

AMERICAN PAYROLL ASSOCIATION

July 3, 2018

Forms and Publications
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
WI.W4.Comments@IRS.gov

Re: Comments on the June 5, 2018, Preliminary Draft 2019 Form W-4, *Employee's Withholding Allowance Certificate*, and June 6, 2018, Preliminary Draft 2019 Instructions for Form W-4

Dear Forms and Publications:

Thank you for the opportunity to comment on the Internal Revenue Service's June 2018 preliminary draft Form W-4 and related instructions for 2019. APA appreciates the level of effort by the IRS and U.S. Department of the Treasury to prepare a revised Form W-4 under the "Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018" (Pub. L. 115-97), otherwise known as the Tax Cuts and Jobs Act (TCJA), with little time for implementation.

In general, APA believes the changes to the form and instructions reflect the new approach dictated by the new law. APA's comments focus on a fundamental understanding of employees and the relationship between employees and employers. This understanding raises some important difficulties with the draft Form W-4 and instructions to which APA offers recommended solutions.

ABOUT APA

APA is a professional organization serving the interests of more than 21,000 payroll professionals nationwide. Our primary mission is to educate members about the laws and regulations that impact payroll operations, including tax administration. APA's advocacy goals center on reduced administrative burden on government, employers, and individual workers. With 70.1 percent of tax collections coming from wage withholding and employer taxes (*2017 IRS Data Book*), the IRS's implementation of U.S. tax policy is extremely important to APA and its members.

GENERAL RECOMMENDATIONS

Time to Comply

APA recommends that the IRS publish a final version of the 2019 Form W-4 no later than the end of August. Of significant concern is the time that will be available to upgrade software systems and adjust payroll processes. The changes to the Form W-4 and the employer requirements will take time to understand and implement. If the final 2019 Form W-4 will be published in the fall (October), this leaves only about two or three months to make these changes and fully test them. APA members will need at least double that time to complete these changes.

Other Instructions

Because of the critical references to other documents for help in completing the 2019 Form W-4, such as Publication 505 and Notice 1392, the IRS should ensure that these documents reflect the latest information. Otherwise, employees and employers will review older versions that do not make sense.

Allow Employers to Require a 2019 Form W-4 from Their Employees

APA asks the IRS to include language in the Summary of the Instructions with the 2019 Form W-4 and in the separate instructions that says, “Your employer may require you to complete a new Form W-4.” This is important because some employers may not have the resources to accommodate software system upgrades that accommodate prior and new versions of the form. The general tone of the draft form and instructions implies that completing a new form is entirely at the discretion of the employee.

For reference, the following is one example of a software company’s scenario listing the tasks necessary to upgrade prior Forms W-4 and create a new system for the 2019 Form W-4:

- Expand the database structure to support data storage for lines 5-8 on the 2019 Form W-4,
- Compile the new calculation engine for the 2019 withholding formula,
- Expand the current withholding tax window to include the new data entry fields,
- Determine the data flag to identify the method of withholding for existing employees and new employees,
- Evaluate the process for managing the tax status of rehires,

- Establish a logic to prevent the new employees' tax status setup from having access to pre-2019 Form W-4 fields,
- Establish a logic to remove access to the previous tax status setup if existing employees submit 2019 Forms W-4,
- Establish a logic for a method to calculate the withholding if the software does not require the employer to identify the calculation method (allowance method versus 2019 formula),
- Create a help file to explain the process for the withholding calculations,
- Conduct extensive testing to ensure all instances and scenarios calculate properly,
- Provide educational outreach to clients.

SPECIFIC COMMENTS ON THE DRAFT 2019 FORM W-4

Personal Information and Privacy

Defining the Problem

The draft 2019 Form W-4 includes lines for employees to identify to their employer that they have nonwage income not subject to withholding, more than one job and/or a working spouse, itemized deductions, and tax credits, as applicable, to calculate their withholding based on the highest paying job in their household (lines 5-8). While some of this information was provided on previous Forms W-4 through various worksheet calculations leading to an equivalent number of withholding allowances that was then placed on the form, the information was not provided directly to employers.

The IRS created the preliminary draft Form W-4 both to comply with the TCJA's elimination of personal exemptions and to allow employees to provide information to their employers that would lead to the most accurate match between the employees' federal income tax withholding and their actual tax liability. However, employees will not likely agree to share information about other jobs and nonwage income with their employers nor are they likely to provide employers with their families' income not subject to withholding, including income as an independent contractor, interest, dividends, capital gains, etc. In many instances, employees do not know the income of their spouses and will not be able to provide this information.

The IRS recognized this problem and provides employees the alternative of using the agency's withholding calculator to determine if an additional amount to withhold should be put on line 9

of the form, while leaving lines 5-8 blank. However, the calculator is not easy to use and the instructions are confusing. An example is provided in Attachment A.

Recommended Solution

The withholding calculator requires updating to make it more effective for employees, even considering necessary 2019 Form W-4 changes. APA recommends the following:

- A “back” button would be useful to prevent the user from having to start over each time changes to a previous page are required.
- On the page about the number of jobs (see Attachment A, item 2), when checking “married, filing jointly,” instead of asking about the number of jobs “you” now hold, the instructions should say, “Enter the information that applies to each of your jobs and the jobs of your spouse.”
- An explanation is needed to assist employees in understanding how to estimate expected bonuses subject to withholding or what to do if bonuses are unknown (see Attachment A, item 3). Consider a pull-down box with instructions or a reference on where to find this information.
- In the sections on estimating 2018 amounts (tax-deferred retirement plan contributions, health insurance contributions, and qualified transportation benefits), an explanation of where to find this information or how to estimate would be useful (see Attachment A, items 4 and 5). For example, the IRS could reference Publication 505 and where to find the latest version.
- When using the term “to date,” the instructions should not also include the term “estimated” (see Attachment A, item 6, second paragraph). If data for a box includes amounts from January 1 through the day when using the calculator and any amounts expected through to December 31, the instructions should explain this clearly and concisely.
- When asking for the last salary amount, consider using the term “last full pay period” to avoid variations such as leave without pay in the last pay period (see Attachment A, item 7).
- When asking about start and end dates of employment during a given year, consider a heading or other reference to part and full-time employment during the year (see Attachment A, items 9 and 10). This will clarify the information requested.

- The difference between wage and nonwage income has become more complicated, especially in a gig economy (see Attachment A, item 11). The IRS should consider a more thorough explanation.
- Greater explanation is needed on the standard deduction versus itemizing in terms of when an employee should consider these options (see Attachment A, item 13).
- In the results, the withholding for anticipated taxes advises the employee to enter “0 allowances” (see Attachment A, page 15). In fact, even with the errors made by the employee in APA’s example, the calculator should have said \$0 (zero dollars) not allowances.
- Under “tips” in the results (see Attachment A), the second item recommends that if the employee has questions, to consult with the employer. Employers generally should not and will not offer tax advice to employees. The “Withholding Calculator Frequently Asked Questions” on the IRS’s website is more accurate. This same language should be provided in the calculator.
- When cautioning the employee in the results summary about underwithholding, as applicable, the explanation should explain that no additional tax withholding is required because your employer is already withholding the correct amount based on IRS tax tables. Telling employees that no taxes are owed with an opposite qualifier message in parentheses is too confusing. In addition, the message was wrong in telling the employee with 0 allowances that the employee will be underwithheld, when, in fact, claiming 0 allowances will result in the highest income tax withholding.
- Being able to access the “Withholding Calculator Frequently Asked Questions” while in the withholding calculator would be helpful to employees. They could get answers to some of their questions when they need them.

Line Analysis and Recommendations

Line 3

- The tax situation of individuals filing “single” and “married filing separately” is different. Employees may be confused with these terms combined in one check box. Therefore, create two check boxes for “ single” and “ married filing separately.”

Line 4

- Remove the check box that is now marked when the employee's name differs from the name on the social security card. Employees think that by checking the box, the employer will resolve the issue, when the instructions are clear that they must request a new card.

Before you begin

- **Corresponding Forms W-4:** The third bullet on the preliminary draft explains that lines 5 through 7 should be completed only for the highest paying job, but the information is not clear on which Form W-4 should be provided to each employer. A fourth bullet should be added to explain that each employer must receive a Form W-4 and which corresponding Form W-4 goes to each employer. Otherwise, the employee may provide a copy of the Form W-4 for the highest paying job to all of his or her employers and/or to a spouse's employer.
- **Employee versus Independent Contractor:** The highest paying job may be under independent contractor status. The IRS has not addressed the relationship between employee and independent contractor in terms of how to identify the highest paying job. In addition, there could be a fairness issue here if an employee cannot take advantage of deductions and credits because the highest paying job is as an independent contractor whether through the employee's own employment or that of a spouse.
- **Sequential Employment:** The instructions contemplate multiple jobs held at the same time. The information does not instruct employees on how to complete a Form W-4 if jobs are held one after the other in sequence (i.e., by project) either for the same employer or multiple employers, but otherwise covering a year of employment. Instructions should be provided.

Line 6

- **Warning of change:** The requested information refers to itemized and other deductions, but there is no warning that these deductions have changed under the Tax Cuts and Jobs Act. The instructions on page 2 offer some examples, but do not explain that some previous deductions cannot be taken. For example, moving expenses. The warning should be either in the section on "Before you begin" or directly in the description with line 6.

Lines 8 and 9

- **Annual versus per pay period amount:** Lines 5 through 8 contemplate an entry based on annual income, credits, and deductions. However, line 9 asks for an amount to be withheld from each paycheck not an annual amount. This can create confusion. Consider either changing line 9 to an annual entry or offering instructions to explain this difference.
- **Want versus need to withhold:** Line 9 asks employees to enter an additional amount that they “want withheld from each paycheck.” The term “want” is misleading because it suggests that employees have an option on whether to pay taxes through wage withholding when, in fact, inaccurate withholding is subject to a penalty. APA recommends that line 9 language reflect an additional amount of withholding, if any, needed for accurate withholding.

Summary of the Instructions

Preliminary Draft 2019 Form W-4, Page 2

Flat dollar or percentage withholding

- APA recommends that the general instructions explain that employees cannot ignore their filing status and ignore the lines on the Form W-4 to instead provide their employers with a flat dollar or percentage amount of withholding. Historically, some employees have drawn a line through certain lines on the form and put a withholding amount or percentage in the margin. On every Form W-4 for the past several years there has been language stating that withholding cannot be based on a flat dollar amount or percentage of wages, and this should be retained.

Line 3

- Add instructions for line 3 explaining the check boxes on page 2.
- **Qualifying widow(er):** The preliminary draft 2019 Instructions for Form W-4 include information on qualifying widow(er) on page 2, under Line 3, but this information is not on the summary instruction page. This should be added.

Line 8

- The instructions are not clear on how to address wages versus self-employment income, which have different tax consequences. For example, the IRS may intend to include self-

employment income on line 5. However, employees will not understand the distinction between wages paid to them through an employer and “wages” paid to themselves through their own business, so they may include such self-employment income as wages from a second job. Instructions should be added to explain this difference.

Example with three jobs

- In the instructions with the draft 2019 Form W-4 on page 2, an example is provided with three jobs. Instead of placing the dollar figures associated with each job, consider explaining further. For example, under item 1, an explanation should be added that because this is the highest paying job, the interest income, educator expenses, and child tax credit are entered on this Form W-4. These explanations tied to the placement of information on the form will allow employees to use the example to understand their own situation and serve to emphasize the instructions.

2019 INSTRUCTIONS FOR FORM W-4

The following are APA’s recommendations regarding the June 6, 2018, preliminary draft 2019 Instructions for Form W-4:

General Instructions

- ***Flat dollar or percentage withholding:*** APA recommends that the general instructions explain that employees cannot ignore their filing status and ignore the lines on the Form W-4 to instead provide their employers with a flat dollar or percentage amount of withholding. Historically, some employees have drawn a line through the form and put a withholding amount in the margin.
- ***Failure of new hire to complete new Form W-4:*** The first sentence under General Instructions states that if a newly hired employee does not complete a Form W-4, the employer will withhold based on “single with no adjustments.” APA recommends additional details on the term “no adjustments.” For example, in the past, withholding for an employee without a Form W-4 would default to single with zero allowances. The draft instructions imply that in the new form, the default for “single with no adjustments” means single with 2 allowances, since anyone checking the single filing status box automatically gets 2 allowances.
- ***Employee messaging:*** APA is concerned about the message to employees in the third paragraph, “If you have too much tax withheld, you will receive smaller paychecks throughout the year, but receive a refund when you file your tax return.” This statement

invites minimal withholding because it warns about overwithholding. APA recommends that the IRS explain to employees that they are required to have taxes withheld from their wages throughout the year and should complete their Form W-4 as accurately as possible to prevent having too much or too little withheld.

- ***Exemption from withholding:*** Employees are not warned about the restrictions on claiming exemptions by employees who can be claimed as a dependent by someone else and expect to exceed a certain threshold of unearned and total income for the year. Before 2018, this information was regularly included on Form W-4. APA asks the IRS add the warning back into the 2019 Form W-4 rather than through a general reference to Publication 505.

Line 6 Instructions

- ***Correction:*** In the first sentence, second line, the reference to “2018 tax return” should be “2019 tax return.”
- ***Standard Deduction versus Itemizing:*** Further information on when to take the standard deduction and when to itemize would be helpful. In addition, in multiple job situations or when filing as “married filing jointly,” the instructions are not clear. APA recommends the following language to replace the fourth sentence in the paragraph under “Line 6 Instructions” on page 3:

If you have more than one job at the same time, only enter an amount on line 6 of the Form W-4 you provide to the employer where you receive the highest amount of pay. If you are filing as married filing jointly and both you and your spouse have jobs, you or your spouse should only enter the information on line 6 of the Form W-4 provided to the employer where you or your spouse receives the highest amount of pay. Do not complete line 6 for all of your places of employment.

- ***Reference for “Other Deductions:”*** The line 6 instructions and the Deductions Worksheet do not include a reference on where to find more information on other deductions. This should be added.

Line 7 Instructions

- In multiple job situations or when filing as “married filing jointly,” the instructions are not clear. APA recommends the following language to replace the third sentence in the paragraph under “Line 7 Instructions” on page 3:

You may only claim the tax credits on one Form W-4. If you have more than one job at the same time, only enter an amount on line 7 of the Form W-4 you provide to the employer where you receive the highest amount of pay. If you are filing as married filing jointly and both you and your spouse have jobs, only you or your spouse should enter the information on line 7 of one Form W-4. The amount should be entered on the Form W-4 provided to the employer where you or your spouse receives the highest amount of pay.

Worksheet line 1, child tax credit

- In the second sentence, there is a reference to December 31 in describing qualifying children. Consider using “December 31, 2019” instead. This will ensure that employees do not complete the form based on the previous year, i.e., December 31, 2018, when completing the 2019 Form W-4.
- In the last sentence of this section on page 3, the instructions read: “If your total income will be higher than \$200,000..., you likely won’t be eligible for this credit.” The instructions should be more concrete by stating when the employee will not be eligible to take the credit. This problem may in large part be resolved once the IRS places all of the actual dollar figures in the credit worksheet.

Worksheet line 2, credit for other dependents

- In the last sentence of this section on page 4, the instructions read: “If your total income will be higher than \$200,000..., you likely won’t be eligible for this credit.” The instructions should be more concrete by stating when the employee will not be eligible to take the credit. This problem may in large part be resolved once the IRS places all of the actual dollar figures in the credit worksheet.

Line 8 Instructions

- On page 4 in the second paragraph of the right hand column, the second sentence reads: “Enter adjustments for lines 5, 6, and 7 only on the Form W-4 for the highest paying job you or your spouse hold. Lines 5, 6, and 7 should be blank on Form W-4 for any other jobs.” Consider changing these sentences to:

Enter adjustments for lines 5, 6, and 7 only on the Form W-4 you or your spouse will provide to the employer for the highest paying job you or your

spouse hold. Lines 5, 6, and 7 should be left blank on the Form W-4 you provide to all other employers.

- On page 4 of the right hand column, third paragraph, in the instructions that offer some examples of pre-tax amounts, consider adding transportation benefits or plans. This is a common pre-tax benefit and may help employees with accuracy.
- In paragraph 5 of the right hand column on page 4 that starts with “When figuring what to enter...” Consider the following changes:

When figuring what to enter on line 8 of the Form W-4 you (and your spouse) provide to each employer, first rank the jobs by the amount of annual wages from highest to lowest amount. Then, for each job, add together the wage amounts for all lower paying jobs. The Form W-4 provided to the employer for the lowest paying job will not include any jobs with less pay. The Form W-4 for the highest paying job will include all other jobs with wages added together. See the Example below. You can use the Multiple Jobs Worksheet to show you what amount to place on line 8 for each job.

Examples of how to complete Form W-4 using the worksheets

- *Example 1:* Consider adding to the example that Becky leaves line 8 blank because she only has one job.

Instructions for Employers - Figuring Employee Withholding

- *Prior year Forms W-4:* Consider more detail on where to find the information on prior year Forms W-4. For example, in the second sentence, “Employers can do this by keeping the number of withholding allowances and additional withholding...,” consider adding after “allowances” “from line 5” and after “withholding” “from line 6.” The sentence would then read: “Employers can do this by keeping the number of allowances from line 5 and additional withholding from line 6 the same as it is on prior year Forms W-4, and assume lines 5, 6, 7, and 8 are zero.”

CONCLUSION

APA’s ongoing dialogue with the IRS and the U.S. Department of the Treasury on tax policy implementation helps payroll professionals understand the requirements and make necessary changes to their processes and procedures to ensure compliance. APA is grateful to the IRS for

issuing the preliminary draft 2019 Form W-4 and instructions early to allow for comments and more time for implementation. APA’s Government Relations Task Force Subcommittee on IRS Issues would be pleased to assist the IRS and Treasury Department further in preparing these forms and any other tax measures with potential impact on payroll management.

Sincerely,

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Attachment A

An employee at an APA member's company used the calculator with the filing status of married filing jointly for the following scenario:

1. "Select the total number of jobs in which you and your spouse are currently or will be employed. (Enter military retirement pay or taxable pensions as additional separate jobs.)" The employee entered 2 (one for her and one for her spouse). She also checked the boxes for contributing to a 401(k) and for health insurance. The employee does not have children or other dependents and did not check any of the other boxes (65 years old, blind).
2. On the Income and Withholding screen the employee was confused by the following instructions: "For each job you now hold ... Enter the gross wages, salary, and tips you expect to receive in 2018. Use the amount of wages, salaries and tips before any taxes, benefits or other items are subtracted. Do not include bonuses." The employee asked where to enter her spouse's information (i.e., does Job 2 apply to her or her spouse?). She was required to start over.
3. The calculator then asked, "Enter in any bonuses you expect to receive in 2018." She asked her company manager if she was going to get a bonus this year. The manager explained the bonuses are discretionary and not determined until December each year. "Then what do I put in the calculator" the employee asked.
4. "Enter your total 2018 contribution to a tax-deferred retirement plan, such as a 401(k). The employee did not know her full contribution for 2018, because it was only May, so she entered the value from her 2017 Form W-2.
5. "Enter your total 2018 contribution to a cafeteria or other pre-tax plan, such as health insurance." While the employee could have used her pay statement to find the correct information, she again entered the value from her 2017 Form W-2. The Form W-2 includes the employee and employer contribution. This employee did not make that distinction, and her employer pays 100% of healthcare benefits. Her contribution should have been 0.
6. "Enter the total Federal income tax withheld to date in 2018 (including amounts withheld from bonuses or which you expect to have withheld for bonuses)." She pulled down the instructions about bonuses, which provided information on small and large bonuses, but this did not answer her previous question regarding expectations for a bonus in 2018.

In addition, the comingling of actually withheld and expected withholding confused the employee, especially because the entry says “withheld to date.” She asked what the withholding rate would be if she got the same bonus as last year. The manager did not want to answer for fear of giving the employee the expectation of a bonus. The employee entered the bonus amount from 2017.

7. “Enter the Federal income tax withheld from your last salary payment.” The employee had exhausted all of her leave and took leave without pay during the last pay period. Therefore, the Federal income tax withheld on her last check was low. Nevertheless, following the instructions, she entered in the value from her pay statement.
8. “Select how frequently you are paid.” The employee selected every two weeks. The company actually pays twice each month, but the employee did not recognize this distinction (24 pay periods not the 26 that the employee indicated).
9. “Select the date closest to when you first held this job in 2018.” This confused the employee because she did not start employment in 2018. She has worked for the company for the past 5 years.
10. “Select the date closest to when this job will end in 2018.” She began to panic with this question, thinking she was getting fired.
11. “Enter the total of any other taxable earned income you received or expect to receive in 2018.” The employee asked if this meant the money she receives from being an Uber/Lyft driver or whether she should enter that as a second job. Her manager attempted to explain the difference between nonwage income and wage income, but the employee was still confused. The pull down instructions provide information on tips and self-employment income, but not wage and nonwage income.
12. “Enter an estimate of your 2018 adjustments to income including deductible IRA contributions and education loan interest. Once again, the employee did not know about 2018 contributions, but heard that a 401(k) plan is the same as an IRA, so she entered the amount from her 2017 Form W-2.
13. Deductions: “If your standard deduction, \$24,000, is more than your total itemized deductions, your standard deduction will be used to calculate your withholding. Otherwise, your total itemized deduction amount will be used.” She asked if she was supposed to estimate her deductions or itemize. She selected the standard deduction despite believing that her itemized deductions might be higher.

Your Results

The calculator appears to have returned incorrect information. “Based on the information you previously entered, your income tax for 2018 is \$0. If you do not change your current withholding arrangement, you will have \$xxxx withheld for 2018 resulting in an overpayment of \$xxxx when you file your return. If you want your withholding to more closely match your anticipated tax, adjust your withholding on a new Form W-4 as follows:

- For the only job you entered (which has a projected salary of \$xxxx): 0 allowances.
- Check the Married box on your Form W-4

Based on the information you entered, if you file a new Form W-4 for the rest of 2018 the expected refund to which you may be entitled, should be about \$xxxx. Following this recommendation to file a new W-4 will ensure that the amount withheld from your wages will cover all of your projected tax liability while minimizing your refund, as long as the information you entered in the calculator remains correct.

Caution! The recommended number of allowances will result in no income tax being withheld from your pay (because your year-to-date withholding is already sufficient to meet your anticipated tax). Therefore, you should analyze your withholding again at the beginning of 2019 (or any time there is a change to your tax situation). If you do not check your withholding at the beginning of next year, you will likely be underwithheld for 2019.”

Tips:

- Click [here](#) to download Form W-4.
- If you have additional questions about your withholding, consult your employer or tax advisor.
- Be sure to review your withholding at the beginning of 2019 (or any time there is a change in your tax situation). If you follow the above recommendation and do not check your withholding at the beginning of next year, your withholding for 2019 might be incorrect.

Frequently Asked Questions – IRS Website

The online FAQs appear to contradict the results summary provided to the employee:

“**Q:** How does someone determine how many allowances they should claim on their Form W-4?”

“**A:** The Withholding Calculator will help employees determine that. Remember, the fewer allowances someone enters on the Form W-4, the more tax will be withheld from their paycheck. So, entering “0” or “1” on Line 5 of Form W-4 will mean more tax is withheld from their paycheck. Entering a larger number of allowances means less tax withholding—which means a smaller tax refund or potentially a tax bill when the employee files their tax return. Taxpayers should review their situation carefully. The Withholding Calculator can help.”

Here, the results under “Caution!” appear to indicate that no taxes will be withheld from the employees pay despite the added language in the parentheses that contradict that message. The FAQ says that by entering 0 more taxes will be withheld, which is accurate.

“**Q:** Can a payroll office or human resources department help someone understand these tax law changes or use the Withholding Calculator?”

“**A:** It’s a taxpayer’s responsibility to check their withholding and determine if it’s accurate for their personal situation. Payroll offices and human resource departments are responsible only for processing the Form W-4. It’s important to remember people working in these offices do not know the rest of someone’s personal financial situation, and they are not responsible for giving you tax advice. Employees who have tax questions should consult with a trusted tax professional.”

The results recommend that the employee consult with her employer.