(*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ," as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[7]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/iSAFEsafeharbor*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/iSAFEsafeharbor*). If this document appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the document and the news release describing it.

A comment filed in paper form should include the "iSAFE Safe Harbor Proposal, P094504" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex E), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. 2010–291 Filed 1–12–10: 8:45 am]

BILLING CODE 6750–01–S

[7] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–137036–08]

RIN 1545–BI21

Section 3504 Agent Employment Tax Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to employment tax liability of agents authorized by the Secretary under section 3504 of the Internal Revenue Code (Code) to perform acts required of employers with respect to taxes under the Federal Unemployment Tax Act on wages paid for home care services, as defined in these regulations. These proposed regulations affect employers who are home care service recipients, as defined in these regulations, and their designated agents. These regulations also propose amendments to modify the existing regulations under section 3504 to be consistent with the organizational structure of the Internal Revenue Service (IRS), and to update the citation to the Internal Revenue Code of 1986.

DATES: Written or electronic comments must be received by April 13, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–137036–08), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–137036–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Additionally, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov.* (Indicate IRS and REG–137036–08.)

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Selvan Boominathan at (202) 622–0047; concerning the submission of comments or requests for a hearing, contact Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Federal, State, and local government programs seek to help elderly or disabled individuals maintain their independence by funding home health care and other personal services. See, for example, Deficit Reduction Act of 2005, Public Law 109–171, se. 6071, 120 Stat. 4, 102–110 (2006) (authorizing the Secretary of Health and Human Services to, among other things, award grants to states to "[i]ncrease the use of home and community-based, rather than institutional, long-term care services.") The government agencies that administer the programs seek to assist the service recipients with employment tax compliance by helping the service recipients to designate agents to report, file, and pay employment taxes on their behalf. The IRS and the Treasury Department are proposing changes to the regulations under section 3504, the section under which a third party can be authorized to act as an agent for an employer, to permit designated agents to provide comprehensive assistance to these service recipients who are employers.

1. Employment Taxes in General

Employers are generally required to withhold income tax and Federal

Insurance Contributions Act (FICA) taxes from their employees' wages under sections 3402(a) and 3102(a), respectively, and are separately liable for the employer's share of FICA taxes and Federal Unemployment Tax Act (FUTA) taxes under sections 3111 and 3301, respectively (collectively referred to herein as "employment taxes"). Sections 3102(b), 3111, 3301, and 3403 provide that the employer is the person liable for the withholding and payment of employment taxes; additionally, the employer is required to make tax deposits, file employment tax returns, and file and furnish Forms W–2, *Wage and Tax Statement,* to employees (collectively referred to herein as "employment tax obligations"). An *employer* is generally defined as the person for whom an individual performs services as an employee. See Sections 3121(d), 3306(a), and 3401(d).

FUTA tax is imposed under section 3301 on each employer in an amount equal to a percentage of wages paid by the employer with respect to employment. FUTA tax is imposed on the employer in an amount equal to 6.2 percent of wages. Under section 3306(b), wages of an employee subject to the FUTA tax are limited to $7,000 per calendar year. Section 3302 provides for a credit against FUTA tax in the amount of contributions paid by the employer into an unemployment fund maintained during the taxable year under the unemployment law of a State. The credit is limited to an amount equal to 90 percent of the FUTA tax.

2. Domestic Service Employment

The employment tax obligations of an employer are modified with respect to domestic services provided in a private home of the employer. Employers are not required to withhold income taxes on wages paid for domestic services, but may enter into a voluntary withholding agreement to withhold income taxes from one or more domestic employees. See sections 3401(a)(3) and 3402(p). An employer is not liable for FICA taxes with respect to cash wages for domestic services as long as the cash wages are less than an applicable dollar threshold amount, which is adjusted annually. Sections 3121(a)(7)(B) and 3121(x). When the cash wages equal or exceed the threshold amount, all of the cash wages (including amounts below the threshold) paid to that employee by the employer are subject to FICA taxes. For example, the FICA wage threshold for domestic services for 2009 is $1,700. This threshold applies separately to each employer with respect to each employee. An employer is liable for FUTA taxes with regard to domestic services if the employer paid aggregate wages of $1,000 or more (for all domestic employees) in any calendar quarter in the current or prior year. Section 3306(c)(2).

3. Agency Relationship Under Code Section 3504

Section 3504 of the Code authorizes the Secretary of the Treasury to promulgate regulations to authorize an agent to perform certain specified acts required of employers. Under section 3504, all provisions of law (including penalties) applicable with respect to employers are applicable to the agent and remain applicable to the employer. Accordingly, both the agent and employer are liable for the employment taxes and penalties associated with the employer's employment tax obligations undertaken by the agent. Section 31.3504–1 of the Employment Tax Regulations provides that the IRS may authorize an agent to undertake the employment tax obligations of an employer with respect to income tax withholding and FICA taxes. The agent is required to file only one return for each tax return period using the agent's own employer identification number (EIN) regardless of the number of employers for whom the agent acts. The current regulations do not authorize an agent to undertake the employment tax obligations of an employer with respect to the FUTA tax. Thus, an authorized agent can act on behalf of the employer for income tax withholding and FICA tax purposes, but the employer must continue to meet its employment tax obligations with respect to FUTA tax.

4. Home Care Service Recipients

Federal, State, and local governments fund programs to provide elderly or disabled individuals with services to assist them with health care or other personal needs in their homes or communities. Following an evolution in policy that seeks to empower the individuals receiving services to have autonomy, these programs generally give the service recipients discretion in selecting the service providers and directing their activities. See Deficit Reduction Act of 2005 section 6071(d)(2)(C)(ii), 120 Stat. at 108 (providing that the Secretary of Health and Human Services shall give preference when awarding grants to state applications proposing to provide eligible individuals with the opportunity to receive home and community-based long-term care services as self-directed services); also see "Roadmap to Medicaid Reform," Centers for Medicare and Medicaid Services, available at *http://www.cms.hhs.gov/smdl/downloads/Rvltcneeds.pdf.* The programs authorize the use of certain intermediaries to serve as agents to disburse payments to service providers on the service recipient's behalf. The federal, State, or local government agencies that administer these programs screen intermediaries before they are entrusted with funds to pay for the services. Intermediaries can be public or private entities. Many are nonprofit organizations. The IRS addressed questions with regard to certain intermediaries working with state or local government agencies in previous guidance. See Notice 2003–70, 2003 CB 916. See § 601.601(d)(2).

The service recipient is generally the employer of the individuals providing the services for employment tax purposes. However the Service recognizes that there are some government programs under which parents, grandparents, or guardians who are engaged in providing care for a disabled child or grandchild receive funding that do not give rise to an employment relationship between the service recipient and the care provider. Although the services generally constitute domestic services under section 3401(a)(3) such that income tax withholding is not required, FICA tax and FUTA tax must still be paid subject to the applicable thresholds, and some service recipients and their service providers may agree to voluntarily withhold income tax under section 3402(p). In recent years, many home care service recipients have applied to designate the intermediary that arranges to pay their service providers as an agent under section 3504 so that the intermediary can withhold, report, and pay income tax withholding and FICA tax on the service recipient's behalf. Designating these intermediaries as agents reduces the administrative burden on the service recipient who may not otherwise have an obligation to report, file, or pay employment taxes. The intermediaries have access to training in compliance with employment tax requirements and have the payroll information from the payments they make to the service providers. An intermediary that is designated as an agent can efficiently handle reporting, filing, and paying income tax withholding and FICA on behalf of multiple service recipients on a single return. A service recipient can complete the application to designate the intermediary as agent at the time the recipient enrolls with the intermediary.

Under the current regulations, a service recipient can designate an intermediary as agent to handle income

tax withholding and FICA but cannot designate an intermediary as agent to pay FUTA tax and file FUTA returns. As a result, separate FUTA returns must be prepared for thousands of individual service recipients reporting small amounts of wages and FUTA tax.

Explanation of Provisions

These proposed regulations would amend the current regulations to allow a home care service recipient to designate an agent under section 3504 to report, file, and pay all employment taxes, including FUTA. This change will allow an intermediary to file a single FUTA return on behalf of multiple home care service recipients as the intermediary does currently with respect to income tax withholding and FICA.

Specifically, the proposed regulation would amend the employment tax regulations under section 3504 to provide that the IRS may authorize a party to act as agent on behalf of employers who are home care service recipients with respect to FUTA taxes imposed on wages paid for home care services, provided that the party has been authorized to act as an agent for those home care service recipients for income tax withholding and FICA tax purposes. The agent is permitted to act for FUTA tax purposes only on behalf of employers who are home care service recipients, and not for any other type of employer on whose behalf the agent is authorized to act for income tax withholding and FICA tax purposes. Additionally, the agent is permitted to act as an agent for FUTA tax purposes only with respect to wages paid for home care services rendered to the home care service recipient.

These regulations propose to define the term *home care service recipient* as an individual who is an enrolled participant in a program administered by a Federal, State, or local government agency that provides Federal, State, or local government funds to pay, in whole or in part, for the provision of home care services, as defined in the proposed regulations. A participant qualifies as a home care service recipient while enrolled in such a program and until the end of the calendar year in which the participant ceases to be enrolled in the program. In all such programs, intermediaries who are engaged to assist beneficiaries to receive and distribute funds on the beneficiaries' behalf are reviewed and approved by a state or local government agency.

These regulations propose to define *home care services* to include health care and personal attendant care services rendered to a home care service recipient in his home or local community. Services provided outside the home care service recipient's private home may qualify as home care services for purposes of these regulations even if the services do not qualify as domestic service in a private home of the employer for purposes of sections 3121(a)(7), 3306(c)(2), and 3401(a)(3), so long as the services are provided within the service recipient's local community.

Because section 3504 provides that all provisions of law applicable to an employer apply to the agent, the agent can report on its aggregate FUTA tax return the state unemployment contributions paid into a state unemployment fund on the home care service recipient's behalf as a credit under section 3302 against the FUTA tax. The credit can be reported by the agent regardless of whether the state unemployment contributions are made under the name and state identifying number of the home care service recipient or the agent.

These regulations also propose amendments to modify the existing regulations under section 3504 to be consistent with the organizational structure of the IRS and to update the citation to the Internal Revenue Code of 1986.

Proposed Effective Date

These regulations are proposed to apply to wages paid on or after January 1 of the calendar year following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register.** Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. Additionally, pursuant to section 7805(b)(7), taxpayers may apply these proposed regulations to all taxable years for which a valid designation as an agent has been in effect under § 31.3504–1(a) of the Employment Tax Regulations. Thus, prior to publication of a Treasury decision adopting these rules as final regulations, any party already authorized under section 3504 to serve as an agent for a home care service recipient, as defined in the proposed regulations, or with an application pending, will not need to file any additional application in order to expand the scope of the agency to cover FUTA taxes.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed regulation. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Selvan Boominathan, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Reporting and recordkeeping requirements, Railroad retirement, Social Security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3504–1 is revised to read as follows:

§ 31.3504–1 Designation of Agent by Application.

(a) *In general.* In the event wages as defined in chapter 21 or 24 of the Internal Revenue Code of 1986, or compensation as defined in chapter 22 of the Code, of an employee or group of employees, employed by one or more employers, is paid by a fiduciary, agent, or other person ("agent"), or if that agent has the control, receipt, custody, or disposal of those wages, or compensation, the Internal Revenue Service may, subject to the terms and conditions as it deems proper, authorize that agent to perform the acts required of the employer or employers under those provisions of the Code and the regulations which have application, for purposes of the taxes imposed by the chapter or chapters, in respect of the wages or compensation. If the agent is authorized by the Internal Revenue Service to perform such acts, all provisions of law (including penalties) and of the regulations applicable to an employer shall be applicable to the agent. However, each employer for whom the agent acts shall remain subject to all provisions of law (including penalties) and of the regulations applicable to an employer. Any application to authorize an agent to perform such acts, signed by the agent and the employer, shall be made on the form prescribed by the Internal Revenue Service and shall be filed with the Internal Revenue Service as prescribed in the instructions to the form and other applicable guidance.

(b) *Special rule for home care service recipients.* (1) *In general.* In the event a fiduciary, agent, or other person ("agent") is authorized pursuant to paragraph (a) of this section to perform the acts required of an employer under chapters 21 or 24 on behalf of one or more home care service recipients, as defined in paragraph (b)(3) of this section, the Internal Revenue Service may authorize that agent to perform the acts as are required of employers for purposes of the tax imposed by chapter 23 of the Internal Revenue Code of 1986 with respect to wages paid for home care services, as defined in paragraph (b)(2) of this section, rendered to the home care service recipient. Each home care service recipient for whom the agent performs the acts of an employer and each agent authorized under this section to perform the acts of an employer shall remain subject to all provisions of law (including penalties) and of the regulations applicable to an employer with respect to those wages paid.

(2) *Home care services.* For purposes of this section, the term *home care services* includes health care and personal attendant care services rendered in the home care service recipient's home or local community.

(3) *Home care service recipient.* For purposes of this section, the term *home care service recipient* means any individual who receives home care services, as defined in paragraph (b)(2) of this section, while enrolled, and for the remainder of the calendar year after ceasing to be enrolled, in a program administered by a Federal, state, or local government agency that provides Federal, state, or local government funds, to pay, in whole or in part, for the home care services for that individual.

(c) *Effective and applicability dates.* An authorization under paragraph (a) of this section in effect prior to the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register** continues to be in effect after that date. Paragraph (b) of this section applies to wages paid on or after January 1 of the calendar year following the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register.** However, pursuant to section 7805(b), taxpayers may rely on paragraph (b) of this section for all taxable years for which a valid designation is in effect under paragraph (a) of this section.

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–415 Filed 1–12–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–1021]

RIN 1625–AA09

Drawbridge Operation Regulation; New Haven Harbor, Quinnipiac and Mill Rivers, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the operation of three bridges across the Quinnipiac and Mill Rivers at New Haven, Connecticut, to relieve the bridge owner from the burden of crewing the bridges during time periods when the bridges seldom receive requests to open while still providing for the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before February 12, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–1021 using any one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Judy Leung-Yee, Project Officer, U.S. Coast Guard; telephone 212–668–7165, e-mail *judy.k.leung-yee@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–1021), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be