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Mr. Victor Aledo
Supervisory Tax Law Specialist
Individual & Specialty Forms & Publications
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Ms. Janet McCubbin
Director
Individual Tax Analysis
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. Curtis Freeman
Senior Technical Advisor
Tax Forms & Publications
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Ms. Carol Weiser
Deputy Benefits Tax Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: 2019 Draft Form W-4 and Instructions

Dear Sirs and Mesdames:

The American Institute of CPAs (AICPA) appreciates the opportunity to submit our recommendations on the 2019 [draft Form W-4](#), *Employee's Withholding Allowance Certificate*, and its [instructions](#). We recognize the tremendous effort required of the Internal Revenue Service (IRS) and the Department of the Treasury ("Treasury") to analyze the complexities of Pub. L. No. 115-97¹ (commonly referred to as the *Tax Cuts and Jobs Act* (TCJA)) to create a draft 2019 Form W-4. Our recommendations emphasize the need for a simple Form W-4 that reduces administrative burden, protects employees from invasion of privacy, and avoids the shifting of additional onus onto employers.

I. Simplification

To achieve simplicity, Form W-4 should not include nonwage income, itemized and other deductions, tax credits, and total pay of all lower paying jobs² ("personal information"). The draft 2019 Form W-4 is unduly complicated and essentially requires taxpayers to calculate their tax liability. Taxpayers need a Form W-4 that is easy to understand and simple to complete, thereby reducing compliance burdens and minimizing the risk of tax underpayment and penalties.

¹ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

² Nonwage income, itemized and other deductions, tax credits, and total pay of all lower paying jobs are lines 5 through 8 of the draft 2019 Form W-4.

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Specifically, in lieu of requesting personal information (lines 5 through 8) on the draft 2019 Form W-4, we recommend the following options:³

- Provide the taxpayer a simplified method (based on the standard deduction) to estimate their total gross income on the Form W-4;
- Allow the taxpayer to withhold a specified additional amount of tax (similar to the current form) or a reduced amount of tax; and
- Include an alternative⁴ on the Form W-4 and instructions for a taxpayer that does not want to provide total gross income and chooses to provide a specified amount to withhold from each paycheck, or elect the same withholding as prior year.⁵

Currently, the draft 2019 Form W-4 is a more challenging task than calculating the number of allowances to claim on the existing 2018 Form W-4. Taxpayers attempting to determine an accurate withholding will face a complex calculation involving personal information or amounts withheld from each paycheck. The draft 2019 Form W-4 references the IRS withholding calculator as an option to assist the taxpayer. However, relying on the tax calculator depends on the taxpayer's ability to understand their credit eligibility, the amounts of those credits, and the interplay between the elimination of most itemized deductions versus the increased standard deduction under the TCJA. Even with the aid of the IRS calculator, the taxpayer could inadvertently underestimate tax withholding.

An additional burden that may arise is if a taxpayer using the married filing jointly status accurately completes the draft 2019 Form W-4, the allocation of the withholding burden could shift unevenly to the higher earner. For example:

Taxpayer earns \$25,000 per year, and Spouse earns \$24,000 per year. With the standard deduction at \$24,000, Spouse checks the married filing jointly box on the draft 2019 Form W-4 and will have no federal withholding because his/her wages do not exceed the standard deduction.

Taxpayer will check the married filing jointly box and enter \$25,000 on Line 8. Since the entire standard deduction is used, Taxpayer's withholding is \$2,619 (($\$19,050$ (the bottom bracket) x 10%) + (($\$25,000 - \$19,050$) x 12%)).

³ Form W-4 should maintain current lines asking for name, social security number, address, filing status (single, married filing jointly, etc.) and the ability to claim an exemption from withholding (lines 1-4, and 7, on the existing 2018 Form W-4).

⁴ Many taxpayers may not read or have access to the instructions. Therefore, the form should clearly state that an alternative option exists if taxpayers do not want to provide total gross income.

⁵ This option is currently included in a "note" on page 2 of the draft 2019 Form W-4, however it is not included in the separate form instructions. The option allows the taxpayer to compute a specific withholding amount. IRS should develop a form to assist taxpayers choosing this option with the calculation.

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The total household income is \$49,000 with each spouse receiving approximately the same salary. However, Taxpayer has \$2,619 withholding while the spouse has \$0 withholding.

The disparity in “take home” pay grows more severe as income levels rise and the combining of incomes of a married couple on the draft 2019 Form W-4 potentially pushes one taxpayer into a higher tax bracket for withholding purposes. For couples that choose to use separate bank accounts and couples with similar earnings, these calculations create imbalances between the spouses. Complex side agreements governing how the overall tax liability is handled internally and how the tax refund is distributed between the two married individuals are relied upon to maintain fairness.

Finally, with the existing 2018 Form W-4, employees were required to update the form on rare occasions when personal or financial changes occurred (*e.g.*, after the birth of a child). Due to the inclusion of personal information and household income on the draft 2019 Form W-4, employers must request employees to complete the form annually, even though the individual’s financial and family situations may remain unchanged. Personal information is unknown to employers and is variable, requiring an extensive annual calculation that will impact taxpayers and employers.

II. Protect Taxpayers from Invasion of Privacy

To protect the privacy of employees from potential unfair employment practices, the IRS and Treasury should develop a simplified Form W-4 (that does not request personal information) and clarify on the form and instructions that personal information is optional.

On the existing 2018 Form W-4, personal information was optional and was included on a separate Form W-4 “Personal Allowances Worksheet,” which taxpayers were instructed to keep for their own records. On the draft 2019 Form W-4, this information has moved to the front of the form, with no clear indication that the personal information is optional. The draft form includes a short “note” on page two that explains these details are not required. However, this notification is not included in the draft instructions to the 2019 Form W-4.

Many employees are likely apprehensive that providing employers with spousal and family income information on the Form W-4 can lead to unfair and discriminatory employment practices.⁶ For example, employees may have concerns that an employer will forego a wage increase if the employer has knowledge of other family income. An employee may also choose to not apprise their employer of self-employment or compensation from other activities outside of their employment as the employee may have concerns that the employer will perceive the employee as less willing to travel or work additional hours. Although many states (though not all) have laws

⁶ Additionally, other employees (*e.g.*, colleagues/personnel in human resource departments) may have access to the personal information on the Form W-4.

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protecting employees or job applicants from discrimination resulting from marital and financial status, many taxpayers will likely choose not to provide this information.

Given the concerns detailed above regarding privacy, taxpayers are unlikely to provide personal information about their other household income, deductions and credits. Therefore, many taxpayers will inadvertently face the risk of inaccurate and incomplete annual withholding calculations, which could then result in an increased level of underpayment of taxes and penalties.

III. Prevent Shifting of Additional Onus onto Employers

To prevent the shifting of unnecessary responsibilities and liability onto employers, the IRS and Treasury should provide employers a straightforward method to determine their employees' withholdings.

The Form W-4 has transformed from a long-standing form that was systematically distributed by employers to new employees as part of their initial onboarding process, to the current draft that employers need to calculate their employees' withholdings on an annual basis. This form transition is a significant change with the risks and responsibility of accurate withholding calculations shifted to employers. Specifically, the current draft 2019 Form W-4 includes a new "tip" that states that taxpayers should "use this form so that [their] employer can withhold the correct amount of income..." Meanwhile, it is unclear what level of due diligence is required of the employer to ensure that the proper amount of tax is withheld. For example, an employee could omit information on Form W-4 to avoid the burden of properly calculating their tax withholdings.

Alternatively, an employer may request that the employee refer to the IRS calculator to provide the amount to withhold from each paycheck, and the employee may not understand, or want to take the time to utilize, the IRS calculator. Either of these situations could result in a significant underpayment or overpayment of taxes.

Historically, employers have used Publication 15 (Circular E), *Employers Tax Guide*, to reference the withholding tables that determine the employees' withholdings. It is unclear if IRS and Treasury plan to revise Publication 15 to provide guidance, perhaps with a new withholding table or a prescribed equation, to calculate the proper withholding. Without a revised Publication 15, the employer will need to understand and interpret the TCJA to determine an appropriate withholding. Many employers, particularly small businesses, simply do not have the technical knowledge or resources to make these critical tax decisions on behalf of their employees.

Finally, the detailed information on the draft 2019 Form W-4 poses an increased identity theft security risk as information on this draft form is highly coveted by criminals filing fraudulent tax returns and loan applications. Currently, employers have the responsibility to protect their

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employees' tax information. The draft 2019 Form W-4 requires employers to keep personal employee information (*e.g.*, spouse's wages) safe and private for an indefinite period of time

Conclusion

The AICPA recommends a simplified Form W-4 that determines withholding in an appropriate and fair manner without placing undue burden and onus on taxpayers and their employers.

The American Institute of CPAs (AICPA) is the world's largest member association representing the CPA profession, with more than 431,000 members in 137 countries and territories, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments. If you would like to discuss these issues further, please feel free to contact Melanie Lauridsen, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9235, or Melanie.Lauridsen@aicpa-cima.com; Amy Wang, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9264 or Amy.Wang@aicpa-cima.com; or me at (408) 924-3508 or Annette.Nellen@sjsu.edu.

Sincerely,



Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: The Honorable David J. Kautter, Acting Commissioner, Internal Revenue Service