



# American Payroll Association

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Government Relations • Washington, DC

Mr. Timothy F. Geithner  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
3330 MT  
Washington, DC 20220

Mr. Steven T. Miller  
Acting IRS Commissioner  
1111 Constitution Avenue  
3000 IR  
Washington, DC 20224

December 17, 2012

**Re: Withholding federal income tax from payments after 12/31/12**

Dear Sirs:

The American Payroll Association (APA) is writing to request guidance on how employers should withhold federal income tax from payments made after December 31, 2012. Specifically, we request that the Administration allow employers to continue using the 2012 income tax withholding rates and tables until the fiscal cliff negotiations are completed and the 2013 income tax rates are determined and withholding tables are released.

The APA is the country's leading private sector advocate for payroll and information reporting issues. The APA is a nonprofit association representing 21,000 payroll professionals, and for the major payroll service providers in the United States who, in turn, process payrolls for an additional 1.5 million employers. The employers for whom APA members process payrolls are diverse in terms of business size, location, and industry. As payroll specialists, APA's members must determine proper employment tax withholding, prepare and file accurate information returns and statements, correct (when necessary) such information returns and statements, calculate and deposit taxes, and maintain all necessary payroll records, all while ensuring their organizations' employees are paid correctly and timely.

The APA and the entire payroll industry are very interested in working with the Administration and any affected agencies to reduce the labor and cost involved as the result of a swift law change and to ensure employers have time to accurately implement any changes in the withholding rates and tables.

Section 3402(a)(1)(B) requires that the withholding tables "provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out purposes

of this chapter.” This language provides the Secretary with considerable flexibility to prescribe the withholding tables and the ability to inform employers of any anticipated tax increase.

Publication 15 (Circular E), *Employer’s Tax Guide*, contains the withholding tables for each year and states that employers are to use these tables to calculate employee withholding during the year. The IRS typically releases an early version of the percentage method tables (Notice 1036) for withholding from wages paid in the following year in early December of the current year. This early release allows employers and payroll service providers to test and implement changes in withholding correctly and timely. Guidance is needed to give employers who are processing 2013’s first payroll as early as December 17 confidence that their employees are being paid correctly. The early release of the tables substantially reduces future errors and cost. However, the early release for 2013 has not yet occurred because of the ongoing fiscal cliff negotiations.

Due to the uncertainty of the 2013 tax rates, we recommend that you authorize the use of the 2012 federal income tax withholding rates and tables for payments made after December 31 and continuing until the resolution of the current fiscal cliff negotiations. We also recommend that if resolution of the fiscal cliff causes changes to the tables for 2013 that employers not be required to apply these changes on a retroactive basis. The tables should take into account that they will be implemented after wages have already been paid in 2013 and any under/over withholding due to the changes should be addressed on the employee’s personal income tax return.

In addition, by operation of law, the optional flat rate for withholding income tax from supplemental wage payments (e.g., bonuses) will increase from 25% to 28% for supplemental wages paid after December 31, 2012, while the mandatory flat rate for withholding from supplemental wage payments for employees who have received supplemental wages exceeding \$1 million in a year will increase from 35% to 39.6% at the same time. The rate for backup withholding on payments subject to Form 1099 reporting when no Taxpayer Identification Number is provided will also increase on January 1, 2013, from 28% to 31%. Employers and other payers need guidance now as to whether they need to use these new rates for payments made in 2013 if no decision on a continuation of the current income tax rates has been reached by Congress and the President before then.

We appreciate the Administration’s prompt and efficient efforts to find as many ways as possible to facilitate any guidance to employers. We believe that immediate guidance on this issue would benefit employers by reducing future withholding errors and providing sufficient lead time for implementation.

Sincerely yours,



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cc: Nina E. Olson