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Proposed regulations: Income tax withholding, periodic retirement and annuity payments

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-100320-20) concerning federal income tax withholding on certain period retirement and annuity payments, as required by tax law changes enacted in 2017, when there is no withholding certificate in effect.

Read the [proposed regulations](#) [PDF 292 KB]

Summary

The 2017 tax law (Pub. L. No. 115-97)—the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA)—made changes to the withholding tax rules regarding any periodic payment for which a withholding certificate is not in effect.

Before the TCJA, the amount withheld from the periodic payment (that is, the default rate of withholding) was determined by treating the payee as a married individual claiming three withholding exemptions. With the TCJA, the default rate of withholding on periodic payments is to be determined under rules prescribed by the Treasury Secretary.

After enactment of the TCJA, the IRS issued a series of notices—Notice 2018-14 and Notice 2018-91 and then Notice 2020-3—to provide that the default rate of withholding when no withholding certificate is furnished with respect to periodic payments would continue to be based on treating the payee as a married individual claiming three withholding allowances.

The preamble to today’s proposed regulations explains that the existing regulations under section 3405 are to be updated to reflect the legislative changes made by the TCJA. Specifically, the proposed regulations would not specifically provide a default rate of withholding but, instead, would provide:

...a flexible and administrable rule that leaves the communication and mechanical details of the default rate of withholding on periodic payments to be provided in applicable forms, instructions, publications, and other guidance. These materials can be updated quickly as needed (for legislative

changes or other reasons) to provide payors and plan administrators processing payments adequate time to program their systems to withhold the proper amount of income tax.

Written or electronic comments and requests for a public hearing concerning the proposed regulations are due by July 27, 2020.

These regulations are proposed to apply to periodic payments made after December 31, 2020, but the preamble explains that taxpayers may rely on these rules, in their entirety, until the date of publication of a Treasury Decision adopting this proposed rule as a final regulation.

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