



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]

This letter responds to your inquiry of July 12, 2001, to the Director, Legislative Affairs. You forwarded an inquiry from your constituent, [REDACTED], asking about the pension withholding requirements in section 3405 of the Internal Revenue Code (the Code).

[REDACTED] asks why he cannot request a fixed dollar withholding from his pension plan distributions to pay his income tax liability and why he must fill out and submit a Form W-4P or a similar form to make this request. The Internal Revenue Service has received many suggestions to revise Form W-4P, Withholding Certificate for Pension or Annuity Payment, to allow a fixed income tax withholding amount.

Unfortunately, the IRS cannot legally make this revision because sections 3405(a)(1) and 3402(a)(1) and (2) of the Code, enacted by the Congress, generally require income tax withholding to be accomplished using withholding allowances. The Congress mandated basing payroll tax withholding on allowances to help taxpayers avoid requesting withholding that would be excessive or substantially insufficient to cover their tax liability. When the Congress decided pension payments should be subject to withholding, it specified that pension withholding should follow the payroll tax withholding rules; that is, be based on withholding allowances.

Thus, section 31.3402(f)(2) of the tax regulations requires employees (and pension recipients by reference in section 35.3405-1, B-3&4) to give their employer (or pension plan administrator) a withholding allowance certificate similar to Form W-4P specifying the number of withholding allowances claimed. The recipient can also use that form to ask the payor to withhold an additional amount of income tax from each payment.

I have enclosed a copy of IRS Publication 505, "Tax Withholding and Estimated Tax," which provides additional information about withholding from pension distributions and estimated tax payments, which is another way [REDACTED] could timely pay his income tax liability.

I hope this information is helpful to you and [REDACTED]. If you need further information, please contact John Tolleris ([REDACTED]) of my staff at (202) 622-6060.

Sincerely,

ALAN TAWSHUNSKY
Assistant Chief Counsel, Employee Benefits
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure