

New Filing Requirement to Notify IRS of Changes in an Entity's "Responsible Party"

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Effective January 1, 2014, the IRS now requires the use of a new form, Form 8822-B, for any entity that has a federal Employer Identification Number (FEIN) to report changes in the entity's "responsible party." The requirement to file Form 8822-B applies to all entities with an FEIN, including those which are tax-exempt. Although not required, Form 8822-B may also be used to report changes to an entity's mailing and/or street address.

Definition of "responsible party"

An entity's original "responsible party" is the individual or entity named on the entity's EIN application (Form SS-4). The instructions to Form 8822-B define a "responsible party" as:

...the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage, or direct the entity (such as in the case of a minor child beneficiary), does not cause the individual to be a responsible party.

For changes that occur on or after January 1, 2014, Form 8822-B is required to be filed within **sixty (60) days** of any change in the identity of the entity's "responsible party." In the case of a change that occurred before 2014, the entity must file Form 8822-B **before March 1, 2014**, and only the most recent change is to be reported.

Interestingly, the Instructions to Form 8822-B currently provide that there are no penalties for failing to file Form 8822-B. They do note, however, that, if an entity fails to provide the IRS with its current mailing address or the identity of its "responsible party," the entity may not receive notice of a deficiency or demand for tax, and that the failure to receive such notice will not avoid penalties and interest from accruing.

Contact



[Ravi Sundara](#)
(314) 333-3912
rsundara@spencerfane.com

Steps to take now

An entity that has a copy of its EIN application (Form SS-4) should verify that the individual or entity named as the “responsible party” is still within the definition described above. If such individual or entity no longer meets the definition to be the entity’s “responsible party,” the entity should file Form 8822-B ***before March 1, 2014***, to designate a new “responsible party.” If an entity no longer has a copy of its EIN application (Form SS-4) and does not know who was named as the entity’s “responsible party,” the entity should consider submitting Form 8822-B before March 1, 2014, in any event, to name a current “responsible party” even though the identity of the previous “responsible party” might have to be left blank. Going forward, the entity should be sure to file a new Form 8822-B within sixty (60) days of any change in the identity of its “responsible party.”

If you have questions regarding the filing of Form 8822-B or regarding who is the entity’s “responsible party,” we suggest that you consult with your attorney or tax advisor. It is possible that your attorney or tax advisor may also have a copy of the entity’s EIN application (Form SS-4). For more information on this new reporting requirement, Form 8822-B and its instructions can be found at the following link: <http://www.irs.gov/pub/irs-pdf/f8822b.pdf>

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