

**QUESTIONS ON VOLUNTARY WITHHOLDING OF FEDERAL  
INCOME TAXES FROM UI BENEFITS**

- 1. Claimants must be given an option to change their tax withholding status at least once during the life of their UI claim. Can that change be retroactive, or is it to be effective only for future weeks paid? For example, can claimants who have already had taxes withheld from prior benefit payments change their withholding option and ask for the amount of withheld taxes to be refunded?**

ANSWER: Changes may not be made retroactively. A request for withholding must be "in effect" at the time the benefit payment is made. Furthermore, SESAs are not responsible for refunding withheld taxes. When taxes are withheld, they are held in trust for the U.S. Government. All refunds must be obtained by the claimant from the IRS just as any overpayment of income tax is done.

- 2. What reports are to accompany fund transfers sent to the IRS and what information should be contained in the reports? Are reports electronic or paper? If paper, what forms are to be used? If electronic, what format should be used?**

ANSWER: No transmittal form is required for the deposits since they will be made electronically through the Electronic Federal Tax Payment System (EFTPS).

- 3. How do SESAs report income tax withheld from UI benefits?**

ANSWER: Withheld income tax is to be reported annually on Form 945, Annual Return of Withheld Federal Income Tax. The location for filing depends on the filing district of the State. Form 945 instructions provide mailing and transmittal information.

- 4. What progress has been made in the development of an alternative to the draw down approach with the Department of the Treasury, as referred to on page 6 of UIPL No. 17-95 (Section 4. e. (2))?**

ANSWER: According to Treasury officials, the alternative draw down approach mentioned on page 6 of UIPL No. 17-95 cannot be executed. Currently, deposits of withheld funds must be made in accordance with the rules set forth in section 31.6302-1 of the Employment Tax Regulations.

These rules are also found in section 11 of Publication 15, Circular E, Employer's Tax Guide. However, beginning in 1997 all the States will be depositing withheld funds electronically under the EFTPS. For more information on EFTPS you may call 1-800-945-8400 or 1-800-555-4477.

Separate deposits are required for non-payroll income tax withholding reported on the Form 945. SESAs may not combine deposits for Form 941 and Form 945, although the rules for how and when to deposit are the same. There are two deposit schedules, monthly or semi-weekly, for determining when a deposit of withheld income tax must be made. Circular E explains these two deposit rules in detail.

**5. Should the amount of Federal Income Tax withheld be reported to the claimant on Form 1099-G?**

ANSWER: Yes, income tax withheld from a claimant's UI benefits must be reported by the State at year end on Form 1099-G, in box #4 entitled "Federal Income Tax Withheld".

**6. Must SESA's provide claimants with 1099-G forms in duplicate (one copy to attach to the tax return and a second copy for claimant records) or is a single copy sufficient?**

ANSWER: Only one copy of Form 1099-G is required to be provided to the claimant. A copy of Form 1099-G does not accompany the individual's tax return. Therefore, no change is required in the current methodology for providing 1099-G forms to claimants.

**7. Some individuals file quarterly estimated tax payments to the IRS. Is the SESA obligated to provide individuals with any type of quarterly tax information, if requested?**

ANSWER: There is no requirement for SESAs to provide quarterly tax information to claimants.

**8. A. When weeks of unemployment already paid are determined overpaid, is the overpayment amount to include the gross amount of benefits authorized for the weeks, or only the amount minus the tax withholding?**

ANSWER: The overpayment amount is the gross amount of benefits authorized for the weeks.

**B. Is the answer to the question the same regardless of whether the overpayment order is issued in the same or subsequent taxable year as the initial payment (pre-1099-G report versus post-1099-G report)? Does the claimant have the option to have taxes already withheld refunded and applied to outstanding overpayments that involve weeks with tax withholdings?**

ANSWER: The SESA must always report the gross amount of benefit payments on the 1099-G. As discussed in question 1, withheld taxes cannot be refunded by the SESA. The claimant must file for a refund with the IRS, as with any other overpayment of withheld income taxes. Instructions for 1995 Individual Federal Income Tax Form 1040 state, "If you

received an overpayment of unemployment compensation in 1995 and you repaid any of it in 1995, subtract the amount you

repaid from the total amount you received. Enter the result on line 19. Also enter "Repaid" and the amount you repaid on the dotted line next to line 19. If, in 1995, you repaid unemployment compensation that you included in gross income in an earlier year, you may deduct the amount repaid on schedule A, line 22."

**9. Can the 15 percent withheld be rounded to the nearest dollar?**

ANSWER: Yes, if rounding is used consistently for all claimants. Withheld tax amounts should be rounded to the nearest whole dollar by (1) dropping amounts under 50 cents, and (2) increasing amounts from 50 to 99 cents to the next higher dollar.

**10. Is a Form W-4 required? Is there a special Form W-4 used to elect 15 percent withholding? Instead of the IRS form, can a State modify its UI claim form to ask whether the individual wants Federal Income Tax withheld?**

ANSWER: The IRS is currently developing a new Form W-4V on which an individual can request voluntary income tax withholding on certain kinds of payments, including UI.

Section 3402(p)(1)(D) of the Internal Revenue Code (IRC) provides that rules similar to the rules that apply to annuities under section 3402(o)(4) shall apply to requests for voluntary withholding from Social Security payments. Section 3402(o)(4) provides that any request for withholding on an annuity must be in writing and must contain the Social Security Number of the payee and the amount to be deducted. A request for change or termination of withholding must also be in writing.

Section 31.3402(o)-2(b) of the IRS regulations states that a request for withholding on an annuity should be made on Form W-4P. In lieu of Form W-4P, however, a payor may prepare and use a form whose provisions are identical with those of Form W-4P. Therefore, SESAs may use an initial claims form for UI, or any other form, as a substitute for Form W-4V, as long as the form includes: (1) the individual's name, Social Security number, and home address; (2) a statement that the individual requests that Federal Income Tax be deducted in the amount of 15 percent of the gross benefit payment amount from each benefit payment, and; (3) the individual's signature.

**11. How long does the election to have income tax withheld remain in effect?**

ANSWER: A claimant's election remains in effect for the duration of the claim, unless a request for change or

termination of withholding is submitted in writing by the claimant. If a claimant files a new claim, a new election must be made.

12. **Is there a minimum amount of tax that can be withheld from a single payment? Can SESAs impose a minimum? Is there a minimum payment amount subject to withholding?**

ANSWER: Section 3402(p)(2) of the IRC, states the amount to be withheld on UI benefits is 15 percent of the payment. The statute does not provide for a minimum amount of withheld tax or for a minimum benefit payment subject to withholding.

13. **Must the amount of the Federal Income Tax withheld from the UI benefit payment be printed on the check (warrant) stub?**

ANSWER: No Federal requirement exists. The State may or may not provide this service to the claimant.

14. **Under a telephone claims system, is it acceptable to mail the written notice advising claimants of the taxation of UI benefits and offering the option of voluntary withholding after the election is made via the Interactive Voice Response System (IVRS)?**

ANSWER: Notice to a claimant regarding the taxation of UI benefits and electing voluntary withholding may be accomplished through an IVRS. The requirement to provide written information regarding the taxability of UI benefits to claimants who file initial claims via IVRS was superseded in UIPL No. 35-95. Claimants may also indicate a preference for withholding via IVRS, however, under current IRS interpretation of the rules, written authorization from a claimant must be received by the SESA before Federal income taxes are actually withheld from benefits. (See question #10 for contents of authorization statement/form). DOL will continue working with the IRS in an attempt to authorize use of Personal Identification Numbers (PIN) in lieu of written authorization.

15. **When mandatory deductions are made from a claimant's benefit payment, is the 15 percent computed on the claimant's "net" payment or "gross" payment?**

ANSWER: The 15 percent for withholding of Federal Income Tax must be calculated on the "gross" amount. As stated in Change 1 to UIPL No. 17-95, the deduction for withholding of Federal Income Tax is voluntary and may not be made before any mandatory deductions. However, if the claimant elects to have amounts withheld, the 15 percent must be taken to the extent funds are available after all mandatory deductions are made.

16. **If, after all mandatory deductions are made from a claimant's benefit check, the net benefit payment will be**

**less than the 15 percent deduction made on the gross amount, does the State still deduct the remaining balance?**

ANSWER: Yes. If the claimant has elected to have taxes withheld, then the State is obligated to do so. Taxes must be withheld to the extent funds are available.

**17. Will there be a standard procedure to use for interstate cases?**

ANSWER: The IB-1 is being revised to include a question regarding election for withholding. When the revision is completed, the liable State will be responsible for withholding any tax.

**18. What records must be retained and for how long in order to comply with IRS regulations?**

ANSWER: For the collection of income tax at the source (withholding), types of records and length of time for maintaining them are addressed in IRS regulations 26 CFR 31.6001-5. These regulations may be revised in the future to specifically address withholding of income tax from UI benefit payments.

**19. For partial and employer filed claims, what is the method of notification for voluntary withholding? Should the notice go to the employer or to the employee? Can the employer notify the claimant or must the agency notify the claimant? Also, can a claimant's election be handled through the employer or must the election be made directly to the agency by the claimant?**

ANSWER: Information regarding the taxation of UI benefits and the option for withholding must be provided by the State agency to the claimant per paragraph 301 of Public Law 102-318. See UIPL No. 45-92 for information on this law. Employers may be designated agents of the State for this