



Eye On Washington Regulatory Update



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IRS Issues Guidance Concerning 2018 Forms W-4

On January 28, 2018, the Internal Revenue Service (IRS) issued Notice 2018-14 to offer guidance to employers concerning Forms W-4, Employee's Withholding Allowance Certificate, establishing claims of exemption, in light of the Tax Cuts and Jobs Act (P.L. 115-97) and the delayed publication of the 2018 Form W-4.

Background

The Tax Cuts and Jobs Act (the Act) made significant changes to tax rates, deductions, tax credits, and withholding calculations, beginning in 2018. The IRS released Notice 1036 (Rev. January 2018), Early Release Copies of the 2018 Percentage Method Tables for Income Tax Withholding, on January 11. However, the IRS does not expect to release a revised 2018 Form W-4 and instructions until late February.

Generally, employers are required to disregard employee claims of exemption from withholding that are not reestablished on a new Form W-4 by February 15. Notice 2018-14 extends, until February 28, the effective period of Forms W-4 claiming exemption from withholding for 2017, and permits employees to claim exemption from withholding for 2018 by annotating and signing a 2017 Form W-4. The Notice provides procedures for claiming exemption from withholding for 2018, using the 2017 Form W-4.

In light of the delayed Form W-4, Notice 2018-14 also suspends the requirement that employees must provide a revised Form W-4 within 10 days of any change to their tax status that would reduce the allowances to which they are entitled.

Notice 2018-14 also provides that the optional flat withholding rate for supplemental wage payments is 22 percent, and provides that, for 2018, withholding pensions, annuities, and other deferred income, when no withholding certificate is in effect, is based on treating the payee as a married individual claiming three withholding allowances.

The IRS is currently working on revising Form W-4 to reflect the changes made by the Act, such as changes in available itemized deductions, increases in the child tax credit, the new dependent credit, and the repeal of dependent exemptions.

As a result, the 2018 Form W-4 may not be released until after February 15, 2018. The Act does not mandate that employees furnish new Forms W-4 for 2018.

The IRS notes that "For employees with simpler tax situations, the new tables are designed to produce the correct amount of tax withholding. The revisions are also aimed at avoiding over- and under-withholding of tax as much as possible." The IRS is expected to release an online withholding calculator on www.irs.gov reflecting changes made by the Act, to help employees determine whether they should update their withholding allowances in response to the Act or changes in their personal circumstances in 2018.

The Notice describes the procedures by which employees may claim exemption from withholding for 2018 using the 2017 Form W-4. (These procedures expire 30 days after the 2018 Form W-4 is released.)

An employee may claim exemption from income tax withholding if the employee certifies on Form W-4 that (1) the employee incurred no liability for income tax for the preceding taxable year; and (2) the employee anticipates that he or she will incur no liability for income tax for the current taxable year. Forms W-4 furnished to the employer claiming exemption from withholding for a taxable year are effective up to and including February 15 of the following year, and an employer may continue to rely on employees' Forms W-4 claiming exemption from withholding until February 16 of the following year. Since the IRS may not release the 2018 Form W-4 until after February 15, Forms W-4 claiming exemption from withholding for 2017 may be treated as effective through February 28, 2018. The 2017 Forms W-4 claiming exemption from withholding for 2017 are not effective for wage payments made after February 28, 2018.



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Employees may claim exemption using the 2017 Form W-4 until 30 days after the 2018 Form W-4 is released, by striking "2017" in the text on Line 7 of the Form W-4 and entering "2018" in its place and signing the form in 2018, or by entering "Exempt 2018" on Line 7 of the 2017 Form W-4 and signing it, or by signing the 2017 Form W-4 without modification, if the employer establishes a procedure under which an employee signs and furnishes the 2017 Form W-4 in 2018 to certify both that the employee incurred no income tax liability for 2017 and that the employee anticipates that he or she will incur no income tax liability for 2018 – and thus claims exemption from withholding for 2018. Any method substantially similar to these approaches that conveys in writing an employee's intent to certify his or her exemption from withholding for 2018 is acceptable.

Employers with electronic systems for administering Forms W-4 withholding allowance certificates are permitted to modify their electronic systems to conform with these options.

Lastly, under Internal Revenue Code (IRC) Section 3405, the payor of certain periodic payments for pensions, annuities, and other deferred income generally is required to withhold

from the payments as if they were wages unless an individual elects not to have withholding apply to the periodic payment. The withholding election generally is made using Form W-4P, Withholding Certificate for Pension or Annuity Payments.

Under the law in effect before 2018, IRC Section 3405(a)(4) provided that, in the case of a payee entitled to periodic payments with respect to which a withholding certificate has not been furnished, the amount to be withheld from each such payment "shall be determined by treating the payee as a married individual claiming 3 withholding exemptions." The Act amended IRC Section 3405(a)(4) to provide that the withholding rate when no withholding certificate is furnished "shall be determined under rules prescribed by the Secretary."

The Notice provides that for 2018, the rules for withholding when no withholding certificate is furnished with respect to periodic payments under IRC Section 3405(a) will parallel the rules for prior years and be based on treating the payee as a married individual claiming three withholding allowances.

For details, see [IRS Notice 2018-14](#).

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