

## Additional Guidance on Withholding Rules

### Cross References

- Notice 2018-14

The new withholding tables for tax year 2018 are included in our news article entitled, *Withholding Tables for 2018*, dated January 15, 2018. These withholding tables are based upon the new tax rates under the Tax Cuts and Jobs Act, signed into law on December 22, 2017. The IRS recently issued additional guidance on the withholding rules for tax year 2018.

**Guidance for employees exempt from withholding.** An employee may claim exemption from income tax withholding if he or she certifies on Form W-4, *Employee's Withholding Allowance Certificate*, that:

- 1) The employee incurred no income tax liability for the preceding tax year, and
- 2) The employee anticipates that he or she will incur no income tax liability for the current tax year.

Under the new guidance, a 2017 Form W-4 claiming exemption from withholding for the 2017 tax year may be treated as effective for any wage payments made through February 28, 2018.

For an exemption from withholding for the 2018 tax year, the IRS will allow employees to use the 2017 Form W-4 until 30 days after the 2018 Form W-4 is released in one of the following ways:

- 1) Modifying the 2017 Form W-4 by striking "2017" in the text on line 7 and entering "2018" in its place and signing the form in 2018,
- 2) Modifying the 2017 Form W-4 by entering "Exempt 2018" on line 7 and signing the form in 2018,
- 3) Using the 2017 Form W-4 without modification and signing the form in 2018, provided that the employer establishes and communicates to employees a procedure under which an employee signs and furnishes the 2017 Form W-4 in 2018 to certify both that the employee incurred no income tax liability for 2017 and that the employee anticipates that he or she will incur no income tax liability for 2018 and thus claims exemption from withholding for 2018, or
- 4) Any method substantially similar to (1) – (3) above that clearly conveys in writing an employee's intent to certify his or her exemption from withholding for 2018.

Employees who claimed exemption from withholding for 2017 and are renewing claims for exemption from withholding for 2018 need to furnish their Form W-4 to the employer under these revised rules by February 28, 2018. If a 2017 Form W-4 is used to claim exemption from withholding for 2018, the employee does not need to submit a new 2018 Form W-4 once that form is released.

**Temporary suspension of 10-day requirement to furnish new Forms W-4 to employers.** Under the old rules, if a change in status occurs that reduces the number of withholding allowances to which employees are entitled, the employee must furnish the employer with a new Form W-4 claiming the proper number of withholding allowances within 10 days of the change in status.

Under the new guidance, an employee is not required to furnish a new Form W-4 with the reduction in the number of withholding allowances until 30 days after the 2018 Form W-4 is released. Moreover, because the 2018 withholding tables are designed to work with the Form W-4 that employees have already furnished to their employers, employees who have a reduction in the number of withholding allowances solely due to the changes made by the Tax Cuts and Jobs Act are not required to furnish employers with a new Form W-4 during 2018.

Employees who choose to update their withholding allowances for 2018 may use the 2017 Form W-4 instead of the 2018 Form W-4 until 30 days after the 2018 Form W-4 is released. Likewise, new hires may continue to claim allowances by using the 2017 Form W-4 until 30 days after the 2018 Form W-4 is released. Employees who use the 2017 Form W-4 for the 2018 tax year do not need to furnish a new 2018 Form W-4 after that version is released.

**Optional flat rate for withholding on supplemental wages.** Under certain circumstances, employers may withhold income tax from supplemental wage payments at an optional flat rate (such as a bonus payment). The optional flat rate for supplemental wage payments made in tax year 2005 through 2017 was 25%.

The Tax Cuts and Jobs Act reduced the tax rates for individuals. As a result, the optional flat rate has been reduced to 22% for supplemental wage payments made after December 31, 2017 and before January 1, 2026.

Employers paying supplemental wages should implement the 22% optional flat rate no later than February 15, 2018. Employers who used the 25% optional flat rate for payments on or after January 1, 2018 and before February 15, 2018, may choose to (but are not required to) correct such withholding on supplemental wages under the rules applicable to corrections of over collections of federal income tax.

**Withholding for periodic payments if no withholding certificate is in effect.** Periodic payments for pensions, annuities, and other deferred income generally requires withholding as if such payments were wages, unless the individual elects to not have withholding apply to the periodic payments. Under prior rules, if the payee did not furnish a withholding certificate to the payor, the amount to be withheld from each payment was determined by treating the payee as a married individual claiming three withholding exemptions.

The Tax Cuts and Jobs Act directs the IRS to issue new regulations to determine the amount required to be withheld when no withholding certificate is furnished by the payee. For 2018, the IRS will continue to apply the old rules that treat the payee as married claiming three withholding allowances.