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## IRS Issues Proposed Regulations Additional Medicare Tax

December 19, 2012

On Nov. 30, 2012, the Internal Revenue Service (IRS) released [proposed regulations](#) on the Additional Hospital Insurance Tax, also known as the Additional Medicare Tax. Under the Affordable Care Act (ACA), **effective Jan. 1, 2013**, employers must withhold an additional tax of 0.9 percent on wages in excess of \$200,000 that any of their employees receive in a calendar year.

The proposed regulations provide guidance for both employers and employees on the Additional Medicare Tax, including regulations relating to:

- Withholding and computation of the Additional Medicare Tax;
- The employer process for making adjustments of underpayments and overpayments of the Additional Medicare Tax; and
- The employer and employee processes for filing a claim for a refund of overpayment.

Although the regulations are not effective until final regulations have been published, the Additional Medicare Tax applies to all wages, compensation and self-employment income received in tax years beginning after **Dec. 31, 2012**. Taxpayers may rely on the proposed regulations until the final regulations are effective.

### EMPLOYER WITHHOLDING REQUIREMENTS

The Additional Medicare Tax applies to individuals' wages, other compensation and self-employment income over certain thresholds. Employers are responsible for withholding the tax on wages and other compensation in certain circumstances.

Although an employee's liability for the Additional Medicare Tax depends on his or her filing status and compensation, the employer's required actions are not affected by those things. An employer must withhold the Additional Medicare Tax from wages it pays to an employee in excess of \$200,000 in a calendar year, regardless of the individual's filing status or wages paid by another employer. Therefore, an employee may owe more than his employer withholds or may be able to claim credit for any withheld Additional Medicare Tax against his total tax liability once he files his income tax return.

Employers are not required to notify an employee when they begin withholding the Additional Medicare Tax and must begin withholding in the pay period in which they pay an employee wages in excess of \$200,000 for that calendar year.

Under the proposed regulations:

- Employees may ask their employers to withhold additional income tax on Form W-4 if they believe they will be subject to the Additional Medicare Tax liability, but they cannot designate a withheld amount specifically for the Additional Medicare Tax; and
- An employer cannot honor an employee's request to cease withholding the Additional Medicare Tax even if the employee will not owe the tax because of his filing status.

If an employer does not properly withhold the Additional Medicare Tax and the employee subsequently pays the tax, the IRS does not collect the tax from the employer. However, the employer remains subject to any applicable penalties or additions for failure to withhold to the extent required.

The IRS plans to release draft revised tax forms for tax year 2013 to account for the Additional Medicare Tax.

### **EMPLOYEE LIABILITY FOR THE ADDITIONAL MEDICARE TAX**

An employee is liable for Additional Medicare Tax on wages or compensation to the extent that tax is not withheld by his or her employer. The Additional Medicare Tax requires employees to pay an additional tax of 0.9 percent to the extent their wages exceed:

- \$250,000 for a joint tax return;
- \$125,000 for a married employee filing a separate tax return; or
- \$200,000 in all other cases.

There is no employer portion corresponding to the amount payable by the employee. All wages that are currently subject to Medicare Tax are also subject to the Additional Medicare Tax, including noncash fringe benefits, tips and other noncash wages.

The Additional Medicare Tax and applicable thresholds also apply to the Railroad Retirement Tax Act compensation paid to railroad employees and employee representatives and to self-employment income. The Additional Medicare Tax payable by self-employed individuals is coordinated with any wages subject to the Federal Insurance Contributions Act (FICA), and threshold amounts of self-employment income are reduced by any wages the individual earns that are subject to FICA.

Lawley will continue to monitor progress of the health care reform law and its implementation and will keep you informed of important developments.

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