



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Shelley Moore Capito
Member, U.S. House of Representatives
300 Foxcroft Avenue, Suite 102
Martinsburg, WV 25401

Dear Congresswoman Capito:

I am responding to your inquiry dated February 12, 2010, on behalf of your constituent, . He asked about changes in federal income tax withholding for his Air Force retirement pay.

The American Recovery and Reinvestment Act of 2009 provides that taxpayers with earned income in 2009 and 2010 may be eligible for the Making Work Pay Credit (MWP credit) (section 1001 of the Act). The credit is the lesser of 6.2 percent of earned income or \$400 for individuals (\$800 for married couples filing jointly). The credit begins phasing out for taxpayers with modified adjusted gross income over \$75,000 per year for individuals (\$150,000 for married couples filing jointly). Only individuals who include their social security account number on their tax return are eligible to receive the credit. Taxpayers claim the MWP credit on Form 1040, U.S. Individual Income Tax Return. The Congress wanted taxpayers to receive the benefit of the credit as soon as possible so they instructed us to revise the income tax withholding schedules for the remaining months of 2009. See H.R. Rep. 111-16.

In February 2009, we issued the revised withholding tables for wages paid in 2009 and told employers to begin using them as soon as possible but no later than April 1, 2009. You can find information about these tables in News Release 2009-13 (enclosed). 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. We have since provided new tables for use

with wages paid in 2010. These tables are available in Publication 15, (*Circular E*), *Employer's Tax Guide*, for 2010 (enclosed).

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

For pension payors we made a new optional procedure for adjusting withholding available on May 14, 2009 (Notice 1036-P, enclosed). This procedure reflects that pension income is not earned income for purposes of the MWP credit. The 2010 tables also include the optional adjustment procedure for pension payors. Pension payors have no requirement to use this new procedure and may use only the withholding tables. The new procedure automatically adjusts withholding on pension payments and pension recipients do not need to take action. We designed the new procedure to avoid pension recipients having their taxes underwithheld. If a pension payor used the withholding tables issued in February 2009 and then switched to the new procedure for pensions once it was available, pension recipients would have seen an increase in their withholding at that time.

Because the MWP credit also applies to 2010, taxpayers may want to consult the IRS withholding calculator on www.irs.gov to see if their withholding will cover their expected tax liability for 2010. The enclosed Publication 919, *How Do I Adjust My Tax Withholding?* provides additional guidance. Pension recipients may submit a Form W-4P, Withholding Certificate for Pension or Annuity Payments, to their pension payor to adjust withholding if necessary.

I hope this information is helpful. If you need further information, please contact me or _____ at _____. In addition, information about the MWP 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 (5)