

AMERICAN PAYROLL ASSOCIATION

June 28, 2019

Mr. Victor Aledo
Supervisory Tax Law Specialist
Individual and Specialty Forms and Publications
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
WI.W4.Comments@IRS.gov

Re: Comments on the Early Release Draft 2020 Form W-4 and New Publication 15-T

Dear Mr. Aledo:

The American Payroll Association (APA) appreciates the opportunity to provide the Internal Revenue Service with comments on the Early Release Draft 2020 Form W-4, *Employee's Withholding Allowance Certificate*, and employer instructions under new Publication 15-T, *Federal Income Tax Withholding Methods*. APA and our members are pleased to have been part of the IRS and U.S. Department of the Treasury's Form W-4 development process under the Tax Cuts and Jobs Act (TCJA) over the past two years.

2020 FORM W-4, EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE

Title of Form W-4

The form is titled, *Employee's Withholding Allowance Certificate*. With the TCJA requirements that shift the determination of income subject to income tax withholding, deductions, and credits by using actual dollar figures instead of the withholding allowance process, APA recommends that the title of Form W-4 be changed to *Employee's Withholding Certificate*.

Step 1: Enter Personal Information

Line 1c – Head of Household

Line 1c defines Head of Household as "If you're unmarried and pay more than half the costs of keeping up a home for yourself and a qualifying individual." The Specific Instructions do not explain "qualifying individual." APA recommends adding a reference to Publication 501, *Dependents, Standard Deduction, and Filing Information*, on page 2 under Specific Instructions, Step 1, line 1c.

Line Between Step 1 and Step 2 – Complete Steps 2 through 4 if they apply to you....

APA recommends adding the word “ONLY” in all capital letters after “4” and before “if,” such that the sentence reads, “Complete Steps 2 through 4 ONLY if they apply to you....”

Please also consider adding, “If exempt, skip to Step 4, line 4d, and certify by writing ‘Exempt.’ Do not complete Steps 2 through 4c if exempt.”

Step 2: Account for Multiple Jobs***Part-Time, Seasonal, and Temporary Employment***

The form and Specific Instructions do not explain how to account for part-time, seasonal, and temporary employment. The reference to the Withholding Calculator in the General Instructions is insufficient because these types of jobs may be in addition to full-time employment. Please add guidance on how these jobs should be addressed on the Form W-4.

2 Multiple jobs. Do only one of the following.

In the third bullet, APA recommends that the IRS explain what will happen if the employee checks the box. The first sentence reads, “If there are only two jobs in your household, you may check here.” Please consider explaining what will happen by rewriting the final sentence to read, “With this option, income tax will be withheld at a higher rate. More tax than necessary may be withheld from your wages, but you generally won’t have too little tax withheld.”

Step 3: Claim Dependents

The Specific Instructions on page 2 state that “other tax credits” should be added to line 3, including education tax credits and foreign tax credits. This is unclear on the form. The title of Step 3 should reflect dependents and other tax credits or the IRS could use the term from the draft 2019 Form W-4, “Total anticipated tax credits.”

In addition, the first line and calculation lines do not indicate that other credits should be included. Please clarify this information. For example, the IRS could add a third bullet:

“● Other tax credits, such as education and foreign tax credits . . . ► \$_____.”

Step 4: Other Adjustments

Line 4a – Other Income

APA is concerned that employees will not know where to include income earned as independent contractors when line 4a includes the statement, “You should not include income from any jobs.” For example, should employees with second jobs as independent contractors place their income in Step 2 or Step 4? Please consider adding instructions for independent contractor income.

Line 4c – Enter any additional amount you want withheld each pay period

Line 4c appears buried on the form because it is only a short line. Consider adding highlighted words at the beginning of the line, similar to those that appear in lines 4a, 4b, and 4d, such as “**Additional amount.** Enter any additional amount you want withheld...”

Line 4d – Exemption

The Specific Instructions do not offer an explanation for the line 4d “Exempt” status. Please consider removing the “Exemption” paragraph from “Purpose of Form” under the General Instructions and adding line 4d to the Specific Instructions with a short explanation. For example:

Enter on this line “Exempt” if you had **no** federal income tax liability in 2019 and you expect to have **no** federal income tax liability in 2020 and you do not want any federal taxes withheld from your pay. Do not complete Steps 2 through 4c. If you claim exempt from withholding, you will need to submit a new Form W-4 by February 16, 2021. Refer to Publication 505, *Tax Withholding and Estimated Tax*, and page 10, Figure 1-A, Exemption From Withholding on Form W-4.

Worksheets on Page 3

Worksheet 1 applies to line 4c (if the employee does not use either of the other options in Step 2), while Worksheet 2 applies to line 4b. APA recommends that the worksheet order be reversed to flow in the same order as the lines on the form.

Please consider adding titles to the worksheets. For example, “Worksheet 1 – Itemized Deductions” and “Worksheet 2 – Multiple Jobs” (assuming their order has been reversed as suggested above).

Worksheet 1 envisions one to three jobs total per household. The worksheet should also address calculations for four or more jobs per household.

Tables on Page 4

Please reverse the order of the first two tables to reflect the order of the check boxes on the form – Single or Married filing separately, Married filing jointly, and then Head of household.

Consistent Use of Terminology and Tools

APA recommends that the IRS compare the terms used in the Early Release Draft Form W-4, Publication 15-T, and the Withholding Calculator to make sure that the language is used throughout. For example, Form W-4 refers to “other income” but the Withholding Calculator references “nonwage income.”

In a March 28 meeting with the IRS and Treasury Department, the IRS envisioned that the Withholding Calculator would be updated to reflect the 2020 Form W-4 in a manner that will provide employees with the same steps that are on the form. In addition, the Withholding Calculator would explain on which lines on the form the calculated information should be placed. APA encourages the IRS to pursue this approach to the Withholding Calculator to provide employees with a more effective means of completing Form W-4 accurately.

In line 1c of the Early Release Draft 2020 Form W-4, the first checkbox is for the filing status of “Single or Married filing separately.” For the sake of consistency and ease of understanding, the percentage and wage bracket method withholding tables in Publication 15-T should also use “Single or Married filing separately” rather than merely “Single.”

Withholding for Nonresident Aliens

The instructions for the Early Release Draft 2020 Form W-4 and Publication 15-T do not include information about tax withholding for nonresident aliens. The 2019 Form W-4 refers nonresident aliens to Notice 1392, *Supplemental Form W-4 Instructions for Nonresident Aliens*, and the 2019 Publication 15 (Circular E), *Employer’s Tax Guide*, details the different calculation of taxable wages for nonresident aliens for the purpose of determining the amount of taxes to withhold. The Early Release 2020 Draft Form W-4 and Publication 15-T do not appear to address how to complete the form and calculate the withholding amount for these individuals. If the IRS intends to continue to provide

separate instructions in Notice 1392 and Publication 15, please consider adding appropriate references in the 2020 Form W-4 and Publication 15-T.

In addition, a check box should be added to the form to identify the employee as a nonresident alien. This will notify the employer that the employee intends to provide tax withholding information based on the IRS's special instructions, such as completing Form 8233, *Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*. This is consistent with the instructions in the 2019 Publication 15 that requires employers that maintain electronic Forms W-4 to provide a field for nonresident aliens.

Nonresident Aliens and the IRS's Withholding Calculator

The Early Release Draft 2020 Form W-4 General Instructions explain when to use the IRS's Withholding Calculator. APA suggests that the instructions clarify that the Withholding Calculator is not appropriate for nonresident alien employees.

The Withholding Calculator also should contain a warning specifically saying it should not be used by nonresident alien employees. The existing webpage only indicates that the Withholding Calculator "works for most taxpayers," but APA finds that this wording is not sufficient to prevent nonresident aliens from relying on it.

The Withholding Calculator webpage also refers taxpayers with "more complex" tax situations to Publication 505, *Tax Withholding and Estimated Tax*. However, the 2019 version states on page 23, in the third column, in the instructions for line 2a of the 2019 Estimated Tax Worksheet: "*No standard deduction*. The standard deduction for some individuals is zero. Your standard deduction will be zero if you:

- File a separate return and your spouse itemizes deductions,
- Are a dual-status alien, or
- File a return for a period of less than 12 months because you change your accounting period."

This statement does not mention that, with one exception (qualifying students and business apprentices from India), nonresident aliens also are not eligible for the standard deduction. A similar problem appears on page 36 of Publication 505, which contains Worksheet 2-4. That worksheet states at the very top, "Caution. Don't complete this worksheet if you expect your spouse to itemize on a separate return or you expect to be a dual-status alien. In either case, your standard deduction will be zero." APA recommends that the IRS caution nonresident aliens that they should not complete the worksheet.

PUBLICATION 15-T, *FEDERAL INCOME TAX WITHHOLDING METHODS*

Examples

The draft Publication 15-T does not include examples, which would be helpful for employers and payroll professionals. APA recommends that the IRS consider at minimum the following examples:

- Federal income tax withholding for an employee relying on a Form W-4 from a year prior to 2020;
- A new employee hired in 2020 who does not complete a Form W-4;
- An employee who completes a 2020 Form W-4 with entries on lines 2 through 4c; and
- An employee who completes a 2020 Form W-4 with entries in lines 2 through 4c and also “Exempt” in line 4d.

Introduction

If the IRS changes the name of Form W-4 to eliminate the word “Allowance” (see “Title of Form W-4” above), Publication 15-T should also be adjusted in the second line under Introduction.

Employees Hired After 2019 and Who Do Not Submit a Form W-4

The Frequently Asked Questions (FAQs) on the Early Release Draft 2020 Form W-4 state that a new employee who fails to submit a Form W-4 after 2019 should be treated as a single filer with no other adjustments, which means that a single filer’s standard deduction with no other entries will be taken into account in determining withholding. The FAQs also state that the IRS and Treasury Department anticipate issuing guidance consistent with this approach. APA recommends that these withholding procedures be added to the employer instructions in Publication 15-T.

Change in Number of Allowances for Head of Household Status

In the draft employer withholding instructions for the 2019 draft Form W-4, the Head of Household filing status was assigned three allowances for the purpose of calculating the amount of income tax to withhold. In the draft Publication 15-T, the Employer’s Withholding Worksheet assigns two allowances to the Head of Household filing status. Please explain why this change was made.

OTHER PUBLICATIONS

The IRS has referenced a number of publications in the Early Release Draft 2020 Form W-4 and Publication 15-T. In these comments, APA has requested a number of additional references to IRS notices and publications. All of these references require updating to match the requirements in the TCJA and the 2020 Form W-4. APA would be pleased to assist the IRS and U.S. Department of the Treasury in revising its notices and publications accordingly.

Thank you again for the opportunity to provide recommendations on the Early Release Draft 2020 Form W-4 and new Publication 15-T.

Sincerely,

Rebecca Harshberger

Rebecca Harshberger, CPP
Cochair, APA IRS Issues
Subcommittee

Stephanie Salavejus

Stephanie Salavejus, CPP
Cochair, APA IRS Issues
Subcommittee

Alice P. Jacobsohn

Alice P. Jacobsohn, Esq.
Senior Manager,
Government Relations