



DEPARTMENT OF THE TREASURY
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Richard G. Lugar
United States Senate
Washington, DC 20510

Attention:

Dear Senator Lugar:

I am responding to your inquiry dated August 4, 2010, on behalf of your constituent, . asked about changes in his federal income tax withholding and possible penalties for underwithholding. also wrote about the taxation of social security benefits.

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 and retirees who receive a pension

and do not have any wage income) 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, available on www.irs.gov.

Eligible workers receive 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. Taxpayers may want to ask their pension payor whether it has used the new withholding tables.

For taxpayers not eligible for the MWP credit, the withholding changes may mean a smaller refund for 2009, or for those who normally receive small refunds, a balance due. A few taxpayers, including those who usually receive very small refunds, could initially incur a penalty if the underpayment is more than we can attribute to the change in the withholding tables. 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 complete Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts (enclosed).

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.

The law governs the taxability of social security benefits (section 86 of the Internal Revenue Code). Up to 85 percent of social security benefits may be taxable for taxpayers whose modified adjusted gross income plus 50 percent of social security benefits exceeds \$34,000 for an individual or \$44,000 for a married couple filing a joint

tax return. Accordingly, the taxable portion of social security benefits depends on the benefit amount, the amount of other income, and the filing status. A detailed explanation of the taxation of social security benefits is available in Publication 915, *Social Security and Equivalent Railroad Retirement Benefits*. The publication contains worksheets for calculating the taxable portion of social security benefits.

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)