



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

OFFICE OF THE CHIEF COUNSEL

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Dear \_\_\_\_\_ :

I am responding to your letter to Vice President Joe Biden, dated January 27, 2010, which was referred to this office by the White House and the Commissioner of Internal Revenue. You asked about changes in federal income tax withholding for your pension.

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 (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 incomes 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 Making Work Pay credit on the 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, *Employer's Tax Guide*, for 2010.

For pension payors we made a new optional procedure for adjusting withholding available on May 14, 2009 (Notice 1036-P, enclosed). This procedure reflected that pension income is not earned income for purposes of the Making Work Pay 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.

We do not know whether your pension payor is using only the regular withholding tables or is also using the optional procedure for adjusting the withholding. Because the Making Work Pay credit also applies to 2010, taxpayers may want to consult the IRS withholding calculator on [www.irs.gov](http://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 Making Work Pay credit and the changes in withholding is available at [www.irs.gov](http://www.irs.gov).

Sincerely,

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

Enclosures (4)