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November 10, 2022

Mr. Keith Richardson
Deputy Chief Financial Officer
Office of Tax and Revenue
1101 4th Street, SW
Suite 270 West
Washington, DC 20024

Dear Mr. Richardson:

We¹ are writing regarding the Office of Tax and Revenue (OTR) Notice 2022-08, concerning employer withholding, to ask that the OTR clarify that employers will not be held liable for any under-withholding for 2022 related to the recent tax rate increases.

As background, in September 2021, Act 24-0176 raised the income tax rate from 9.75% to 10.75% on income over \$1 million and adjusted wage brackets for individuals earning more than \$250,000. These changes were effective January 1, 2022. On September 2, 2022, the OTR issued a notice of income tax rates on its website for tax year 2022, but no income withholding instructions or tables were issued to employers.

On October 17, 2022, OTR posted TAX NOTICE 2022 – 08, DISTRICT OF COLUMBIA WITHHOLDING FOR TAX YEAR 2022, which noted that the Tax Cuts and Jobs Act (TCJA) affected OTR's ability to produce withholding tables, but that taxpayers are "encouraged" to use the 2022 tax rate schedule and the federal allowance amount for tax year 2022.

Some payroll practitioners and service providers have contacted the OTR to inquire about withholding instructions. FR-230, the Income Tax Withholding Instructions and Tables, was last updated in 2018. It was reported that OTR said that employers will be responsible for withholding income tax according to the Act 24-0176, effective January 1, 2022. One article² noted that "The OTR confirmed that it has not yet updated FR-230 to reflect changes under the

¹ The National Payroll Reporting Consortium ("NPRC") represents businesses that provide payroll processing and employment tax services to employers. NPRC members serve over 3 million U.S. employers, representing roughly 48% of the U.S. workforce. Payroll Service Providers have long served an important role in our nation's tax collection system as a conduit between employers and federal and state tax authorities, improving the efficiency of tax collection and improving employer compliance.

The American Payroll Association (APA) is a nonprofit association representing more than 20,000 payroll professionals throughout the United States. The APA's Government Relations Task Force works with government to help payroll professionals with compliance, while minimizing the administrative burden on government, employers, and individual workers.

² <https://taxnews.ey.com/news/2022-1526-district-of-columbia-withholding-instructions-and-tables-do-not-currently-reflect-tax-increases-that-were-effective-january-1-2022>

Act but employers, nonetheless, will be liable for any underwithholding that is the result of using the most current FR-230 (rev. 2018) on its website. (Telephone conversation, OTR, 10-6-2022.)”

As a practical matter, employers and payroll service providers have long understood that income tax *rates* and employer *withholding tables* are distinct and often vary significantly for various reasons. Consequently, payroll systems are generally not modified until the tax authority issues revised withholding tables and calculations.

From a technical perspective, payroll systems are not designed to be able to retroactively recalculate income tax withholding back to the beginning of a tax year. For example, employers cannot adjust withholding for former employees who change jobs in 2022. Similarly, for employees who joined the current employer in mid-2022, employers have no knowledge of and cannot adjust for amounts withheld by prior employers. All payroll withholding calculations apply only to the current employer and each employee’s earnings in the current payroll period.

Our Request

We ask that the Office of Tax and Revenue clarify that employers will not be held responsible for any under-withholding for 2022, as long as the employer complied with the FR-230 Income Tax Withholding Instructions and Tables issued in 2018. It may also be necessary to suspend or modify application of any under-withholding penalties that may apply to taxpayers to which the higher rates apply for 2022.

Optimally, OTR would issue and post new withholding tables for employers as soon as possible. It would also be helpful if the OTR could update the Form D-4, withholding allowance certificate, which has apparently been under review for several years. It was last revised in 2016.

Please let us know how we might assist in addressing the above concerns. We would be happy to meet with OTR to discuss this if it would be helpful. Thank you for your consideration.

Sincerely,



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Cc:

The Honorable Muriel Bowser, Mayor
The Honorable Phil Mendelson, Chairman, City Council
Mr. Glen Lee, Chief Financial Officer
Mr. John Falcicchio, Mayor’s Office