



## Upcoming IRS webinars—

[Tax Reform Basics About Opportunity Zones](#) presented by Stakeholder Liaison, Thursday, Nov. 29 at 2:00 PM ET; 60 minutes, 1 hour of CE

[Understanding the Dark Web](#) presented by Stakeholder Liaison, Monday, Dec. 3 at 2:00 PM ET; 100 minutes; no CE available

## TAX NEWS

**Interim Guidance on 2019 Income Tax Withholding**—Last September, the IRS indicated that a proposed Form W-4 “makeover” scheduled for 2019 would be postponed to 2020 and that the 2019 form and instructions would be similar to the 2018 versions. Notice 2018-92 provides interim guidance on withholding for the upcoming year. As we saw with the 2018 guidance, the notice clarifies how TCJA changes affect withholding. For example, employees may take the §199A deduction into account in figuring their 2019 tax liability. If appropriate, employees may use the IRS’s withholding calculator rather than W-4 schedules to determine withholding. [Page 2](#)

**Proposed Regulations Modify 401(k) Hardship Distribution Rules**—Employees may not usually take distributions from 401(k)s until certain events occur, such as attaining age 59½. Plans may allow for “hardship distributions” when an employee has certain financial needs, such as heavy medical expenses. The Bipartisan Budget Act passed last February included a provision directing the IRS to modify regulations related to hardship distributions rules. Accordingly, the Treasury Department and IRS have proposed several changes that will make it easier for participants to take hardship distributions from plans. [Page 2](#)

## QUESTION OF THE WEEK

The various credits for dependents all seem to have different tax ID requirements. How do the EIC, child tax credit, and the credit for other dependents differ in terms of these requirements? [Page 4](#)

## ORIGINAL INSIGHTS

**Revisiting the de minimis safe harbor tangible property regulations** — The de minimis safe harbor election allows businesses to expense items which are usually depreciated. [Full insight](#). View all insights at [www.thetaxinstitute.com/insights/](http://www.thetaxinstitute.com/insights/).

## INTERIM GUIDANCE ON 2019 INCOME TAX WITHHOLDING

The IRS and Treasury Department have released [Notice 2018-92](#) providing interim guidance on income tax withholding for 2019.

**Background.** Earlier this year, the IRS released a draft of a proposed Form W-4, *Employee's Allowance Certificate*, scheduled to go into effect in 2019. The proposal called for a dramatic redesign of the form and accompanying instructions, essentially doing away with the traditional allowance system. Instead, employees were to account for all income, deduction, and credit items, resulting in withholding that would agree as closely as possible to actual tax liability. In September, the IRS released a statement that the proposal would be postponed until 2020 and that the 2019 W-4 would be similar to the 2018 version. See the March 7, 2018 edition of TAX in the News for a discussion of the 2018 Form W-4 and the September 26, 2018 edition for the 2019 proposal and postponement.

**Interim guidance.** Following the news about the postponement of the W-4 overhaul, the IRS released a [draft](#) of the 2019 Form W-4 and instructions. Notice 2018-92 reiterates that the final 2019 form will be similar to the 2018 version and indicates that regulations will be revised to reflect changes made by the TCJA. The notice includes the following points:

- The TCJA revised §3402 (the section that covers wage withholding) in part to refer to a single withholding allowance that covers multiple items, including the employee's marital status, the standard deduction, whether the employee's spouse is working, whether the employee is eligible for credits, etc. The Treasury Department will revise regulations to conform with the TCJA, for example, by eliminating references to "withholding exemptions" and addressing the TCJA's withholding terminology.
- Employees who have a change in withholding status, such as a child withdrawing from college, must normally furnish a new Form W-4 within 10 days of the event. Notice 2018-92 continues until April 30, 2019, a temporary suspension of this requirement for employees who have a change of status solely because of the TCJA. For instance, an employee who will not be itemizing deductions because of TCJA changes does not need to complete a new W-4 until May 10, 2019. However, employees are encouraged to update their Forms W-4 as soon as possible.
- Employees may take the §199A qualified business income deduction into account in determining their withholding.
- Employees who fail to furnish Form W-4 will be subject to a "default rule" in which they'll be treated as single with zero allowances (the IRS intends to issue further guidance for this circumstance).
- Notice 2018-92 specifically allows employees to use the IRS [withholding calculator](#) in lieu of completing W-4 schedules to determine any additional withholding amount to enter on line 6 of the 2019 W-4. However, the withholding calculator is not appropriate for everyone, such as taxpayers who owe self-employment tax or taxpayers with taxable social security benefits.

Employers may follow the guidance in this notice until final regulations are issued.

## PROPOSED REGULATIONS MODIFY 401(k) HARDSHIP DISTRIBUTION RULES

The Treasury Department and IRS have issued [proposed regulations](#) that make it easier for individuals to take hardship distributions from 401(k) plans. The proposal reflects changes made by the Bipartisan Budget Act of 2018 (BBA of 2018) and other legislation.

**Background.** Ordinarily, 401(k) plan participants may take distributions only on or after certain events occur. These include disability, severance from employment, and attainment of age 59½. Plans may allow participants to take distributions on account of "hardship," defined as "immediate and heavy financial need."

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A plan sponsor may consider all relevant facts and circumstances in allowing a hardship distribution, but the current regulation (Reg. §1.401(k)-1(d)(3)(iii)(B)) offers six examples of immediate and heavy financial needs that may justify such distributions:

- Medical care expenses for the employee, the employee's spouse, or dependents determined without regard to whether the expenses exceed the AGI limit on medical expense deductions.
- Costs directly related to the purchase of an employee's principal residence (excluding mortgage payments).
- Tuition, related educational fees and room and board expenses for the next 12 months of postsecondary education for the employee or the employee's spouse, children, or dependents.
- Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage on that residence.
- Funeral expenses for the employee, the employee's spouse, children, or dependents.
- Certain expenses that would qualify for the casualty loss deduction needed to repair damage to the employee's principal residence, without regard to the 10% AGI limit.

The BBA of 2018 passed last February included many provisions, including the extension of expiring extenders and the new Form 1040SR for taxpayers at least age 65. Also included was special tax relief for victims of the 2017 California Wildfires, similar to the relief provided for victims of Hurricanes Harvey, Irma, and Maria during the fall of 2017. For more information about this legislation, see *Tax in the News*, February 14, 2018.

The BBA also directs the IRS to modify §401(k) regulations to make it easier for employees to take hardship distributions.

**Hardship distribution changes.** Accordingly, the proposed regulations would:

- Clarify that the definition of "casualty" for hardship distribution purposes is *not* restricted to the TCJA's narrow definition of casualty loss as one occurring in a federally-declared disaster area.
- Eliminate the requirement for participants to take all available loans from the 401(k) plan and other employer plans before receiving hardship distributions.
- Eliminate the 6-month waiting period before a taxpayer taking a hardship distribution can resume contributing to the qualified plan.
- Add a "primary beneficiary under the plan" as an individual – not only the employee – for whom qualifying medical, educational, or funeral expenses may be incurred.
- Allow hardship distributions to include 401(k) earnings, matching contributions, and other components of the employee's account balance.
- Create a new, broader type of "disaster expense" category on account of a FEMA-declared disaster that is any immediate and heavy financial need that cannot be satisfied by any other source than the taxpayer's 401(k) account.

Moreover, the proposed regulation eliminates a facts and circumstance test used to determine if a distribution is necessary to satisfy financial need and replaces it with a general standard. Under the general standard,

- A hardship distribution may not exceed the amount of an employee's need (including amounts necessary to pay federal, state, or local income tax or penalties reasonably anticipated to result from the distribution)

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- The employee must have obtained other available distributions under the employer's plans, and
- The employee must represent that he or she has insufficient cash or other liquid assets to satisfy the financial need.

An employer (plan sponsor) may rely on the employee's representation unless the plan administrator has actual knowledge to the contrary.

The changes to the hardship distribution rules made by the BBA of 2018 are generally effective for plan years beginning after December 31, 2018 for distributions beginning after December 31, 2018. The changes to the revised list of safe harbor expenses may be applied to distributions on or after a date that is as early as January 1, 2018. Plan sponsors need to consider plan amendments to apply the revised safe harbor expense; the deadline for plan amendments is generally the end of the second calendar year after IRS issues a list of required amendments.

## **QUESTION OF THE WEEK**

**Q.** After tax reform, the various credits for dependents all seem to have different tax ID requirements. How do the EIC, child tax credit, and the new \$500 other dependent credit differ in terms of tax ID (SSN or ITIN) requirements?

**A.** Prior to the TCJA, only the earned income credit had a social security number (SSN) requirement. Here, the SSN must be valid for work in the U.S. An SSN issued solely to obtain federally funded benefits and that says "not valid for employment" on the card does not serve as a valid SSN for the earned income credit. The TCJA now has an SSN requirement for the child tax credit as well.

Here is a rundown of the current taxpayer ID requirements for the three types of tax credits.

**Earned income credit (EIC):** The taxpayer, the taxpayer's spouse if married, and any child claimed for the EIC must have a valid SSN. This provision was in effect before the TCJA and was not affected by the new law. Before the PATH Act of 2015, it was possible to amend returns for open years to claim the EIC for taxpayers with individual tax identification numbers (ITINs) who later received valid SSNs. Because the PATH Act requires the taxpayer, spouse, and qualifying child to have the SSN in place prior to the due date of the return, retroactive claims for EIC are no longer possible.

**Child tax credit (CTC):** The TCJA added an SSN requirement for CTC claims starting with tax year 2018. The change applies to both the nonrefundable and refundable portions of the credit. Unlike the EIC though, the SSN is required only for the qualifying child. Thus, a taxpayer and spouse may have ITINs but claim the CTC for a child with an SSN. The SSN must be valid for work and must be in place by the due date of the return.

Because SSNs must be applied for with the Social Security Administration rather than submitting a W-7 application with the tax return, taxpayers who expect to receive an SSN for their child after the return due date should consider requesting an extension. If the SSN is received by the extended due date, the taxpayer can then file claiming the CTC / ACTC. Otherwise, the taxpayer will have to wait until the following tax year to claim the CTC.

If a child obtains an SSN in 2018 or later, tax returns for 2017 and earlier cannot routinely claim the CTC even though the SSN requirement didn't apply before 2018. For example, if a qualifying child had an ITIN prior to the due date of the 2017 return and a return was not filed or filed without claiming the CTC, an original or amended return can be filed for 2017 to claim the credit. If the child did not have an ITIN by the return due date, the credit can't be claimed for 2017. In other words, the relevant ID number requirement must be met each year.

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**Credit for other dependents (ODC):** The new \$500 credit for other dependents may be claimed for a dependent with an SSN or ITIN. Just as with the other two credits, the dependent must have the tax ID by the due date of the tax return. Also, while the ODC is available for an individual with an ITIN, the qualifying dependent must be a U.S. citizen or a U.S. resident. Non-U.S. citizens/residents who are residents of Canada or Mexico are not qualifying children or qualifying relatives eligible for the ODC.