

Notice 2018-92

Interim Guidance and Request for Comments on Income Tax Withholding from Wages and from Retirement and Annuity Distributions

SECTION 1. PURPOSE

This notice provides interim guidance for the 2019 calendar year on income tax withholding from wages and from retirement and annuity distributions. This notice provides that certain withholding rules in Notice 2018-14, 2018-7 I.R.B. 353, that applied for 2018 will remain in effect for the 2019 calendar year or, in the case of one such rule, until April 30, 2019. Also, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) intend to develop regulations under sections 3401 and 3402 of the Internal Revenue Code, as amended by section 11041 of the Tax Cuts and Jobs Act, Pub. L. 115-97 (the “TCJA”). These withholding regulations will reflect changes made by the TCJA, other changes in the Code since the regulations were last amended, and certain miscellaneous changes consistent with current procedures. Comments are requested both on the interim guidance provided herein and guidance that should be provided in regulations. Comments must be received by January 25, 2019.

SECTION 2. OVERVIEW

Section 3402 requires an employer to withhold income tax from wages under methods and procedures prescribed by the Secretary. Section 3402 sets forth certain methods of withholding but also gives the Secretary broad regulatory authority in providing for tables or computational procedures for income tax withholding.

Longstanding regulations have provided specific rules for income tax withholding. See, for example, Treas. Regs. §§ 31.3402(b)-1 and 31.3402(c)-1. Under section 3402(f)(2), an employee who receives wages subject to withholding under section 3402 is required to furnish his or her employer a Form W-4 (Employee's Withholding Allowance Certificate). See also Treas. Reg. § 31.3402(f)(5)-1. An employee completes Form W-4 based on his or her personal tax situation and furnishes the Form W-4 to the employer.

Form W-4 is updated each year and is typically released before the beginning of the calendar year. Release of the 2018 Form W-4 was delayed until February 28, 2018, in order to reflect law changes made by the TCJA, such as changes in itemized deductions available, increases in the child tax credit, the new credit for other dependents, and the suspension of personal exemption deductions. Notice 2018-14, 2018-7 I.R.B. 353, provided relief for employers and employees affected by the delayed release of the 2018 Form W-4.

On June 6, 2018, and June 7, 2018, respectively, the IRS released for public comment a draft 2019 Form W-4 and draft instructions. Unlike the relatively minor changes made to Form W-4 in recent years, this draft form and instructions incorporated significant changes intended to improve the accuracy of income tax withholding and make the withholding system more transparent for employees. Many comments were received on the draft form and instructions. In response to comments received from stakeholders, the IRS and the Treasury Department announced on September 20, 2018, that implementation of the redesigned form would be postponed until 2020 and that the IRS and the Treasury Department would continue working

closely with stakeholders as additional changes are made to the form. Accordingly, instead of using the draft 2019 Form W-4 that was released in June of 2018, the IRS intends to release a 2019 Form W-4 before the end of 2018 that makes minimal changes to the 2018 Form W-4. Like the 2018 Form W-4, the 2019 Form W-4 will implement changes made by the TCJA using computational procedures based on allowances and will be “appropriate . . . to reflect the provisions of chapter 1 applicable to” the 2019 calendar year. See section 3402(a)(1)(B).

This notice includes the following sections. Section 3 addresses the use of the term “withholding allowance” in section 3402 and its regulations. Section 4 continues until April 30, 2019 the temporary suspension of the requirement under section 3402(f)(2)(B) that employees must furnish their employers new Forms W-4 within 10 days for reductions in allowances solely resulting from changes made by the TCJA. See Notice 2018-14, 2018-7 I.R.B. 353, 355. Section 5 addresses the repeal of section 3401(e) and provides that employees who have failed to furnish a Form W-4 will be treated as single but entitled to the number of allowances provided in accordance with computational procedures set forth by the Commissioner in Publication 15 (Circular E), Employer’s Tax Guide. Section 6 requests comments on items taken into account under section 3402(m) and Treas. Reg. § 31.3402(m)-1(b) and provides that taxpayers may include an estimate of the deduction allowed under section 199A in determining the additional withholding allowance under section 3402(m) to which they are entitled and may claim on Form W-4. Section 7 explicitly allows taxpayers to use the online withholding calculator (www.irs.gov/W4App) or Publication 505, Tax Withholding and Estimated Tax, in lieu of the worksheets to Form W-4. Section 8 requests comments on

alternative withholding methods under section 3402(h) and announces that the IRS and the Treasury Department intend to eliminate the combined income tax withholding and employee FICA tax withholding tables under Treas. Reg. § 31.3402(h)(4)-1(b). Section 9 modifies notification requirements for the withholding compliance program. Section 10 provides that, for 2019, the rules for default withholding for periodic payments under section 3405(a)(4), related to pensions, annuities and certain other deferred income, will continue to parallel the rules for prior years by treating the payee as a married individual claiming three withholding allowances and applying that status to the 2019 withholding tables.

SECTION 3. WITHHOLDING ALLOWANCES

Under sections 3402(a)(1)(A) and 3402(a)(2), as modified by the TCJA, for each employee, an employer is to withhold on “the amount by which the wages exceed the taxpayer’s withholding allowance, prorated to the payroll period.” This withholding allowance is determined by the criteria set forth in section 3402(f)(1). In addition, section 3402(m) provides that, “[u]nder regulations prescribed by the Secretary, an employee shall be entitled to an additional withholding allowance or additional reductions in withholding” under section 3402(m). On the 2018 Form W-4, in accordance with section 3402, an employee reported “withholding allowances” to the employer based on the employee’s personal situation. Although the TCJA amended section 3402(f) to provide for a “withholding allowance” in the singular rather than “withholding exemptions” in the plural, section 3402(f) provides that under rules determined by the Secretary, an employee shall be entitled to a withholding allowance determined on the basis of multiple items listed in section 3402(f), and section 3402(m)

provides for an additional withholding allowance. Accordingly, under the general authority to establish computational procedures pursuant to section 3402(a), the 2019 Form W-4 and the computational procedures in Publication 15 will continue to use the term “withholding allowances” and related terminology to properly incorporate the factors specified in section 3402(f) and the additional items in section 3402(m).

Pursuant to Treas. Reg. §§ 31.3402(b)-1 and 31.3402(c)-1, the 2019 Publication 15 will set the value of one withholding allowance for 2019. (The value of one withholding allowance for 2018 is \$4,150.) However, the IRS and the Treasury Department intend to amend the regulations under sections 3401 and 3402 describing withholding allowances and withholding exemptions to update the terminology used in those regulations. Until further guidance is issued, any reference to a withholding exemption in the regulations and guidance under section 3402 will be applied as if it were a reference to a withholding allowance. Thus, for example, the language in Treas. Reg. § 31.3402(f)(2)-1(g)(2)(i) providing for an IRS notification process to specify a “maximum number of withholding exemptions” an employee may claim will be applied as a reference to a maximum number of withholding allowances.

In addition, as provided with respect to periods prior to 2019, for 2019 certain nonresident aliens may claim only one withholding allowance under Treas. Reg. § 31.3402(f)(6)-1 and related instructions, such as Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens. If an employee identifies as a nonresident alien employee on the 2019 Form W-4, the employer should follow the instructions for adding a specified amount to the nonresident alien individual’s wages before application of the

wage withholding tables, as provided in Publication 15, to account for nonresident aliens' ineligibility for the standard deduction. See section 63(c)(6)(B).

Finally, section 3402(f)(2)(B) and (C) and the regulations thereunder provide that if an employee experiences a "change of status" that reduces the "withholding allowance" the employee is entitled to, the employee must furnish his or her employer a new Form W-4 within 10 days after the change if the change affects the current calendar year and by December 1 of the current calendar year if the change affects the next calendar year. See also Treas. Reg. §§ 31.3402(f)(2)-1(b) (for a change that affects the current calendar year) and 31.3402(f)(2)-1(c)(1)(i) (for a change that affects the next calendar year). However, if the change affecting the next calendar year occurs in December of the current calendar year, the employee must furnish a new Form W-4 within 10 days after the change occurs. See Treas. Reg. § 31.3402(f)(2)-1(c)(1)(i).

For 2019, the IRS and Treasury Department have determined that the "withholding allowance" as described in section 3402(f)(2)(B) and (C) means the number of withholding allowances claimed by the employee on Form W-4 multiplied by the value of the "withholding allowance" for 2019 as prescribed by the Commissioner in Publication 15. Thus, if an employee no longer reasonably expects to be entitled to one or more of the withholding allowances claimed on the Form W-4, the employee must generally furnish the employer a new Form W-4 within 10 days of the change.

However, see section 4 of this notice for a special rule related to TCJA changes.

SECTION 4. CHANGES OF STATUS SOLELY BECAUSE OF THE TCJA

As noted in section 3 of this notice, section 3402(f)(2)(B) and Treas. Reg. § 31.3402(f)(2)-1(b) provide that if an employee experiences a "change of status" that

reduces the withholding allowances to which the employee is entitled, that employee must generally furnish a new Form W-4 within 10 days. Under Section III of Notice 2018-14, employees who had a change of status “solely due to the changes made by the TCJA” were not required to furnish new Forms W-4 to their employers during 2018. The IRS and the Treasury Department have determined that this rule should continue in effect until April 30, 2019. Accordingly, if an employee experiences a change of status on or before April 30, 2019 that reduces the number of withholding allowances to which the employee is entitled and the change is solely due to the changes made by the TCJA, the employee is not required to furnish a new Form W-4 on or before May 9, 2019, but is generally required to furnish the employer a new Form W-4 by May 10, 2019. However, consistent with section 3 of this notice, if an employee no longer reasonably expects to be entitled to a claimed number of withholding allowances because of a change in personal circumstances not solely related to changes made by the TCJA (for example, an individual no longer qualifies as the employee’s qualifying child, as defined in section 152(c), because of a change in the individual’s principal place of abode), the employee must furnish his or her employer a new Form W-4 within 10 days after the change. Similarly, if an employee claims married filing status on Form W-4 but becomes divorced from his or her spouse, the employee must furnish the employer a new Form W-4 within 10 days after the change. See section 3402(l); Treas. Reg. § 31.3402(l)-1(b)(2). In addition, employees are encouraged to update their Forms W-4 as soon as they become aware of a change in withholding allowances they are entitled to resulting from changes made by the TCJA. The online withholding calculator (www.irs.gov/W4App) has been updated to reflect changes made by the TCJA and will

be updated for 2019. Employees are encouraged to check their withholding using this online tool to prevent under-withholding and possible section 6654 estimated tax penalties.

SECTION 5. EMPLOYEES WHO FAIL TO FURNISH A VALID FORM W-4

Prior to TCJA, section 3401(e) provided that employees who failed to furnish a Form W-4 were considered to have claimed zero withholding allowances or exemptions. See also Treas. Reg. § 31.3402(f)(2)-1(a) (last sentence). Under section 3402(l) an employee is treated as single unless the employee furnishes a Form W-4 indicating that the employee is married (determined by applying the rules of section 3402(l)(3)). Thus, under prior law, employees who failed to furnish a Form W-4 were treated as single with zero allowances for purposes of determining withholding.

TCJA repealed section 3401(e) but made no substantive changes to section 3402(l). Accordingly, the IRS and the Treasury Department intend to withdraw the regulations under section 3401(e) and modify other regulations to provide that employees who have failed to furnish a Form W-4 will be treated as single but entitled to the number of withholding allowances provided in accordance with computational procedures set forth by the Commissioner in Publication 15. Until further guidance is issued, the IRS plans to provide, in the computational procedures in Publication 15 applicable for 2019, that employees who fail to furnish a Form W-4 will be treated as single with zero withholding allowances.

SECTION 6. ESTIMATED AMOUNTS OF DEDUCTIONS AND CREDITS UNDER SECTION 3402(m)

Section 3402(m) allows for an additional withholding allowance or additional reductions in withholding under regulations prescribed by the Secretary. Treas. Reg. § 31.3402(m)-1(b) lists items that may be taken into account in determining the withholding allowance to which an employee is entitled. The IRS and the Treasury Department request comments with respect to the list of items set forth in Treas. Reg. § 31.3402(m)-1(b). Until further guidance under section 3402(m) is issued, in addition to the items listed in Treas. Reg. § 31.3402(m)-1(b) insofar as they are applicable to the relevant tax year, a taxpayer may include the taxpayer's estimated deduction under section 199A in determining the additional withholding allowance under section 3402(m) that the taxpayer is entitled to claim on Form W-4.

SECTION 7. USE OF WITHHOLDING CALCULATOR AND PUBLICATION 505 AS AN ALTERNATIVE WITHHOLDING PROCEDURE

Consistent with instructions currently provided in Publication 505, Publication 15, and the instructions for Form W-4, the IRS and the Treasury Department intend to update the regulations under section 3402 to explicitly allow employees to use the withholding calculator (www.irs.gov/W4App) or Publication 505 to determine what entries to make on Form W-4 in lieu of completing certain schedules included with the Form W-4. These options are appropriate for employees who want their withholding to be as accurate as possible. For 2018, the withholding calculator provides an amount to enter on line 5 of Form W-4 for total number of allowances claimed and, if appropriate, an additional amount to enter on line 6 of Form W-4 for an additional amount to be

withheld from each paycheck. The 2019 Form W-4 is expected to have the same lines. The accuracy of the calculator results depends on the accuracy of the information entered into the calculator.

As explained in the instructions for the IRS withholding calculator on the [irs.gov](https://www.irs.gov) website, taxpayers in certain situations should not use the calculator to calculate their withholding but should use Publication 505 instead. For example, for 2018, the 2018 withholding calculator should not be used by taxpayers who owe self-employment tax, alternative minimum tax, the tax on unearned income of dependents, or certain other taxes; taxpayers with long-term capital gains or qualified dividends; or taxpayers who have taxable social security benefits. It is expected that the regulations will provide that using the withholding calculator is not an acceptable procedure for an employee to follow in calculating withholding if the instructions for the IRS withholding calculator provide that it should not be used by the employee because of the employee's individual tax situation.

SECTION 8. ALTERNATIVE WITHHOLDING METHODS UNDER SECTION 3402(h)

The IRS and the Treasury Department request comments on alternative withholding procedures under section 3402(h). The IRS and the Treasury Department intend to eliminate one of the alternative withholding procedures, specifically, the combined income tax withholding and employee FICA tax withholding tables under Treas. Reg. § 31.3402(h)(4)-1(b), due to the unintended complexity and burden of the method. Although employers currently may withhold FICA and income tax simultaneously under these tables, they still need to report each of these amounts

separately on quarterly or annual employment tax returns and Forms W-2, thus reducing any benefit from using the combined tables.

SECTION 9. SUSPENSION OF REQUIREMENT TO NOTIFY THE IRS THAT AN EMPLOYEE IS NOT EMPLOYED BY AN EMPLOYER

In certain cases, the IRS may issue an employer a notice prescribing a maximum number of withholding allowances an employee may claim (a lock-in letter). See Treas. Reg. § 31.3402(f)(2)-1(g)(2)(i). When the employer no longer employs the employee (within the meaning of Treas. Reg. § 31.3402(f)(2)-1(g)(2)(iii)), Treas. Reg. § 31.3402(f)(2)-1(g)(2)(iv) requires the employer to send a written response to the IRS office designated in the lock-in letter that the employee is not employed by the employer. The IRS and the Treasury Department intend to eliminate this requirement from the regulations. Pending issuance of further guidance, employers should not send a written response to the IRS as provided in Treas. Reg. § 31.3402(f)(2)-1(g)(2)(iv).

SECTION 10. WITHHOLDING UNDER SECTION 3405

Under section 3405, the payor of certain payments for pensions, annuities, and certain other deferred income generally is required to withhold from the payments unless an individual elects not to have withholding apply to the payment. (The no-withholding election generally is unavailable with respect to eligible rollover distributions under section 3405(c) and certain payments to be made outside of the United States or its possessions under section 3405(e)(13).) An individual's withholding election identifying the marital status and number of allowances being claimed (as well as an individual's request for additional withholding) generally is made using Form W-4P, Withholding Certificate for Pension or Annuity Payments.

Under the law in effect before 2018, 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.” See also Temp. Treas. Reg. § 35.3405-1T, Q&A A-10. The TCJA amended 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.” See section 11041(c)(2)(G) of TCJA. Section V of Notice 2018-14 provided that, for 2018, the rules for withholding when no withholding certificate is furnished with respect to periodic payments under section 3405(a) parallel the rules for prior years and are based on treating the payee as a married individual claiming three withholding allowances. For 2019, the same rules will continue to apply to periodic payments under section 3405(a). Accordingly, for 2019, the rules for withholding when no withholding certificate is furnished with respect to periodic payments under section 3405(a) will parallel the rules for prior years and will be based on treating the payee as a married individual claiming three withholding allowances and applying that status to the 2019 withholding tables.

SECTION 11. REQUEST FOR COMMENTS

Interested parties are invited to submit comments on this notice by January 25, 2019. Comments should be submitted to: CC:PA:LPD:PR (Notice 2018-92), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 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 (Notice 2018-92), Courier’s Desk, Internal

Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., 20224.

Alternatively, taxpayers may submit comments electronically to

Notice.comments@irs.counsel.treas.gov. Please include "Notice 2018-92" in the subject line of any electronic submission.

SECTION 12. DRAFTING INFORMATION

The principal authors of this notice are A.G. Kelley and Mikhail Zhidkov of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mikhail Zhidkov at (202) 317-4774 (not a toll-free call).