

May 15, 2009

GOVERNMENTAL PLAN E-ALERT

IRS Gives Pension Plans Choice in Withholding Tables

In March 2009, the Internal Revenue Service (IRS) released Publication 15-T, which established new wage withholding tables ("February tables") designed to accelerate the benefit of the "Making Work Pay" tax credit passed under the American Recovery and Reinvestment Act of 2009. The new withholding tables may result in underwithholding for retirees who do not qualify for the Making Work Pay tax credit, for example because pension benefits are their sole source of income. The deadline for implementing the new withholding tables was generally April 1, 2009.

Some entities raised concerns that the new tables (all other things being equal) would create underwithholding for a significant number of retirees. In response to these concerns, the IRS issued Notice 1036-P on May 14. The Notice permits pension plans to choose either of the following paths:

- One is to simply continue using the February tables. We know that along with the new tables, many entities have instituted education programs, notices and other communications designed to educate retirees about the effect of the February tables. They may feel that changing course from what has been communicated for the past month or two will be extremely confusing to retirees.
- The second option is to adopt an additional procedure that increases the withholding by a specified amount depending on the pensioner's payment frequency (e.g., monthly), marital status and pension amount (per the table in Notice 1036-P). The IRS has not specified an effective date for adoption of the additional withholding procedure, but has encouraged plans that choose to adopt this new procedure to do so as soon as possible. Under this option, plans

may wish to consider additional communication to members who have already filed a new Form W-4P, because those members may find themselves in an over-withheld position.

Therefore, each plan should assess whether adoption of the additional withholding procedure would be helpful or not. A plan will want to consider a number of factors in determining its course of action, including the following - the efforts already undertaken with respect to the February tables, the plan's educational efforts, retiree response to those efforts, the number of Form W-4Ps processed as a result, and the time and cost involved in adopting the new procedure.

We realize this may well create additional questions and concerns in what is, for many of you, a challenging time.

As in the current Publication 15-T, there is no basis in Notice 1036-P upon which to use the old (pre-February) withholding tables. Therefore, a plan must follow one of the two approaches outlined above (use only the February tables or use the February tables in conjunction with the new procedure).

For more information about Notice 1036-P or assistance in implementing its provisions, please contact Mary Beth Braitman, Terry A.M. Mumford, Albert Lee, Katrina Clingerman, Lisa Erb Harrison or your Ice Miller LLP employee benefits attorney.

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