
PAYROLL CURRENTLY

The Compliance Publication of the American Payroll Association

September 7, 2018

Volume 26

Issue 9

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IRS Finalizes Regulations Eliminating Automatic Filing Extension For Forms W-2 and 1099-MISC

The IRS released final regulations that eliminate the 30-day automatic extension to file forms in the W-2 series (except Form W-2G) and Forms 1099-MISC reporting nonemployee compensation (NEC) in Box 7 [83 F.R. 38023, 8-3-18; <https://www.gpo.gov/fdsys/pkg/FR-2018-08-03/pdf/2018-16717.pdf>]. The regulations went into effect on August 3. The automatic extensions were eliminated so the forms would be available earlier in the filing season for the IRS to use in its identity theft and refund fraud detection processes.

Background

On August 13, 2015, the IRS published temporary regulations to remove the automatic 30-day extension of time to file forms in the W-2 series (except Form W-2G, *Certain Gambling Winnings*) and to provide for a single,

non-automatic, 30-day extension to file these forms (80 F.R. 48433, 8-13-15). The temporary regulations also added forms in the 1097 series and Forms 1094-C, 3921, and 3922 to the list of information returns covered by the regulations on the extension of time to file. The temporary regulations were applicable for extension requests for information returns due after December 31, 2016, and were set to expire on August 10, 2018, but were superseded by the final regulations.

Also on August 13, 2015, the IRS published proposed rules to remove the automatic 30-day extension to file all information returns subject to Treas. Reg. §1.6081-8 and to provide for a single, non-automatic, 30-day extension of time to file for those returns (80 F.R. 48472). After considering the comments it received, the IRS adopted the

proposed regulations only with respect to the removal of the automatic extension of time to file the Form W-2 series (except Form W-2G) and forms reporting NEC (currently only Form 1099-MISC with information in Box 7).

Forms not affected

The automatic extension of time to file is retained for:

- Form W-2G, *Certain Gambling Winnings*;
- Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*;
- Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*;
- Form 1095-B, *Health Coverage*;
- Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*;
- Form 1097 series;
- Form 1098 series;
- Form 1099 series (except forms reporting NEC);
- Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b)*;
- Form 3922, *Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)*;
- Form 8027, *Employer's Annual Information Return of*

Tip Income and Allocated Tips; and

- Form 5498 series.

Comments on Form 8809

The IRS intends to update Form 8809, *Application for Extension of Time to File Information Returns*, for the 2019 filing season. It plans to add a fifth checkbox under Line 7 of the form. Line 7 includes checkboxes to indicate the reason why the filer is requesting a non-automatic extension (e.g., a fire, casualty, or natural disaster affected the operation of the business). Employers will be able to use the new checkbox when they do not receive timely data on a third-party payee statement. This third-party payee statement might be a Schedule K-1, *Partner's Share of Current Year Income, Deductions, Credits and Other Items*; Form 1042-S; or a statement of third-party sick pay. The extension will be granted even if the employer receives the third-party payee statement by the statutory furnishing deadline, provided that the employer did not receive the statement in time to prepare an accurate information return.

Interested parties can address and suggest criteria by submitting comments on the form at <https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications>. ■

IRS Answers Question on Revising Wage Levy Computations

The IRS answered another question about how employees could revise ongoing wage levies during the August 2 payroll industry conference call.

The question. How can an employee request a revised wage levy computation when the employer received the wage levy *after* the release of the first version of Publication 1494, *Tables for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income*, in early 2018 but *before* the revised publication in May?

The employee wants the employer to recalculate the levy based on the May 2018 version of Publication 1494 because it would increase the amount of wages exempt from the federal tax levy.

The IRS answer. The employee must complete a new *Statement of Dependents and Filing Status*, which is found at the end of Notice 1439, *Figuring the Amount Exempt From Levy on Wages, Salary, and Other Income – Forms 668-W, 668-W(ACS) and 668-W(ICS)*. Notice 1439 is available at <https://www.irs.gov/pub/irs-pdf/n1439.pdf>. The employee should give the completed statement to the employer for a revised wage levy computation.

Background

In May, the IRS created Notice 1439, which updates instructions for the three versions of Form 668-W, *Notice of Levy on Wages, Salary, and Other Income* (<https://www.irs.gov/pub/irs-pdf/n1439.pdf>; see **PAYROLL CURRENTLY**, Issue 6, Vol. 26). On May 1, the IRS issued a revised 2018 Publication 1494 with updated exempt amounts based on the increased standard deduction and the number of dependents claimed instead of the number of exemptions, which reflects changes made by Public Law 115-97, known

as the Tax Cuts and Jobs Act (TCJA).

The revised Publication 1494 does contain what APA believes are several errors in the exempt amount tables, most of which are minor. APA has pointed them out to IRS. The IRS will let APA know when a further revised publication with corrected exempt amounts will be released.

- For someone married filing a joint return, paid daily, with more than 5 dependents, the table says \$93.21 plus \$15.96 for each dependent, which should be \$92.31 plus \$15.96 for each dependent.
- For someone married filing a joint return, paid daily, with 2 dependents, the table says \$124.33, which should be \$124.23.
- For someone filing as head of household, paid daily, with 3 dependents, the table says \$1171.11, which should be \$117.11.
- For someone filing as head of household, paid weekly:
 - 2 dependents – table says \$505.87, which should be \$505.77.
 - 3 dependents – table says \$585.68, which should be \$585.58.
 - 4 dependents – table says \$665.49, which should be \$665.39.
 - 5 dependents – table says \$745.30, which should be \$745.20.

Other questions

For other questions and answers on the revised wage levy exemption amounts, see **PAYROLL CURRENTLY**, Issue 7, Vol. 26. ■

Employers Must Use Current Standard Child Support Withholding Order

As of August 31, 2018, employers should be using only the revised version of the standard child support withholding order, *Income Withholding for Support*, (IWO) with an expiration date of August 31, 2020 (see *The Payroll Source*®, §9.1-2). The form is required to be used in all child support cases. It must be used by child support agencies, courts, tribes, private attorneys, and other entities when ordering or sending notices to withhold (42 USC §666(a)(1) and (8), (b)(6)). Both the form and instructions are available on the APA website.

When the Office of Child Support Enforcement (OCSE) released the current IWO, it allowed employers additional time to implement the revised IWO (OCSE, AT-17-09, 8-31-17; <https://www.acf.hhs.gov/css/resource/2017-revisions-to-the-iwo-form-and-instructions>; see *PAYROLL CURRENTLY*, Issue 10, Vol. 25).

Important changes to the IWO form and instructions

In an Action Transmittal (AT) issued to state and tribal child support directors, OCSE described the changes made to the IWO form and instructions, which include:

- Adding an optional field for the employee/obligor's date of birth.
- Clarifying that an entity, including a child support agency, should send a One-Time Order/Notice for Lump Sum Payment after receiving notification of an upcoming lump sum payment by an employer or other source.
- Removing the words "up to" in front of the withholding limit percentage and clarifying that the IWO sender must enter a specific withholding percentage, up to the Consumer Credit Protection Act (CCPA) limits, in the correct data field to avoid overwithholding from a noncustodial parent.
- Clarifying tribal withholding limits and adding links to addresses and contacts for tribes.
- Changing references to FIPS Code to Locator Code.
- Adding a link to the OCSE Child Support Portal for employers to report lump sum payments and terminations and to update information about their company.
- Adding emphasis to fields that are optional and not required.
- Adding a statement on encryption requirements. ■

DOL WHD to Hold Public Sessions on 'White Collar' Regulations

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) will hold open listening sessions this month to hear the public's ideas on the "white collar" exemption regulations [83 F.R. 43825, 8-28-18; <https://www.gpo.gov/fdsys/pkg/FR-2018-08-28/pdf/2018-18649.pdf>]. The WHD plans to update the regulations at some point and would like feedback on proposed changes.

Background

The white collar regulations implement exemptions from the Fair Labor Standards Act's minimum wage and overtime pay requirements for executive, administrative, professional, and certain other employees. The DOL published a Request for Information in the Federal Register allowing the public to comment on the overtime rule in July 2017 (82 F.R. 34616, 7-26-17; <https://www.gpo.gov/fdsys/pkg/FR-2017-07-26/pdf/2017-15666.pdf>). The comment period ended on September 25, 2017, and the DOL is reviewing the more than 240,000 submissions it received.

Input needed on topics

Public listening sessions will provide further opportunity for the public to provide input to the DOL on issues related to the exemptions' salary level test, such as:

- (1) What is the appropriate salary level or range above which the overtime exemptions for bona fide executive, administrative, or professional employees may apply?
- (2) What benefits and costs to employees and employers

might accompany an increased salary level? How would an increased salary level affect real wages (e.g., increasing overtime pay for employees whose current salaries are below a new level but above the current threshold)? Could an increased salary level reduce litigation costs by reducing the number of employees whose exemption status is unclear? Could this additional certainty produce other benefits for employees and employers?

(3) What is the best methodology to determine an updated salary level? Should the update derive from wage growth, cost-of-living increases, actual wages paid to employees, or some other measure?

(4) Should the DOL more regularly update the standard salary level and the total-annual-compensation level for highly compensated employees? If so, how should these updates be made and how frequently should updates occur?

Sessions are free; registration is required

There is no fee to attend the listening sessions; however, registration is required. To register for a session, visit <https://www.eventbrite.com/e/overtime-rule-listening-sessions-tickets-49216139799>. Listening sessions will be held from 10 a.m. to 12 p.m. local time on: September 7 in Atlanta, Ga.; September 11 in Seattle, Wash.; September 13 in Kansas City, Mo.; September 14 in Denver, Colo.; and September 24 in Providence, R.I. ■