIBILITIES OF AN ELECTRONIC FILER

.01 To ensure that complete returns are accurately and efficiently filed, an Electronic Filer must comply with Publication 1855.

.02 The Electronic Filer that is an Agent must retain the following material for 4 years after the due date of the return, unless otherwise notified by the Service:

- (1) a complete copy of the electronically filed Form 941;
- (2) a copy of the Service's acknowledgement of receipt of the return; and
- (3) a copy of each Authorization.

.03 An Electronic Filer that is an Agent must:

- (1) provide the taxpayer with a copy of the taxpayer's electronically filed Form 941. This information may be provided on a replica of an official form or on an unofficial form. However, data entries on an unofficial form must refer to the line numbers on an official form;

- (2) advise the taxpayer to retain a copy of the return and any supporting material;

- (3) inform the taxpayer of the service

center that processes the taxpayer's returns;

- (4) advise the taxpayer that an amended return, if needed, must be filed as a paper return and mailed to the service center identified in accordance with section 10.03(3) of this revenue procedure. See section 9 of this revenue procedure for adjustments to Forms 941; and

- (5) provide the taxpayer, upon request, with the date the return was transmitted to the Service and the date the Service acknowledged receipt of the taxpayer's return.

.04 An Electronic Filer must comply with the following userid/password and PIN requirements:

- (1) each authorized employee of the Electronic Filer must submit a signed receipt acknowledging receipt of the userid/password, and accepting the associated responsibilities. See Exhibit 3 in the APPENDIX of this revenue procedure for a sample userid/password receipt;

- (2) the Authorized Signatory for the Electronic Filer must submit a signed receipt acknowledging possession, and accepting responsibility for proper use, of the PIN for signing and filing tax returns (or for software development testing) in the Form 941 ELF Program. See Exhibit 3 in the APPENDIX of this revenue procedure for a sample PIN receipt;

- (3) the Electronic Filer is responsible for ensuring that the PIN remains the confidential information of the Electronic Filer's Authorized Signatory. If the Electronic Filer suspects that the confidentiality of the PIN and/or userid/password has been compromised, the Electronic Filer must contact the ELF Help Desk within 24 hours for instructions on how to proceed. See section 21 of this revenue procedure for Service contact information;

- (4) if the Authorized Signatory for an Electronic Filer changes, the Electronic Filer must notify the Service of the name and title of the new Authorized Signatory for the electronically filed Form 941 and apply for a new PIN no later than 15 days before the filing of another return. After this notification, the Service will deactivate the current PIN and issue a new PIN to the new Authorized Signatory. The new Authorized Signatory must submit a PIN receipt as specified in section 10.04(2) of this revenue procedure in order to activate the PIN; and

- (5) the Authorized Signatory for the Electronic Filer must manually enter the PIN signature for each transmission of electronically filed Forms 941.

.05 An Electronic Filer that is a Software Developer must:

- (1) promptly correct any software error that may cause, or causes, an electronic return to be rejected;

- (2) promptly distribute any such software correction;

- (3) ensure that any software package that will be used to transmit returns from multiple Electronic Filers that are Agents has the capability of combining these returns into one Service transmission file; and

- (4) not incorporate into its software a Service assigned PIN.

SECTION 11. ALTERNATIVE FILING PROCEDURES

.01 Procedures for the filing of Form 941 on magnetic tape are in Rev. Proc. 96-18 and the specifications are in Publication 1264.

.02 An Electronic Filer that is an Agent may use a Form 941 ELF Program Authorization to file a paper Form 941 under the Form 941 ELF Program under the following circumstances:

- (1) the late receipt of payroll information from a taxpayer that would jeopardize the timely submission of the taxpayer's return;

- (2) the amendment of returns filed under the Form 941 ELF Program;

- (3) the rejection of an electronic transmission that would jeopardize the timely submission of the taxpayer's return;

- (4) an authorization by the Service for an Electronic Filer to file paper Forms 941 instead of electronically filed Forms 941; or

- (5) the suspension of an Agent from the Form 941 ELF Program as provided in section 16.02(3) of this revenue procedure.

.03 An Agent may prepare a paper Form 941 for the taxpayer's signature. A taxpayer's authorized representative that is not an Agent participating in the Form 941 ELF Program (including a suspended Agent) must have a valid power of attorney (usually a Form 2848, Power of Attorney and Declaration of Representative) that authorizes the representative to sign

and file a paper Form 941 on behalf of a taxpayer.

.04 Each paper Form 941 must be signed by the taxpayer, the taxpayer's authorized representative, or a participating Agent to the extent permitted under section 11.02 of this revenue procedure.

SECTION 12. REVISION OF COMPUTER SPECIFICATIONS BY THE SERVICE

.01 If Publication 1855 is revised, the Service, if necessary, will advise all current Electronic Filers to submit test files prior to filing under the new specifications. Failure to submit a test file may later result in a Processing Interruption or an Error Rate exceeding 5 percent on returns filed electronically for which an Electronic Filer may receive a notice of suspension. See section 14 of this revenue procedure concerning the reasons for suspension of electronic filing privileges.

.02 If an Electronic Filer is unable to comply with the changes in specifications, the Electronic Filer must contact the ELF Help Desk for further instructions. See section 21 of this revenue procedure.

SECTION 13. ADVERTISING STANDARDS

.01 An Electronic Filer must:

(1) comply with the advertising and solicitation provisions of 31 C.F.R. Part 10 (Treasury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. In addition, advertising must not imply a special relationship with the Service, Financial Management Service ("FMS"), or the Treasury Department;

(2) adhere to all relevant federal, state, and local consumer protection laws;

(3) not use the Service's name, "Internal Revenue Service" or "IRS", within a firm's name;

(4) not use improper or misleading advertising in relation to the Form 941 ELF Program;

(5) not carry the Service, FMS, or other Treasury Seals on its advertising material;

(6) clearly state the names of all cooperating parties if advertising for a coop-

erative electronic return filing project (public/private sector);

(7) pre-record any radio or television advertisement and keep a copy of this advertisement for a period of at least 36 months from the date of the last transmission or use; and

(8) retain a copy of any actual direct mailing or fax communications, along with a list or other description of persons to whom the communication was mailed, faxed, or otherwise distributed for a period of at least 36 months from the date of the last mailing, fax, or distribution.

.02 Acceptance to participate in the Form 941 ELF Program does not imply endorsement by the Service, FMS, or the Treasury Department of the software or quality of services provided.

SECTION 14. REASONS FOR SUSPENSION

.01 The Service reserves the right to suspend an Electronic Filer from the Form 941 ELF Program for the following reasons (this list is not all-inclusive):

(1) submitting tax returns for which the Service did not receive A u t h o r i z a t i o n s ;

(2) repeatedly submitting tax returns that have an Error Rate exceeding 5 percent or that cause a Processing Interruption;

(3) submitting tax returns that have an Error Rate exceeding 5 percent or that cause a Processing Interruption after failing to submit the test file required by section 12 of this revenue procedure;

(4) failing to comply with the responsibilities of an Electronic Filer set forth in section 10 of this revenue procedure;

(5) failing to abide by the advertising standards in section 13 of this revenue procedure; or

(6) significant complaints about an Electronic Filer's performance in the Form 941 ELF Program.

.02 If the Electronic Filing Coordinator ("ELF Coordinator") informs an Electronic Filer that a certain action is a reason for suspension and the action continues, the service center director may send the Electronic Filer a notice proposing suspension of the Electronic Filer. However, a notice proposing suspension may be sent without a warning if the Electronic Filer's action indicates an inten-

tional disregard of rules. A notice proposing suspension will describe the reason(s) for the proposed suspension, and indicate the length of the suspension and the conditions that need to be met before the suspension will terminate.

.03 An Electronic Filer that is an Agent has an obligation to notify taxpayers filing through the Agent if and when that Agent is suspended from filing under the Form 941 ELF Program as provided in section 16.02(4) of this revenue procedure. The Service reserves the right to extend the period of suspension of any Agent that fails to comply with this requirement.

SECTION 15. ADMINISTRATIVE REVIEW PROCESS FOR PROPOSED SUSPENSION

.01 An Electronic Filer that receives a notice proposing suspension may request an administrative review prior to the proposed 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 ELF Coordinator within 30 calendar days of the date on the notice proposing suspension. The ELF Coordinator will forward the written request to the National Program Analyst for Electronic Filing of Business Returns ("National Coordinator") if the service center director continues to believe that suspension is warranted.

.04 After consideration of the written request for an administrative review, the National Coordinator will either issue a suspension letter or notify the Electronic Filer in writing that the proposed suspension is withdrawn.

.05 If an Electronic Filer receives a suspension letter, the ELF Coordinator's subsequent determination of whether a reason for suspension has been corrected is not subject to review or appeal.

.06 If an Electronic Filer does not timely submit a written request for an administrative review, the service center director will issue a suspension letter.

.07 Failure to submit a written request for an administrative review within the

30-day period described in section 15.03 of this revenue procedure irrevocably terminates the Electronic Filer's right to an administrative review of the proposed suspension.

SECTION 16. EFFECT OF SUSPENSION

.01 An Electronic Filer'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.

.02 In the case of an Electronic Filer that is an Agent, the following additional rules apply:

(1) if a Form 941 is due (without regard to extensions) within 60 days from the date on the suspension letter, the Agent may file the Form 941 under the Form 941 ELF Program;

(2) if a Form 941 is due (without regard to extensions) more than 60 days from the date on the suspension letter, the Agent may not file the Form 941 under the Form 941 ELF Program;

(3) if a suspended Agent has a power of attorney from a taxpayer that authorizes the Agent to sign and file Form 941, the suspended Agent will be able to sign and file a paper Form 941 for the taxpayer. See section 11.03 of this revenue procedure. Form 8655 does not authorize the filing of paper Forms 941 outside of the Form 941 ELF Program; and

(4) an Agent must provide written notification of a suspension to a taxpayer at least 45 days before the due date of the taxpayer's first return affected by the suspension. This notification must be provided even though the Agent may believe that the Agent will be able to meet the conditions for terminating the suspension before the due date.

.03 An Electronic Filer will be able to participate in the Form 941 ELF Program from which the Electronic Filer was suspended, without reapplying to the Form 941 ELF Program, after:

(1) the stated suspension period expires; and

(2) the reason(s) for suspension are corrected.

SECTION 17. APPEAL OF SUSPENSION

.01 If an Electronic Filer receives a suspension letter from the National Coordi-

nator, the Electronic Filer is entitled to appeal, by written protest, to the National Director of Appeals. The written protest must be sent to the National Coordinator, who will forward it to the National Director of Appeals. During the appeals process, the suspension remains in effect.

.02 The written protest must be received by the National Coordinator within 30 calendar days of the date of the suspension letter. The written protest must contain detailed reasons, with supporting documentation, for termination of the suspension.

.03 Within 15 calendar days of receipt of a written protest, the National Coordinator will forward the file on the Electronic Filer and the material described in section 17.02 of this revenue procedure to the National Director of Appeals.

.04 Failure to appeal within the 30-day period described in section 17.02 of this revenue procedure irrevocably terminates the Electronic Filer's right to appeal the suspension.

SECTION 18. PENALTY FOR A FAILURE TO TIMELY FILE A RETURN

Section 6651(a)(1) provides that for each month (or part thereof) a return is not filed when required (determined with regard to any extensions of time for filing), there is a penalty of 5 percent of the unpaid tax not to exceed 25 percent, absent reasonable cause. A taxpayer does not establish reasonable cause simply by engaging a competent Agent to file the taxpayer's return. However, if the Agent has reasonable cause under § 6651(a) for failing to timely file the taxpayer's return, the taxpayer will also have reasonable cause for that failure, and the failure-to-file penalty will be abated.

SECTION 19. FILING FORMS W-4 WITH THE INTERNAL REVENUE SERVICE

.01 An employer is required to send to the Service by the due date of the quarterly return copies of all Forms W-4, Employee's Withholding Allowance Certificates, received during the quarter from any employee still employed at the end of the quarter who claims:

(1) more than 10 withholding exemptions; or

(2) exemption from withholding and

is expected to earn more than \$200 per week.

Employers should not send other Forms W-4 unless notified by the Service in writing to do so.

.02 If an employer's Form 941 is filed under the Form 941 ELF Program, copies of required paper Forms W-4 along with a cover letter providing the employer's name, address, EIN, and the number of Forms W-4 included must be sent to the service center that would have received the employer's paper Form 941. See Publication 15, Circular E, Employer's Tax Guide, for more information on sending Forms W-4 to the Service.

.03 Required Forms W-4 information may also be filed on magnetic media (5 1/4 inch diskettes, 3 1/2 inch diskettes, or magnetic tape). See Publication 1245, Specifications for Filing Form W-4, Employee's Withholding Allowance Certificate, on Magnetic Tape, and 5 1/4- and 3 1/2-Inch Magnetic Diskettes, for more information concerning magnetic media filing of Forms W-4.

SECTION 20. FILING FORMS W-2 (COPYA) WITH THE SOCIAL SECURITY ADMINISTRATION

Forms W-2, Wage and Tax Statements, must be filed directly with the Social Security Administration on magnetic media or paper. For information on magnetic media reporting of Form W-2, contact the Social Security Administration's Regional Magnetic Media Coordinators.

SECTION 21. INTERNAL REVENUE SERVICE CONTACT

Unless otherwise instructed, all questions regarding this revenue procedure should be directed to the following address and telephone number:

Internal Revenue Service
Memphis Service Center
Electronic Filing Help Desk
P.O. Box 30309 AMF
Memphis, TN 38130
Attention: ELF Unit Stop 26

The telephone number of this office is (901) 546-2690 (not a toll-free number).

SECTION 22. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 96-9 is amplified, clarified, modified, and superseded.

.02 Section 6.05 of Rev. Proc. 96-17, 1996-1 C.B. 633, is modified to provide the same relief as set forth in section 5.05 of this revenue procedure (regarding an Agent not having to replace a previously submitted Authorization under certain circumstances).

SECTION 23. EFFECTIVE DATE

.01 *In general.* This revenue procedure is effective for returns due after October 20, 1997 (without regard to extensions).

.02 *Grandfather rule.* A taxpayer or an Agent that has filed an application for acceptance in the Form 941 ELF Program on or before the effective date of this revenue procedure, may be treated as an Electronic Filer that is an Agent for purposes of this revenue procedure. The taxpayer or Agent must have been eligible to apply for acceptance in the Form 941 ELF Program under Rev. Proc. 96-19, and must comply with all the applicable provisions of this revenue procedure other than the section 5.03(5) requirement of an Agent's List containing the names of 10 or more taxpayers.

SECTION 24. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1557.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 5, 6, 7, 8, 10, 12, and 13. This information is required by the Service to implement the Form 941 ELF Program and to enable taxpayers to file their Forms 941 electronically. The information will be used to ensure that taxpayers receive accurate and essential information regarding the filing of their electronic returns and to identify persons involved in the filing of electronic returns. The collections of information are required to retain the benefit of

participating in the Form 941 ELF Program. The likely respondents are business or other for-profit institutions, federal, state or local governments, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting and recordkeeping burden is 9,305 hours.

The estimated annual burden per respondent/recordkeeper varies from 9 hours to 47 hours, depending on individual circumstances, with an estimated average of 46.53 hours. The estimated number of respondents and recordkeepers is 200.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

APPENDIX

Exhibit 1

Letter of Application to Participate in the Form 941 ELF Program as an Agent

AAAPayroll, Inc.
111 Main St.
Columbus, NY 11111
EIN XX-XXXXXXX

[Date]

Internal Revenue Service
Memphis Service Center
Electronic Filing Help Desk
P.O. Box 30309 AMF
Memphis, TN 38130
Attention: ELF Unit Stop 26

To whom it may concern:

This letter is an application to participate in the electronic filing program for Forms 941 ("Form 941 ELF Program").

I understand and agree to the following which are prerequisites for participation in the Form 941 ELF Program:

1. I will keep copies of the Form 8655, Reporting Agent Authorization for Magnetic Tape/Electronic Filers (or its equivalent) on file at my principal place of business for a period no less than required under the period of limitation for assessment for the last return filed under its authority. I will provide these Authorizations for examination by the Service upon request.
2. I will abide by the recordkeeping requirements set forth in section 10.02 of Rev. Proc. 97-47.

3. I will provide my clients documentation of filed returns as set forth in section 10.03 of Rev. Proc. 97-47.

4. I will comply with all electronic security restrictions set forth in section 10.04 of Rev. Proc. 97-47 and Publication 1855, Technical Specifications Guide for the Electronic Filing System of Form 941, Employer's Quarterly Federal Tax Return.

5. I agree to submit returns that meet the eligibility requirements set forth in section 3.03 of Rev. Proc. 97-47.

[Name, title] of [firm name] is the individual to contact concerning the userid/password. [Name] can be reached at [telephone number]. [Name] has read and understands the rules that apply to the use of the userid/password.

[Name, title] of [firm name and address] is the designated recipient of the Personal Identification Number (PIN). [Name] is authorized to administer and use the PIN as the signature of [firm name] to sign and file tax returns in the Form 941 ELF Program.

I will begin submitting returns using the Form 941 ELF Program for returns due XX quarter 19XX. I estimate that I will be submitting XXX number of returns (no fewer than 10 returns).

I expect to use [software brand name] translation software and EDI release version [number] for electronic transmissions.

I have included with this application a Reporting Agent's List and an Authorization for each taxpayer on my Reporting Agent's List.

Please contact [name, title & telephone number] to discuss this letter of application.

[Signature of Electronic
Filer's Authorized Signatory]

Attachments:

(1) Agent's List

(2) Authorizations for taxpayers on the Agent's List

Exhibit 2

Letter of Application to Participate in the Form 941 ELF Program as a Software Developer

AAAPay Developers
111 Main St.
Columbus, NY 11111
EIN XX-XXXXXXX

[Date]

Internal Revenue Service
Memphis Service Center
Electronic Filing Help Desk
P.O. Box 30309 AMF
Memphis, TN 38130
Attention: ELF Unit Stop 26

To whom it may concern:

This letter is an application to participate in the electronic filing program for Forms 941 (“Form 941 ELF Program”).

I understand and agree to the following which is a prerequisite for participation in the Form 941 ELF Program as a software developer:

I will comply with all electronic security restrictions set forth in section 10.04 of Rev. Proc. 97-47 and

Publication 1855, Technical Specifications Guide for the Electronic Filing System of Form 941, Employer’s Quarterly Federal Tax Return.

[Name, title] of [firm name] is the individual to contact concerning the userid/password. [Name] can be reached at [telephone number]. [Name] has read and understands the rules that apply to the use of the userid/password.

[Name, title] of [firm name and address] is the designated recipient of the Personal Identification Number (PIN). [Name] is authorized to administer and use the PIN as the signature of [firm name] to test software for use in filing tax returns in the Form 941 ELF Program.

I will provide software to begin submitting returns using the Form 941 ELF Program for returns due XX quarter 19XX.

I will use [name of software brand or development name] translation software and EDI release version [number] for electronic transmissions. The software package will be marketed to [reporting agents filing more than XXX returns (no fewer than 10 returns)]. The software is a [standalone or payroll package interface].

Please contact [name, title & telephone number] to discuss this letter of application.

[Signature of Software
Developer’s Authorized Signatory]

Exhibit 3

PIN/Userid/Password Receipt

I, [*insert "name of Authorized Signatory, title, Electronic Filer's name and address"*] acknowledge receipt of the [*insert "userid/password" or "PIN" as appropriate*] for the Form 941 ELF Program.

I understand that I am bound by the requirements and responsibilities regarding [*insert userid/password, or "PIN" as appropriate*] as set forth in Rev. Proc. 97-47, and Publication 1855.

[Note: the following paragraph only applies to the PIN receipt] I accept and adopt the PIN as my signature for signing tax returns filed for [*insert "Electronic Filer's name"*] in the Form 941 ELF Program. I also understand that by entering the PIN, I will be declaring, under penalties of perjury, that to the best of my knowledge and belief, the tax returns being submitted electronically are true, correct, and complete.

For userid/password: [Signature of employee recipient]

For PIN: [Signature of Electronic Filer's Authorized Signatory]

NOTE: Separate receipts are required for a user identification/password and a PIN.