

July 6, 2018

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Dear Acting Commissioner Kautter:

On behalf of the National Association of Enrolled Agents, which represents the interests of over 55,000 enrolled agents (EAs), I write to provide our input on the [draft Form W-4](#) (Employee's Withholding Allowance Certificate). IRS substantially redesigned the form in light of the recently-passed Tax Cuts and Jobs Act (TCJA). As tax experts, we are on the front lines of tax administration and frequently assist individual and small business taxpayers with the withholding form. We are well placed to provide practical, common sense observations.

After every major Internal Revenue Code overhaul, the Service redesigns Form W-4 to reflect the changes wrought by Congress. Typically, this exercise requires the Service to strike a balance between a complex yet more accurate form on the one hand and a simpler yet less accurate version on the other. In this instance, however, we are concerned the new form both increases complexity (by an order of magnitude) and, in many cases, decreases accuracy.

We believe that the form as currently drafted raises a number of serious concerns. Namely, it:

- increases, unnecessarily, burden on both taxpayers and employers;
- raises privacy concerns by allowing inappropriate disclosures to employers; and
- creates a substantial risk of underwithholding.

NAEA recommends IRS move back to a design that assigns “points” or exemptions based on questions answerable by the average worker. This system should err in favor of over-withholding to avoid penalties and unexpected balances due. Further, the form cannot require numerous—with a stress on numerous—and complex worksheets. We also recommend the agency find a solution that provides balanced withholding between spouses, instead of weighting withholding toward the higher income spouse. Finally, the online withholding calculator should follow an interview format similar to private sector software, relying as much as feasible on plain language questions with short explanations when necessary.

Burden

While the new Form W-4 raises a number of issues relative to burden, we focus on four. First, the Form W-4 Instructions and accompanying worksheets, at 11 pages, are too long and too complicated. Second, taxpayers are asked to forecast other tax-related items that are traditionally difficult to forecast. Finally, the new form requires taxpayers to calculate the value of tax credits and shifts significant new burden to employers.

Form W-4 instructions and worksheets are too long and too complicated

Gone from the new form is any semblance of the time-tested technique of counting noses in a family and using that number as the first stab at proper withholding. Moving away from this use of exemptions requires calculations and estimates better left to the annual tax return. Because the form itself contemplates basic one-line answers, taxpayers are expected to wade through 11 additional pages of instructions and work sheets to fill in these blanks.

The average time and expense required to complete the form will vary depending on individual circumstances and may take many hours even for taxpayers with basic income tax knowledge. Most taxpayers will not need to make all of these calculations but will likely still spend excessive time attempting to understand this form. If Form W-4 requires a taxpayer to make Form 1040-like calculations to determine items such as tax credits, the form will invariably cause mistakes that are avoided using the traditional method of merely entering a number of exemptions.

Practitioners' due diligence will require some degree of tax planning, even when the obvious advice for the client is, using the current parlance, "Claim Single and 1." While tax pros are well positioned to assist, this assistance may or may not be included in a taxpayer's prep fee, assuming the taxpayer is currently paying for tax services.

In order to properly prepare the new form W-4, the taxpayer is directed to reference up to 12 other publications and forms, including:

- Publications 524, 970, 968, 514, 590, 530, 502, and 5120 and
- Forms 3800, 8834, 8801, and 8859

We question whether these forms are ever helpful for the average taxpayer, but in the case of a worker trying to complete pre-employment paperwork, references to a dozen forms and pubs borders on the ludicrous. At what point does a taxpayer either wave the white flag and hope for the best—or retain the assistance of a professional?

Forecasting tax-related items is traditionally difficult

The new form asks taxpayers to forecast other tax related items that are traditionally difficult to forecast. We are particularly concerned by the following:

- tax deferred retirement plan contributions;
- scholarship and grant taxability;
- work-related child and dependent care expenses;
- tax year wages and bonus;
- other income from self-employment and nonwage income;
- medical and dental expenses;
- property taxes; and
- mortgage interest.

Contributions to tax-deferred retirement plans and other non-taxable portions of compensation are often not evenly distributed throughout the year and often unknown at the beginning of the year. Scholarship and grant taxability is often unknown until the end of the tax year. Work-related child and dependent care expenses can vary wildly between any two tax years. Few are able to calculate accurately bonuses and wage increases—aside from the wisdom of telegraphing to an employer both of those estimates.

The new form requires taxpayers to calculate the value of tax credits

Under the new tax code, credits will be playing a much more prominent role in many taxpayers' lives. Over or under estimating these credits will cause wild swings in withholding, resulting in serious inaccuracies in many employees' withholding amounts. Asking taxpayers to simply provide a number for the allowable credits and referring them to a worksheet and complicated instructions will likely result in workers ignoring this line—at their own peril. Equally concerning, taxpayers are able to enter on line 7 their tax credits, for instance education credits. Some taxpayers won't know the credits to which they are potentially entitled. Others won't understand whether they in fact qualify for a credit they are "claiming" on the Form W-4.

The new form W-4 shifts a significant burden to employers

While the new form requires the worker to have a complex understanding of his or her financial situation, knowledge of the Internal Revenue Code and tax jargon in general, it also shifts burden to the employer in calculating withholding amounts. Smaller businesses generally lack HR resources and tax code knowledge, and the level of burden in this space will be particularly acute, increasing the need to contract with external payroll services.

Privacy concerns

Disclosing unrelated sources of income, such as a side job or small home-based business, could infer a lack of commitment to the employer. Similarly, disclosure of a spouse's income could persuade the employer to not consider wage or salary increases for the employee. This may be the one example of when a separate worksheet—privy only to the worker—providing an exemption number or numbers could help prevent awkward privacy issues from arising.

As an aside, which entries are required is unclear. Taxpayers may omit lines 5 through 9, yet we believe many taxpayers will fail to understand this. Employees may not want to disclose this information to their employer and both employers and employees should understand this option.

Underwithholding risks

The calculator is particularly unreliable for employees with multiple jobs and/or varying other income (earned or passive) according to IRS' own admission in a recent education webinar.

The instructions for the revised Form W-4 state that more complex situations should use the [online withholding calculator](#), but the calculator conspicuously lacks the ability to account for complex situations. A taxpayer who makes estimated tax payments because of investment income or self-employment is but one example. We wonder if IRS has created a calculator predicated on the concept that all tax should be paid through wage withholding. That approach does not work for married couples in which one spouse is an employee and the other self-employed, paying his/her taxes using quarterly estimated tax payments.

We also note a taxpayer who uses the link to the Spanish version of the Form W-4 withholding calculator is taken to a page identical to the English version rather than to a Spanish version of the Form W-4 withholding calculator.

Line 3 of the paper form asks taxpayers to indicate filing status. We find taxpayers frequently do not know their filing status and, left to their own devices, will far too often select Head of Household because they do not understand that term of art.

Possible Solutions

Fundamentally, we suggest the agency begin with the following goals: the withholding calculator, whether paper or electronic, should be as simple as possible, prevent disclosure of personal/family information to one's employer, and err towards overwithholding.

We suggest the withholding calculators emulate private sector interview software, which generally asks simple questions geared towards the lay person. Are you married? Does your spouse work? Do you have income from other sources, not subject to withholding? Do you have children under a certain age living with you or in college? Depending on the answers, the interview will ask further, more detailed questions as necessary. It would be helpful to both employers and employees if the online withholding calculator were more prominently referenced in the instructions.

Alternatively, IRS should consider a return to a traditional method of claiming a simple number of exemptions based on the answers to these plain language questions. This allows the taxpayer to avoid guessing answers (for instance, on line 7, tax credits).

We recommend IRS create one worksheet for all outside income, including income needing additional withholding and other income subject to withholding for both the worker and a spouse. Further, this worksheet should provide for a more balanced withholding between two worker spouses.

Finally, if a taxpayer fails to provide enough information or if no amounts are entered, the form should include a default warning that withholding will be an amount comparable to the current “Single with 1 exemption.”

In conclusion, no group recognizes better the importance of withholding, an issue that is surprisingly complicated. Taxpayers view withholding through a different lens than do tax administrators. The costs of erring are high. True underwithholding can lead to IRS penalties or to a taxpayer’s inability to pay his/her balance due. A smaller refund than expected (or taxpayer expectation-adjusted underwithholding) doesn’t lead to penalties, but can lead to serious complications for a taxpayer’s finances.

We recommend IRS consider both ease of use and taxpayer expectations as it considers modifying the draft Form W-4. We also suggest the agency consider including tax professionals as it formulates commonly used forms, such as this one. The results matter. If taxpayers and employers are forced to use Forms W-4 that are difficult to understand and require taxpayers to disclose personal information, we should expect unpleasant (or catastrophic) surprises in early 2020 when taxpayers determine the liabilities of their post-TCJA Form 1040.

Thank you for considering the National Association of Enrolled Agents’ concerns regarding post-TCJA withholding. We look forward to continuing this discussion.

Sincerely,

A handwritten signature in blue ink that reads "Jean C. Nelsen" with a decorative flourish at the end.

Jean C. Nelsen, EA
President
National Association of Enrolled Agents

cc: Ms. Karen Holland, Director, Forms and Publications
Mr. Ken Corbin, Commissioner, Wage and Investment Division
Ms. Kirsten Wielobob, Deputy Commissioner for Services and Enforcement