

**MEMO# 28526**

November 14, 2014

# IRS Releases Revised Draft of Form W-9 and Instructions

[28526]

November 14, 2014

TO: TAX MEMBERS No. 30-14

ICI GLOBAL TAX COMMITTEE No. 19-14

INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 17-14

TRANSFER AGENT ADVISORY COMMITTEE No. 72-14

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TAAC FATCA TASK FORCE No. 9-14 RE: IRS RELEASES REVISED DRAFT OF FORM W-9 AND INSTRUCTIONS

The IRS has posted in draft form to its website a revised version of Form W-9 and the Instructions for the Requester of Form W-9. Form W-9 is used to request a U.S. person's taxpayer identification number and to obtain certain certifications. Failure to provide a valid Form W-9 can result in tax withholding.

- The draft Form W-9 can be downloaded from the IRS at:  
<http://www.irs.gov/pub/irs-dft/fw9--dft.pdf>
- The draft Instructions for the Requester of Form W-9 can be downloaded from the IRS at:  
<http://www.irs.gov/pub/irs-dft/iw9--dft.pdf>

The draft changes to these forms respond to requests made by the ICI and the American Council of Life Insurers ("ACLI") earlier in 2014. [\[1\]](#)

## Changes to Form W-9

The body of Form W-9 is not substantially altered in this draft. Line numbers have been added to the fields that are to be completed by the taxpayer and clarifications have been made in Field #3 regarding the proper federal tax classification of single-member LLCs.

Two noteworthy changes were made to the instructions that are attached to Form W-9. First, in addition to stating that a person giving a Form W-9 with respect to a U.S. account can leave the FATCA field blank, the instructions state that the Form W-9, if provided by a U.S. financial institution, may come pre-populated with "Not Applicable" or similar indication in the FATCA field. Second, the instructions now say that, "You may wish to consult with the financial institution requesting this form to determine whether the FATCA

code and/or exempt payee code should be completed.”

## **Changes to the Instructions for the Requester of Form W-9**

As requested by the ICI and ACLI, changes were made regarding the creation of substitute Form W-9s. Notable changes are as follows.

- U.S. financial institutions, which do not need to collect FATCA exemption codes, may now omit that field from their substitute forms.
- U.S. financial institutions can pre-populate Form W-9s provided to customers with “Not Applicable” or similar language in the FATCA code field.
  - If a Form W-9 with a prepopulated FATCA exemption code is received by a non-U.S. financial institution, such institution may not rely on such form to treat a customer or counterparty as exempt from FATCA reporting.
- If a financial institution receives a Form W-9 with a FATCA exemption code and it knows or has reason to know that the person submitting the form is actually a specified U.S. person, the Form may not be relied upon to treat the person as exempt from FATCA reporting; however the Form may still be relied upon to treat the person as a specified U.S. person.
  - Under this rule, a U.S. customer that provides an incorrect FATCA exemption code to a U.S. financial institution has still provided a valid form for purposes of exempting the person from backup withholding.
- The FATCA certification language has been made more precise. Additionally, if a U.S. financial institution has omitted the FATCA exemption code field, the substitute form can note that this certification does not apply to the customer.
  - However, even though it is inapplicable when provided to a U.S. financial institution, a substitute form provided by a U.S. financial institution may not omit the FATCA certification language.

The draft forms are not final. Draft forms and instructions are subject to change and to review and approval by the Office Management and Budget before being finalized.

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### **endnotes**

[1] See ICI Memorandum #27818, January 6, 2014, available at:  
[http://www.ici.org/my\\_ici/memorandum/memo27818](http://www.ici.org/my_ici/memorandum/memo27818)