

The New Michigan Pension Withholding Requirements

1/5/2012 Mary Jo Larson

Many questions remained unanswered after the State of Michigan enacted new withholding requirements for retirement payments. Since systems must be in place for payers to withhold by January 1, 2012, quick guidance was sorely needed. (See prior article for a general description of the new rules [here](#).)

The Michigan Treasury stepped up to the plate and published the “2012 Pension Withholding Guide,” which included a new MI-4P on which the employee could provide withholding instruction. The Michigan Supreme Court also jumped into action and issued an opinion on several constitutional questions, which prompted the Michigan Department of Treasury to revise its guidance. The most recent “2012 Pension Withholding Guide” with the most recent MI-4P is available [here](#). You will know you have the most current version if the version date “11/11” is in the upper left corner.

The key take-aways include the following.

Amount to Withhold

From payments that may be partially deducted

Certain retirement plan payments may be partially deducted from income, depending on the age of the participant and spouse; withholding is not required on the deductible amounts or amounts below the standard exemptions. These payments include:

- Payments from tax-qualified pension and annuity plans
- IRA payments after age 59-1/2, death, disability, or as a life-time annuity
- 403(b) distributions from an annuity purchased by a 501(c)(3) organization or public school, if made after the retirement date specified in the plan*
- Tax-qualified profit-sharing plan or 401(k) distributions attributable to employer contributions (or employee contributions mandated by the plan), if made after the retirement date specified in the plan*
- Distributions from church plans

- Distributions from nonelective nonqualified plans that set retirement criteria, if made from a pension trust after retirement

Other retirement plan payments, including distributions made before the retirement date specified in the plan, are not wholly or partially exempt from income tax and are therefore subject to withholding.

Because the withholding amount on partially deductible payments under the statute depends on the ages of the participant and spouse, their personal exemptions, and their income, it was previously unclear how a payer could determine the appropriate amount to withhold. The Michigan Supreme Court decision held that varying the tax and withholding based on income levels violates the constitutional ban against graduated income taxation, so income level is no longer relevant. With respect to age and exemptions, a new MI W-4P is available on which the participant can provide withholding instruction. The participant may determine, for example, that income taxes attributable to retirement payments will be covered by other withholding and/or estimated taxes, in which case the participant's MI W-4P would indicate that no withholding is required. The MI W-4P also provides tables for the administrator to determine the appropriate amount to withhold based on the participant's instructions. Absent instruction from the participant on an MI W-4P (and only on a MI W-4P), the administrator should withhold on the partially deductible payments, based on the age of the participant and without regard to the spouse's age, as follows:

- Do not withhold on payments made to participants born before 1946 (except to the extent the amounts exceed the previous private pension limits, \$45,842 for single or married filing separate or \$91,684 for married filing jointly).
- For those born after 1946, withholding should be at the rate of 4.35 percent on the entire distribution, without regard to exemptions.

From all other payments

All other payments are subject to withholding at the rate of 4.35 percent, regardless of the age of the participant or exemptions, absent instruction otherwise from the recipient on a Form MI W-4P.

Payers Subject to the New Withholding Rules

Only those subject to Michigan jurisdiction are required to withhold Michigan income tax under the new rules. Other payers need not withhold, even though the payee resides in Michigan.

The Withholding Guide refers to the pension "administrator" as the person responsible for

withholding. If the administrator is registered with Michigan Department of Treasury only for reasons other than withholding, the administrator must register again as a “pension administrator.” It is not entirely clear whether an administrator who administers payments to one person from more than one plan would have to aggregate the payments for withholding purposes. Analogy to federal law would indicate that aggregation is allowed but not required.

More information can be found [here](#).

If you have questions about the requirements, please contact [Mary Jo Larson \(mlarson@wnj.com\)](mailto:mlarson@wnj.com) or 248.784.5183) or another member of the Employee Benefits/Executive Compensation Group at Warner Norcross & Judd.

*The definition of retirement plan payments has not changed from the prior law allowing deduction of such payments at all ages, subject to the dollar maximums. We understand that the Michigan Treasury historically has relied on the coding on the IRS Form 1099-R for distributions after age 59½ to determine whether payments are made after the retirement date.