



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

OFFICE OF THE CHIEF COUNSEL

April 16, 2010

Number: **INFO 2010-0095**
Release Date: 6/25/2010

CC:TEGE:EOEG:ET2
CONEX-112195-10

UIL: 3402.19-00

The Honorable Sherrod Brown
United States Senate
Washington, DC 20515

Attention:

Dear Senator Brown:

I am responding to your letter dated March 09, 2010, on behalf your constituent, . wrote about changes in the federal income tax withholding tables to implement the Making Work Pay credit and the effect on many retirees.

Withholding tables generally apply to wage payments from employers to employees. Withholding tables also generally determine the withholding on retirement pay. We issued revised withholding tables in February 2009 that reflected the effect of the Making Work Pay credit. The Making Work Pay credit provides a credit against income tax for a taxable year to an eligible individual in an amount equal to the lesser of 6.2 percent of earned income or \$400 (\$800 in the case of a joint return).

The tax regulations generally provide for the same income tax withholding treatment for retirement pay as wages. Therefore, payors of retirement pay must use wage withholding tables even though we do not count retirement income in determining a taxpayer's Making Work Pay credit. However, retirement plan administrators can make an additional adjustment to withholding that effectively removes the benefit of the Making Work Pay credit for withholding purposes.

An individual may owe an underwithholding penalty for 2009 if his or her unpaid tax liability is \$1,000 or more, and if his or her total withholding and timely estimated payments did not equal at least the smaller of 90 percent of the 2009 tax or 100 percent of the 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 2009 caused the underpayment. To request a waiver of penalty, taxpayers must follow the Instructions for Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts (enclosed).

For those not eligible for the Making Work Pay credit, the withholding changes may mean a smaller refund in 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 of my staff at .

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)

Enclosures (2):