



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

OFFICE OF
CHIEF COUNSEL

May 21, 2002

Number: **INFO 2002-0097**
Release Date: 6/28/2002
Index No: 3405.00-00

CC:TEGE:EOEG:ET2
CONEX-126342-02

[REDACTED]

Dear [REDACTED]:

This letter responds to your March 25, 2002, letter to Commissioner Rossotti. Because your letter concerns income tax withholding, he has requested that this office reply.

Your question raises the issue of whether income tax withholding may be requested with respect to certain pension payments. Section 3405 of the Internal Revenue Code provides that, generally, a pension payment is subject to income tax withholding unless the recipient of the pension elects out of such withholding. Form W-4P, Withholding Certificate for Pension or Annuity Payments, is the form used by recipients to request changes in withholding on a pension.

Generally, an individual can satisfy his or her obligation to pay income tax by adequate income tax withholding or by estimated tax payments. In addition, the balance of tax due can be paid with the return, subject to an interest penalty that may apply if timely payments of estimated tax or income tax withholding were required to be made and have not been made.

Your letter indicates that the Medicaid office in New Jersey has indicated that income taxes cannot be withheld from the pension payments. We are unaware of the legal authority used by the Medicaid office to reach the conclusion that income tax cannot be withheld from the pension. As noted above, such withholding is generally provided for under the Internal Revenue Code, generally subject to the recipient's right to elect out of the withholding.

CONEX-126342-02

We hope the above information will prove helpful to you. If you want us to grant further consideration to this issue, we would need a statement from the appropriate Medicaid office as to the legal authority that office is relying on in reaching the conclusion that withholding cannot be made from the pension payment. If you have any questions about this letter, please contact Alfred G. Kelley at (202) 622-6040 (not a toll-free number).

Sincerely,

Lynne Camillo
Chief, Employment Tax Branch 2
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure
Form W-4P