



TaxNewsFlash

United States



No. 2020-607
September 28, 2020

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

The IRS this afternoon posted on its website a version of final regulations (T.D. 9920) concerning federal income tax withholding on certain periodic retirement and annuity payments.

Note: After the IRS released its version of these final regulations, the U.S. Treasury Department and IRS on September 30, 2020, officially released the final regulations for publication in the Federal Register. Read the version of the [final regulations](#) [PDF 106 KB] as scheduled for publication in the Federal Register on October 1, 2020.

Today's release finalizes regulations that were proposed in May 2020, and according to the preamble to today's final regulations, the proposed regulations are adopted "as final with no modifications." Read about the proposed regulations in [TaxNewsFlash](#)

Read the [final regulations](#) [PDF 118 KB]

The version of the final regulations released by the IRS today includes this statement:

This document will be submitted to the Office of the Federal Register (OFR) for publication and will be pending placement on public display at the OFR and publication in the Federal Register. The version of the final regulations released today may vary slightly from the published document if minor editorial changes are made during the OFR review process. The document published in the Federal Register will be the official document.

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 May 2020 proposed regulations explained that the then-existing regulations under section 3405 were being updated to reflect the legislative changes made by the TCJA. Specifically, the proposed regulations did not provide a default rate of withholding but, instead, proposed a flexible and administrable rule that would leave 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.

With the final regulations, there is also a related IRS release—[IR-2020-223](#) (September 28, 2020)—explaining that today's final regulations provide guidance for 2021 and future calendar years and specifies that the IRS and Treasury Department will provide the rules and procedures for determining the default rate of withholding on periodic payments in applicable forms, instructions, publications, and other guidance. This IRS release further notes that:

- In July 2020, the IRS released a draft of a redesigned 2021 Form W-4P and instructions intended to align with the redesigned Form W-4, *Employee's Withholding Certificate*.
- The draft 2021 Form W-4P also proposed a new default rate of withholding on periodic payments that begin after December 31, 2020.
- Based on comments received in response to the draft Form W-4P—regarding the time required by payors to implement the new form and a new default rate of withholding—the IRS will postpone issuance of the redesigned form. Instead, the 2021 Form W-4P will be similar to the 2020 Form W-4P.
- The instructions to the 2021 Form W-4P and related publications will provide that the default rate of withholding on periodic payments will continue to be determined by treating the taxpayer as a married individual claiming three withholding allowances.

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