



## EY Payroll NewsFlash Workforce Tax Services

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## IRS issues proposed regulations governing the Form W-4 and federal income tax withholding requirements

In [REG-132741-17](#), the IRS issued proposed regulations incorporating changes made to the [Form W-4, Employee Withholding Certificate](#), and related federal income tax withholding computations under the Tax Cuts and Jobs Act as well as other modifications the IRS made in 2020 to streamline and improve withholding elections for taxpayers. For the benefit of employees, the proposed regulations also set forth the circumstances under which various Form W-4 elections apply and the amount of time employees are given to submit Forms W-4 to their employers under various scenarios.

The proposed regulations generally document information the IRS has already published in notices, on its website and in the 2020 editions of Form W-4, [Publication 15](#) and the new [Publication 15-T](#); however, the following arise as items of interest for employers:

- **Name of Form W-4.** The regulations clarify that the name assigned to the new Form W-4, *Employee's Withholding Certificate*, has the same meaning as *Employee's Withholding Allowance Certificate* in IRC § 3402(f)(2) and IRC §3402(f)(5).
- **Requiring employees use the 2020 Form W-4.** An employer may ask all employees first paid wages before 2020 to furnish a 2020 Form W-4, but in connection with the request the employer should explain that (1) employees are not required to furnish a new Form W-4, and (2) if the employee does not furnish a 2020 Form W-4, the amount of tax to be withheld from the employee's wages will continue to be based on the last valid Form W-4 previously furnished.

Mandatory use of the Form 2020 Form W-4 applies only to employees who (1) are first paid wages on and after January 1, 2020, (2) are changing their withholding elections on and after January 1, 2020 or (3) claimed exemption from withholding in 2019.

- **Employees who claimed exemption from withholding in 2019.** A Form W-4 submitted in 2019 claiming exemption from federal income tax withholding expires on February 18, 2020. If employees do not furnish a valid 2020 Form W-4, for income tax withholding purposes, the employer must treat them as if they checked the box for single or married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2020 Form W-4.

Unlike the current regulations, the proposed regulations do not require the employer to put into effect a previously furnished valid Form W-4 when an employee's Form W-4 claiming exemption from withholding expires.

- **Limitations on Forms W-4 requesting additional withholding.** In addition to specifying an additional amount to withhold from wages, employees may request that an additional amount be added to wages on Form W-4, so that the employer may withhold an additional amount of income tax resulting from this addition under the computational procedures prescribed by the IRS in forms, instructions, publications, and other guidance for the calendar year for which the Form W-4 is in effect. In addition, these proposed regulations provide that an employee may request an additional amount, not otherwise required, to be withheld from the employee's wages by selecting higher withholding rate tables.

Under the proposed regulations, an employer must comply with the employee's request for additional withholding made on a valid Form W-4 but only after the employer has withheld all amounts otherwise required to be withheld by federal law, state law, and local law (other than by state or local law that provides for voluntary withholding).

- **Requirement to use Form W-4 for the correct calendar year.** The proposed regulations provide that, unless provided otherwise in forms, instructions, publications, or other guidance prescribed by the IRS, only the Form W-4 revision in effect for a calendar year may be furnished by an employee in that calendar year and given legal effect by the employer as a new Form W-4 or to replace a previously furnished Form W-4. However, an employee may furnish a Form W-4 revision in one calendar year for the next calendar year.

**Example 1.** Employee Anthony furnishes a 2019 Form W-4 to his employer in calendar year 2020. The 2019 Form W-4 Anthony furnished in 2020 has no legal effect. Anthony's employer must disregard this 2019 Form W-4 furnished in 2020 and continue to withhold based on a previously furnished Form W-4 that has been in effect for Anthony, if any. If Anthony has no Form W-4 in effect, he is treated as having no valid withholding allowance certificate.

**Example 2.** Employee Susan furnishes a 2021 Form W-4 to her employer in calendar year 2020 to take effect in calendar year 2021. The 2021 Form W-4 is valid, and Susan's employer must put this form in effect in 2021 in accordance with the timing

rules in Reg. § 31.3402(f)(3)-1.

- **Employee additions to Form W-4 that do not cause the form to be invalid.** An entry “Exempt” on a 2020 Form W-4 in the space below Step 4(c) is not an unauthorized addition because this entry is permitted by the 2020 Form W-4 instructions. Similarly, an entry on the Form W-4 indicating an employee is a nonresident alien individual is not an unauthorized addition because this entry is permitted by Notice 1392. The proposed regulations clarify, however, that an entry claiming exemption from withholding that is accompanied by any other entry on the Form W-4 (other than the employee’s filing status) that could potentially affect the amount of income tax withheld from the employee’s pay (i.e., an entry on Step 2, Step 3, or Step 4 of the 2020 Form W-4) is an unauthorized addition and, thus, a Form W-4 that includes such an entry is invalid.
- **Employee Social Security Number (SSN) is required on Form W-4.** The employees must provide their full SSN on the Form W-4. A truncated SSN is not allowed.
- **Assumption if no valid Form W-4 on file.** If there is no valid Form W-4 on file for an employee, for income tax withholding purposes, the employer must treat that employee as if he/she checked the box for single or married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2020 Form W-4.
- **When employers must put Forms W-4 into effect.** The proposed regulations reiterate existing statutory law concerning the period during which employers must put an employee’s Form W-4 submission into effect.

When there is no withholding allowance certificate in effect for a particular employee, and the employee furnishes a withholding allowance certificate to the employer, the employer must put the certificate into effect as of the beginning of the first payroll period ending after the date the certificate is furnished. If the payment of wages is made without regard to a payroll period, the employer must put the withholding allowance certificate into effect as of the first payment of wages after it is furnished.

If the employer has a valid withholding allowance certificate in effect with respect to a particular employee, and the employee furnishes a withholding allowance certificate to take effect during the calendar year, the employer must put the certificate into effect as of the beginning of the first payroll period ending (or the first payment of wages made without regard to a payroll period) on or after the 30th day after the day on which the certificate is furnished. An employer may elect to put a withholding allowance certificate into effect earlier but no earlier than on or after the day the withholding allowance certificate is furnished. An employer may not put into effect a withholding allowance certificate that is furnished to take effect in the next calendar year until the next calendar year.

- **Lock-in letters.** As previously announced in [Notice 2018-92](#), the IRS confirms that employers are no longer required to notify the IRS if an employee subject to a lock-in letter has terminated. For more information on lock-in letter compliance see [Tax Alert 2020-0343](#).
- **Single but withhold at a higher single rate vs. married taxpayer filing jointly.** For married taxpayers filing jointly with two jobs held concurrently, the effect of checking the box on the 2020 Form W-4 in Step 2(c) is similar to selecting “Married but withhold at a higher single rate” on the 2019 Form W-4.
- **Content moved from Publication 15 to new Publication 15-T.** Percentage method tables, wage bracket withholding tables, discussion on alternative withholding methods, and Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members that were formerly published in Publication 15 (Circular E), *Employer’s Tax Guide*, Publication 15-A, *Employer’s Supplemental Tax Guide*, and Publication 51, *Agricultural Employer’s Tax Guide*, are now published in Publication 15-T, *Federal Income Tax Withholding Methods*.

However, in 2020, the IRS discontinued publishing Formula Tables for Percentage Method Withholding (for Automated Payroll Systems), Wage Bracket Percentage Method Tables (for Automated Payroll Systems), and Combined Federal Income Tax, Employee Social Security Tax, and Employee Medicare Tax Withholding Tables.

- **Discontinuation of Notice 1036, Early Release Copies of the Percentage Method Tables for Income Tax Withholding.** Effective in 2020, the IRS will post information previously included in Notice 1036 in early drafts of Publication 15 and Publication 15-T. The IRS states that early release drafts of withholding tables will be generally be available sooner than Notice 1036 was in prior years.
- **2020 Form W-4P, Withholding Certificate for Pension or Annuity Payments.** The IRS has no plan to redesign the 2020 Form W-4P in the same manner as the 2020 Form W-4. Instead, the 2020 Form W-4P will continue to request withholding allowances and marital status, rather than filing status. Similarly, the Step 2(c) checkbox on the 2020 Form W-4 to request withholding using a higher withholding rate table is inapplicable for the 2020 Form W-4P. Publication 15-A includes further information regarding the 2020 Form W-4P and related withholding tables; computational procedures for the 2020 Form W-4P are included in Publication 15-T. (See also [IRS Notice 2020-3](#).)

### **Special instructions for nonresident alien employees**

Nonresident alien employee instructions for completing the Form W-4 are contained in [IRS Notice 1392](#), *Supplemental Form W-4 Instructions for Nonresident Aliens*. IRS Notice 1392 is updated to reflect the significant changes made to the Form W-4. Following are the changes to note.

- **Adjustment to taxable wages for standard deduction.** Nonresident aliens cannot claim the standard deduction. The benefits of the standard deduction are included in the existing wage withholding tables published in Publication 15-T. Because nonresident aliens may not claim the standard deduction, employers are instructed to withhold an additional amount from a nonresident alien's wages. For the specific amounts to be added to wages before applying the wage tables, see Publication 15-T. There are two tables within Publication 15-T for this purpose, one table for employees with Forms W-4 submitted before January 1, 2020 and another table for employees with Forms W-4 submitted on and after January 1, 2020.

Note that a special rule applies to nonresident alien students from India and business apprentices from India who are eligible for the benefits of Article 21(2) of the United States-India income tax treaty. Employers are not required to withhold an additional amount for the standard deduction from the wages of these individuals, as they may be entitled to claim the standard deduction. (See Publication 15-T and Publication 519 for more information.)

- **Step 1(c): Personal Information.** Nonresident aliens must check the Single or Married filing separately box, regardless of their actual marital status.
- **Step 3: Claim Dependents.** Only certain nonresident aliens should use Step 3. Nonresident aliens from Canada, Mexico, South Korea, or India may be able to claim the child tax credit or the credit for other dependents. (See Pub. 519 and Pub. 972 for more information.) Nonresident aliens are generally not entitled to education credits. (See Pub. 519 for more information.)
- **Step 4(b). Nonresident alien itemized deductions and adjustments to income may be limited.** If nonresident alien employees expect to claim itemized deductions and/or adjustments to income (such as the student loan interest deduction), they are instructed to add their itemized deductions and adjustments to income and enter the amount in Step 4(b).
- **Step 4(c). Write "nonresident alien" or "NRA" in the space below Step 4(c).** If nonresident aliens would like to have an additional amount withheld, they are instructed to enter the amount in Step 4(c).
- **Exempt from withholding.** Nonresident alien employees are instructed to not claim that they are exempt from withholding in the space below Step 4(c) of Form W-4 (even if they meet both conditions to claim exemption from withholding listed in the instructions to the Form W-4).

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