



TaxNewsFlash

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Proposed regulations: Withholding on distributions, guidance under section 3405

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-132240-15) concerning the rules for withholding on certain periodic and non-periodic distributions under section 3405 (other than eligible rollover distributions).

The [proposed regulations](#) [PDF 305 KB] generally adopt guidance previously provided by the IRS in Notice 87-7, with certain clarifications and amendments.

Notice 87-7

The IRS issued Notice 87-7 as guidance under section 3405(e)(13)(A) to payors of designated distributions with respect to their duty to withhold income tax from these distributions. The IRS notice addresses designated distributions to the following categories of payees:

- Payees who have provided the payors with a residence address outside of the United States
- Payees who have provided the payors with a residence address within the United States
- Payees who have not provided the payors with a residence address

Notice 87-7 specifies that:

- If a payee has provided the payor with a residence address outside of the United States, the payor is required to withhold income tax from designated distributions to the payee.
- If a payee has provided the payor with a residence address within the United States, the payor is required to withhold income tax from these distributions to the payee unless the payee has elected no withholding in accordance with section 3405.
- If a payee has not provided the payor with a residence address, the payor is required to withhold income tax from designated distributions—and included within this category is a payee who has provided the payor with an address for the payee's nominee, trustee, or agent without also providing the payee's residence address.

Proposed regulations

According to the preamble to today's proposed regulations, Notice 87-7 provides "an administrable standard with respect to withholding under section 3405." The proposed regulations are, thus, based on the guidance provided in Notice 87-7 but with clarifications concerning situations when:

- The payee provides the payor with an Army Post Office (APO), Fleet Post Office (FPO), or Diplomatic Post Office (DPO) address.
- The payee provides the payor with a residence address located within the United States but provides payment instructions that request delivery of the designated distribution to a financial institution or other person located outside of the United States.

Once these rules are finalized, the regulations would supersede the guidance in Notice 87-7 for payors of designated distributions with respect to their duty to withhold under sections 3405(a)(1) or (b)(1).

The proposed regulations are to apply with respect to distributions on or after the applicability date of the final regulation. Until then, taxpayers may continue to rely upon Notice 87-7, or they may apply Prop. Reg. section 31.3405(e)-1(b)(1) and (2) until the regulations are finalized.

Comments or requests for a public hearing on the proposed regulations are due 90 days after the proposed regulations are published in the Federal Register (scheduled for May 31, 2019).

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