



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

OFFICE OF THE CHIEF COUNSEL

JANUARY 19, 2010

Number: **INFO 2010-0030**
Release Date: 3/26/2010

CONEX-153547-09
UIL: 9999.98-00

The Honorable Steve Buyer
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Mr. Buyer:

I am responding to your inquiry dated December 1, 2009, on behalf of one of your constituents who asked whether implementation of the Making Work Pay credit as part of the economic stimulus package requires her or her husband to have more taxes withheld at year end to avoid a penalty.

Individuals may owe an underwithholding penalty for 2009 if their unpaid tax liability is \$1,000 or more and if their total withholding and timely estimated payments did not equal at least the smaller of 90 percent of their 2009 tax or 100 percent of their 2008 tax (assuming the 2008 tax covers a 12 month period). However, if an individual has an underpayment, we will waive all or part of the penalty if we determine that the adjustments we made to the withholding tables in spring 2009 caused the underpayment. To request a waiver of the penalty, taxpayers must follow the Instructions for Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts (enclosed).

By way of background, in February 2009 we issued revised withholding tables to take into account the Making Work Pay credit. We told employers to implement the revised tables as soon as possible but no later than April 1, 2009. You can find information about these tables in News Release 2009-13 (enclosed). The actual tables are available in Publication 15-T, *New Wage Withholding and Advance Earned Income Credit Payment Tables (For Wages Paid Through 2009)*. In May 2009, we released the enclosed Publication 4766, *Making Work Pay Credit and Form W-4 Employee's Withholding Allowance Certificate*, a one page flyer explaining that certain individuals (including married couples) might need to adjust their withholding before the 2009 tax return filing season.

Eligible workers received the benefit of the reduced withholding to reflect the credit without any action on their part. This means that workers did not need to fill out a new Form W-4, Employee's Withholding Allowance Certificate. However, some people may have found that the changes built into the withholding tables resulted in less tax withheld than they would have preferred.

For those not eligible for the Making Work Pay credit, the withholding changes may mean a smaller refund for 2009. A few taxpayers, including those who usually receive very small refunds, could incur a penalty if the underpayment is more than we can attribute to the change in the withholding tables. Because the Making Work Pay credit also applies to 2010, taxpayers may want to consult the IRS withholding calculator on www.irs.gov and submit revised Forms W-4 to ensure adequate tax withholding to cover their expected tax liability for 2010. Enclosed Publication 919, *How Do I Adjust My Tax Withholding?* provides additional guidance for tax withholding.

I hope this information is helpful. If you need further information, please contact me or _____ at _____. In addition, information about the Making Work Pay credit and the changes in withholding is available at www.irs.gov.

Sincerely,

Janine Cook
Chief, Employment Tax, Branch 1
Division Counsel/Associate Chief
Counsel
(Tax Exempt & Government Entities)

Enclosures