



American Payroll Association

Government Relations • Washington, DC

December 8, 2017

The Honorable Orrin Hatch
U.S. Senate
104 Hart Senate Office Building
Washington, D.C. 20510

Re: Problems Caused for America's Employers by H.R. 1

Dear Senator Hatch:

Next week, less than two weeks before Christmas, members of the U.S. House of Representatives and Senate who have been appointed to the Conference Committee on H.R. 1, the Tax Cuts and Jobs Act, will begin deliberations to resolve differences between the House and Senate versions of the bill with the aim of producing a final version that will be voted on in both chambers by December 22.

Should the final version pass both chambers and be signed into law by President Trump on the 22nd, America's employers will have to begin implementing the new law only five business days later on January 2, 2018 – a herculean task even if the law were to make minimal changes to the tax system, given that many companies shut down between Christmas and New Year's Day and in others many employees are using the last of their hard-earned vacation time.

New Forms W-4 for EVERY Employee?

Whatever version of this “tax reform” measure is enacted will not make minimal changes to the tax system. It will turn much of the system, especially the payroll withholding infrastructure that is the underpinning of our entire economy, upside down. With the elimination of personal exemptions under the tax code in favor of doubling the standard deduction, while at the same time providing an “as if there were an exemption” amount to use in determining employee withholding allowances, the bill would make it nearly impossible for employees to complete their Forms W-4 so they could properly calculate their annual federal tax liabilities. Yet every employee in America will be required to read and understand the new tax law and to file a new Form W-4 (which may not be released by the IRS until March 2018) to request withholding on 2018 taxable income (in amounts equal what the employees estimate will be needed to cover their 2018 income tax liabilities).

The American Payroll Association's 21,000 members represent 17,000 employers, who in turn will be required to process more than 40 million **new** Forms W-4 and Forms W-2 for U.S. employees, – and our members are already starting to panic, on behalf of themselves and millions of employees, about the effect on 2018 withholdings of a tax bill that will be effective a week after its enactment.

To solve excessive withholding problems, APA recommends that employers be allowed to continue to apply, throughout 2018, the 2017 versions of Forms W-4 (even though they reflect the use of “personal exemptions” which are no longer part of the law), because **there is no time to design and implement a totally new Form W-4 system** (e.g., one that allows employees to request exemptions from wage withholding, perhaps based upon “deduction equivalents” to the longstanding personal exemption system). APA expects that the IRS would not allow employees across America simply to request income

tax withholding at a rate to be selected by each individual employee; and even if such elections were allowed, such a system would be impossible to administer immediately.

Supplemental Withholding Rate at 28% (increased from 25%)?

There are also unanswered questions about the flat “supplemental withholding rate” that would be applicable in 2018 to lump-sum payments and other “supplemental wages” paid to employees, such as bonuses, commissions, and stock compensation. This supplemental rate has been 25% since 2007, but the tax bill apparently increases that rate to **28%**, effective in 2018. This immediate increase in supplemental wage withholding will be extremely hard to implement immediately – and obviously will distress millions of affected employees, who thought they were promised a tax cut. While employers and their payroll departments will do their best to be of help in such untenable situations, they do not play the role of tax advisor, and the bill could result in just the opposite of one of its boosters’ major claims – that the whole tax process for individual taxpayers would be simplified.

Dealing With Repealed Exemptions.

In addition to the payroll withholding complications posed by the bill, there are the provisions in one or both of the bills that will turn many nontaxable, employer-provided fringe benefits into taxable wages for employees at the beginning of 2018. Among these oft-used and widespread benefits are reimbursed moving expenses, dependent care assistance, education assistance, and tuition reduction for dependents of college employees, not to mention the final indignity of taxing a “retirement watch” that might be provided to an employee who is retiring after lengthy service.

Plea for Transition Relief.

At the very least, America’s employers deserve transition relief – applicable throughout 2018 - from any penalties for failing to properly withhold or deposit federal income tax, should a version of H.R. 1 be enacted into law. Employers and payroll professionals are the main reason that the tax withholding system works in the first place, and making massive changes to the system with an unconscionably short lead time is a recipe for disaster. Give the payroll system time to adjust, and America will get what it has gotten ever since withholding began on a regular basis in 1943 – a voluntary tax compliance rate that has increased to over 90%.

Call Us at APA

If you would like more information about the proposed tax cut legislation and its effects on America’s employers and the payroll tax withholding system, call or email Alice Jacobsohn, Esq., APA’s Senior Manager of Government Relations, at 202-248-3901 or ajacobsohn@americanpayroll.org; or Michael O’Toole, APA’s Senior Director of Publications, Education, and Government Relations, at 210-630-4303 or motoole@americanpayroll.org.

Sincerely,



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