



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Jerry F. Costello  
U.S. House of Representatives  
Washington, DC 20515

Attention:

Dear Mr. Costello:

I am responding to your inquiry dated February 9, 2011, about the effect of the Making Work Pay (MWP) credit, which is no longer available for 2011, pm senior taxpayers.

The MWP credit, enacted by the American Recovery and Reinvestment Act of 2009, provided taxpayers with a refundable tax credit of up to \$400 for working individuals and up to \$800 for married taxpayers filing jointly for tax years 2009 and 2010.

We issued revised withholding tables for 2009 and 2010, that reflected reduced withholding resulting from the MWP credit. Most eligible workers received the benefit of the MWP credit without any action on their part, as employers typically handled the credit through automated withholding changes. This meant that workers did not need to fill out a new Form W-4, Employee's Withholding Allowance Certificate. However, for some workers, such as employees with multiple jobs or married couples in high tax brackets, the changes from the MWP credit required them to submit a revised Form W-4 to ensure that employers withheld enough tax.

Pension recipients did not qualify for the MWP credit unless they received other earned income. However, because the revised 2009 and 2010 withholding tables, which reflected the MWP credit, could result in underwithholding for pension recipients, we provided pension plan administrators with an optional adjustment procedure available on May 14, 2009 (see Notice 1036-P). This procedure reflected that pension income is not earned income for purposes of the MWP credit. The 2010 tables also included the optional adjustment procedure for pension plan administrators. The optional procedure

automatically adjusted withholding on pension payments, and pension recipients did not need to take action. If used, the optional procedure avoided underwithholding on pension payments. However, not all plan administrators made the optional adjustment.

As a result of the changes to withholding, some taxpayers may receive a smaller refund for 2010, while others may owe money with their return. In addition, some taxpayers, including pension recipients, could initially incur a penalty if the underpayment is more than we can attribute to the change in the withholding tables. 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 for 2009 and 2010 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.

Further, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (Tax Relief Act), enacted on December 17, 2010, included several changes affecting workers' take-home pay and retirees' net pension checks for 2011. The Tax Relief Act did not extend the MWP credit that had been available for tax years 2009 and 2010. The Tax Relief Act extended for two years the income tax rates that were to expire at the end of 2010. That extension prevented a large increase in federal income tax withholding. The Tax Relief Act also provided a reduced rate of social security tax for all employees from 6.2 percent to 4.2 percent for tax year 2011 (withholding for Medicare, at 1.45 percent, did not change).

The withholding tables for 2011 reflect the expiration of the MWP credit. The expiration of the MWP credit will result in increased withholding for most taxpayers. For most employees, the net effect of the expiration of the MWP credit and the reduced rate of employee social security tax will result in less total tax withheld from their checks. However, the social security tax reduction does not affect pension payments. Pensioners whose plan administrators did not use the optional adjustment procedure for withholding in 2009 or in 2010 are likely to see an increase in withholding for their 2011 pension payments once pension plan administrators make the 2011 changes. This increase in withholding may vary per payment, depending on filing status, the amount of the payment, and the frequency of the payment. Accordingly, the retirement check payments for some pensioners may be lower, depending on the method that their plan administrators used to calculate withholding in 2009 and 2010.

We encourage employees and pension recipients to review their withholding every year. They can use the [IRS Withholding Calculator](http://www.irs.gov) on www.irs.gov. If necessary, they can fill out a new Form W-4 or Form W-4P, Withholding Certificate for Pension or Annuity Payments, and give it to their employer or pension plan administrator.

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](http://www.irs.gov).

Sincerely,

Ligeia M. Donis  
Acting Chief, Employment Tax, Branch 1  
Division Counsel/Associate Chief Counsel  
(Tax Exempt & Government Entities)