

No. 13-1343

In the Supreme Court of the United States

ALBERT BROWN,

Petitioner,

v.

MISSISSIPPI DEPARTMENT OF HEALTH,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

BRIEF IN OPPOSITION

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Question Presented

Must this Court restrain the discretion district courts have under 42 U.S.C. § 2000e-5(g)(1) to calculate and award or not award a tax enhancement on back pay or front pay awards? If so, is this case an appropriate vehicle where (1) there is an inadequate and erroneous record of usable tax information; (2) the alleged circuit split is not fully developed; (3) the outcome of this case would not change; and (4) the matter is more properly dealt with by Congress?

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Counterstatement of the Case

The district court's jurisdiction in this case was based on 28 U.S.C. § 1331 and Title VII of the Civil Rights Act of 1964, as amended.

Factual Background

Albert Brown is an employee of the Mississippi Department of Health ("MDH"). In 2008, Brown applied for a promotion to Chief Information Officer. He was not found to be the most qualified individual for the position. Brown filed a charge of discrimination alleging race discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended.

Proceedings In The District Court

At the conclusion of the evidence, the trial judge granted MDH's motion for a directed verdict as to the race discrimination claim. As to Brown's retaliation claim predicated on a prior lawsuit he had filed against MDH, the jury returned a verdict in favor of Brown and awarded \$350,000 in compensatory damages and an additional \$75,000 in back pay. MDH moved for judgment as a matter of law and Brown filed a motion for front pay and for an additional amount for alleged tax consequences of his wage based awards. The district court denied MDH's judgment as a matter of law; reduced the compensatory damages award to \$210,000; upheld the \$75,000 back pay award; and granted an additional \$100,000 in front pay. In its footnote 52 the district court denied Brown's request for an additional amount to offset the tax consequences.

The Appellate Proceedings

MDH appealed the retaliation verdict to the Fifth Circuit Court of Appeals. Brown also appealed the denial of compensation for alleged additional tax liability and the limitation of the front pay award to four years. As explained in MDH's Petition for Certiorari, briefing concluded before this Court issued its decision in *University of Texas Southwestern Medical Center v. Nassar* which held the causation standard for a Title VII retaliation claim is the heightened "but for" standard rather than the mixed-motive standard applied by the Fifth Circuit. 133 S.Ct. 2517 (2013). The Fifth Circuit requested letter briefs from the parties regarding the applicability of *Nassar* prior to oral argument. Both parties complied, but the Fifth Circuit nevertheless refused to apply *Nassar* to the case. The district court's judgment was affirmed in all respects.

MDH filed a Petition for Rehearing En Banc and Petition for Panel Rehearing. MDH argued that it did not waive the application of *Nassar* by not objecting to the mixed-motive instruction which was the correct standard at the time under well-settled Fifth Circuit law. MDH has timely filed a Petition for Certiorari regarding that issue which is currently pending before this Court as No. 13-1284.

Brown has now filed this Petition for Certiorari regarding the availability of tax enhancement awards in Title VII discrimination cases.

Reasons for Denying the Petition

1. The issue of tax enhancements is more properly left to Congress.

Since Congress granted the courts discretion by choosing the word “may” in 42 U.S.C. § 2000e-5(g)(1), whether the courts’ discretion should or should not be restricted should result from legislative rather than judicial action. Congress has demonstrated its interest in and ownership of this issue through legislation such as the Revenue Act of 1943 which first allowed income averaging for back pay recipients who received a lump-sum amount in excess of 15% of the individual’s gross income for the tax year in which the lump-sum was received. At that time, the back pay resulted from awards under the Fair Labor Standards Act and the National Labor Relations Act. In 1964, Congress passed the Revenue Act of 1964 which replaced the previously existing income averaging provisions with provisions that permitted all taxpayers to utilize income averaging over a five year period. This scheme remained in place until 1986 when Congress made the decision to eliminate income averaging in all instances. Thus, Congress has spoken on this issue. Congress may speak to this issue again. The Civil Justice Tax Fairness Act of 2013 currently pending in both the United States House of Representatives (H.R. 2509) and the United States Senate (S. 1224) would exclude amounts received as a result of claims of unlawful discrimination and would allow for income averaging of back pay and front pay awards. The bills have been referred to the appropriate committees. It is quite possible that the question presented in this petition will be rendered moot.

2. This case is not a good vehicle for deciding the Question Presented.

If this Court were inclined to preempt Congressional action and to limit the discretion of the lower courts in determining appropriate front and back pay damages, then this case provides a poor vehicle through which to do so. The evidence provided by Petitioner to the district court does not support any accurate – or even reasonably appropriate – determination of a tax enhancement award.

Petitioner offered a one page, six paragraph affidavit averring that he earned \$62,000 per year, that his wife earned \$52,000 per year, and that they filed joint tax returns each year. App. 4-5. Petitioner's counsel provided a one-half page chart purporting to show additional taxes which would be owed by Petitioner if the court awarded six years of front pay (which it did not award). App. 6-7. Finally, Petitioner submitted the IRS 2012 Form 1040-ES Estimated Tax For Individuals package. App. 8-40. Not submitted by Petitioner was evidence regarding:

1. Income other than Albert Brown's and Ravis Brown's income from employment;
2. Deductions available to or historically claimed by Albert and Ravis Brown;
3. Brown's taxable income;
4. Brown's taxes paid;
5. Brown's tax returns;
6. Brown's state income taxes.

Petitioner provided no expert testimony or other information regarding the proper calculation of any change in Petitioner's tax obligations. The information in the chart provided by Petitioner does not comply with standard tax calculations nor does it follow the 2012 Tax Rate Schedule Y-1 which he provided at App. 32. For example, in the chart Petitioner calculated his and his wife's taxes by multiplying the annual income amount by either 25% or 33%. However, proper calculations, as shown in Schedule Y-1, specify a tax amount for each lower bracket and then use the highest applicable tax bracket only for that amount of income which exceeds the next lower bracket. In other words, a taxpayer in the 33% tax bracket does not pay income taxes of 33% on *all* income, but only on that amount that exceeds the top of the next lower bracket. App. 32. Using Petitioner's examples in his chart, the amount of income tax owed in 2012 on income of \$339,000.00 would be \$88,776.50 rather than the \$111,870.00 stated by Petitioner. Petitioner's other "Taxes with promotion" and "Taxes with jury award" entries are similarly miscalculated.

Thus, the record in this case does not provide a clean, clear question of law for this Court to resolve, but rather a record lacking necessary detail and accurate information which renders this case the wrong vehicle to use to address the tax enhancement question presented.

3. Success by Petitioner on this issue would not change the outcome in his case.

Even if this case were found to be a good vehicle for addressing the Question Presented by Petitioner, the outcome would remain the same.¹ The Question Presented is “[w]hether a court *may* increase a damage award under Title VII....” There is no dispute that the courts have broad discretion regarding equitable relief and that they may do so. 42 U.S.C. § 2000e-5(g)(1). However, unless they abuse their discretion, they cannot be required to engage in the tax accounting required by the Petitioner.² Neither the district court nor the Fifth Circuit Court of Appeals ruled that the lower court could not consider an increased award. Instead, the district court refused to do so, citing *Johnston v. Harris County Flood Control District* in a footnote to support its desire to avoid the speculative

¹ Petitioner asserts that this issue is an important issue of national policy based on the number of employees in private industry. This argument is somewhat exaggerated since the number of employees has absolutely no bearing on the number of individuals who might ultimately be awarded front or back pay damages in a Title VII case.

² Although Petitioner phrases his Question Presented as “[w]hether a court may increase a damage award under Title VII...”, the Petition seems to be seeking a mandate from this Court requiring courts to increase damages awards to account for potential tax liability. As this Court has repeatedly stated, “as in any case of statutory construction, our analysis begins with the language of the statute And where the statutory language provides a clear answer, it ends there as well.” *Harris Trust & Savs. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 254 (2000) (quoting *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999)).

act of calculating Petitioner's potential tax liability as a result of this case. 869 F.2d 1565 (5th Cir. 1989). The Fifth Circuit affirmed this decision.

4. There is not a well-developed circuit split.

Petitioner argues that there is a 3-3 circuit split as to whether district courts have the discretion to award additional amounts to account for increased tax liability. However, a careful reading of the cases cited by Petitioner shows that the split is not so well-developed. It appears that the split is more accurately reported as a 2-1 split, or at best a 3-1 split, with the Tenth, Third, and possibly Fourth Circuits allowing tax enhancement awards and the D.C. Circuit expressly refusing to allow them. Given the lack of on point decisions and the fact that the majority of the Circuit Courts of Appeals have yet to weigh in, this issue should be allowed to develop further in the lower courts.

As for the courts of appeals cases cited by Petitioner that purport to support tax enhancement awards, those cases are primarily based on extraordinary circumstances. In *Sears v. Atchinson, Topeka & Santa Fe Railway Co.*, the court noted that tax enhancement damages might not be appropriate in a typical case, but held them to be appropriate based on an award of seventeen years of back pay, which well exceeded the five year income averaging period in effect at the time of the decision. 749 F.2d 1451, 1456 (10th Cir. 1984). The Third Circuit directly addressed the issue for the first time in *Eshelman v. Agere Systems, Inc.* 554 F.3d 426, 442-43 (3d Cir. 2009). In *Eshelman*, the Third Circuit found no abuse of discretion in granting a tax enhancement award under the Americans with

Disabilities Act, but noted that it may not be appropriate in all cases.³ Petitioner claims that *Bryant v. Aiken Regional Medical Centers, Inc.*, shows that the Fourth Circuit “ha[s] confirmed that courts have discretion to allow damages to offset increased tax burdens.” Pet. for Cert. at 5. This somewhat overstates the Fourth Circuit’s treatment of the issue which was only mentioned in footnote 5. 333 F.3d 536 (4th Cir. 2003). This footnote upholds the denial of an enhancement award and notes that such an award would be equitable relief, thus subject to review for abuse of discretion. *Id.* at 549, n.5.

Petitioner maintains that the Eighth Circuit does not recognize tax enhancement of back pay awards and cites *Arenson v. Callahan* for this position. 128 F.3d 1243 (8th Cir. 1997). However, the *Arenson* decision did not decide whether tax enhancement is an appropriate form of equitable relief in employment discrimination cases. *Arenson* simply held that “if” tax enhancement is an appropriate form of relief, it is not available in cases against the federal government because Congress has not specifically waived immunity as to that class of damages. *Id.* at 1247. *Arenson* is not properly included in a circuit split analysis as it is not a decision on the question presented.

³ Importantly, the plaintiff in *Eshelman* submitted testimony of “an economic expert who calculated the amount of tax-effect damages based upon the back pay award, the applicable tax rates, and Eshelman’s income tax returns for the appropriate years.” 554 F.3d at 442. As discussed in section 2, *supra*, Petitioner submitted only the most basic, and inaccurate, information to the district court.

Similarly, the Fifth Circuit has not ruled that “no such equitable remedy” is available as stated by Petitioner. Pet. for Cert. at 5. Instead, in *Johnston v. Harris County Flood Control District*, the Fifth Circuit refused to “require district courts to act as tax consultants every time they grant back pay awards, speculating as to what deductions and shelters the plaintiff will find, and then calculating the plaintiff’s potential liability.”⁴ 869 F.2d 1565, 1580. This is the very point of law cited by the district court for refusing Petitioner’s request to enhance his back pay and front pay awards. As shown in section 2, *supra*, the district court would have had to be clairvoyant to determine a proper tax enhancement award in this case. Of the Circuit Court of Appeals cases cited by Petitioner which purport to deny the availability of a tax enhancement award, only *Fogg v. Gonzales* actually holds that tax enhancement awards are not available. 492 F.3d 447 (D.C. Cir. 2007).

Conclusion

For these reasons, the petition for writ of certiorari as this question presented should be denied.

⁴ Petitioner also argues that the district court should not have relied on the Fifth Circuit’s 1989 decision in *Johnston* because it is in conflict with this Court’s later decision in *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200 (2001). However, the points raised by Petitioner were not the basis of the district court’s decision.

Respectfully Submitted,

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APPENDIX 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF MISSISSIPPI
JACKSON DIVISION**

CIVIL ACTION NO. :3:11-CV-146 CWR-FKB

[Filed July 2, 2012]

ALBERT BROWN

PLAINTIFF

VS.

MISSISSIPPI DEPARTMENT OF HEALTH

DEFENDANT

**PLAINTIFF'S MOTION FOR
EQUITABLE RELIEF**

Plaintiff, Albert Brown, moves the Court to amend the judgment to promote him to the position of Chief Information Officer with the Mississippi Department of Health, or, alternatively, to award him the appropriate amount of front pay and additional monies for tax implications.

1. On June 14, 2012, the Jury returned a verdict in favor of Plaintiff on his claim of retaliation. The jury awarded Mr. Brown damages of \$75,000 for back wages and \$350,000 for emotional pain and suffering damages.

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2. Mr. Brown now asks this Court for equitable relief sought in the Complaint in the form of a promotion to the Chief Information Officer position, or in the alternative, front pay. Defendant has indicated that the position sought is filled, therefore making equitable relief unattainable.

3. Plaintiff also seeks an award of attorney fees and costs as the prevailing party in this action.

4. A brief in support of this Motion is being filed simultaneously herewith.

WHEREFORE, PREMISES CONSIDERED Plaintiff respectfully requests that the Court grant his request for equitable relief in the form of promotion to the position of Chief Information Officer, or alternatively, award Plaintiff front pay in lieu of promotion. Plaintiff additionally seeks monies to offset the additional taxes he will have to pay because of a lump sum payment, attorney fees and costs.

Respectfully submitted,

BY: s/ Nick Norris

Louis H. Watson, Jr., (MB # 9053)

Nick Norris (MB # 101574)

ATTORNEYS FOR PLAINTIFF

App. 3

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* * *

*[Certificate of Service Omitted for Purposes of this
Appendix]*

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

CIVIL ACTION NO: 3:11-CV-146 CWR-FKB

ALBERT BROWN

PLAINTIFF

VS.

MISSISSIPPI DEPARTMENT OF HEALTH

DEFENDANT

AFFIDAVIT OF ALBERT BROWN

1. My name is Albert Brown, and I am a black male. I am over the age of eighteen years old. I state the following based upon my own personal knowledge and am competent to testify as to these matters.

2. I was hired by the Defendant, Mississippi Department of Health ("MDH"), on or about January 1, 1997 as a Data Processing-Systems Analyst III. I have since been promoted to Systems Manager I, which is my current position with the MDH.

3. My current salary is approximately \$62,000.00 per year.

4. I file a joint tax return every year with my wife, Ravis Brown.

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5. Ravis Brown is currently an employee with the United States Postal Service, and her yearly income is approximately \$52,000.00 per year.

6. I will become eligible for retirement with the Mississippi Public Employees Retirement System in approximately 6 years plus a few months.

I declare under penalty of perjury that the above and foregoing is true and correct as therein stated.

Further Affiant saith not.

Executed this the 2nd day of July, 2012.

/s/ Albert Brown
Albert Brown

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	Albert Brown joint wages income with jury	Income if he had received promotion	Taxes with jury award	Taxes with promotion
2012	\$339,000.00	\$139,000.00	\$111,870.00	\$34,750.00
2013	\$114,000.00	\$139,000.00	\$28,500.00	\$34,750.00
2014	\$114,000.00	\$139,000.00	\$28,500.00	\$34,750.00
2015	\$114,000.00	\$139,000.00	\$28,500.00	\$34,750.00
2016	\$114,000.00	\$139,000.00	\$28,500.00	\$34,750.00
2017	\$114,000.00	\$139,000.00	\$28,500.00	\$34,750.00
2018	\$114,000.00	\$139,000.00	\$28,500.00	\$34,750.00
Total	\$1,023,000.00	\$973,000.00	\$282,870.00	\$243,250.00

	Difference in additional taxes	\$39,620.00		
	Additional amount needed to balance additional tax implications	\$60,030.00		
	This additional amount is determined by dividing \$39,620.00 by 66% as any additional income the Court awards will be taxed at 33%			

**Department of Treasury
Internal Revenue Service**

**2012
Form 1040-ES
Estimated Tax for Individuals**

At the time this form went to print, Congress was considering legislation that would extend certain tax provisions that expired at the end of 2011. Legislative actions may impact your estimated tax liability calculation. The IRS will take appropriate steps to notify the public on any legislative developments. For more information about these tax provisions, see the discussion under What's New and Expiring Tax Benefits, later.

Purpose of This Package

Use this package to figure and pay your estimated tax. If you are not required to make estimated tax payments for 2012, you can discard this package.

Estimated tax is the method used to pay tax on income that is not subject to withholding (for example, earnings from self-employment, interest, dividends, rents, alimony, etc.). In addition, if you do not elect voluntary withholding, you should make estimated tax payments on other taxable income, such as unemployment compensation and the taxable part of your social security benefits.

Change of address. If your address has changed, file Form 8822, Change of Address, to update your record.

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Who Must Make Estimated Tax Payments

The estimated tax rules apply to:

- U.S. citizens and resident aliens;
- Residents of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and
- Nonresident aliens (use Form 1040-ES (NR)).

General Rule

In most cases, you must pay estimated tax for 2012 if both of the following apply.

1. You expect to owe at least \$1,000 in tax for 2012, after subtracting your withholding and refundable credits.
2. You expect your withholding and refundable credits to be less than the smaller of:
 - a. 90% of the tax to be shown on your 2012 tax return, or
 - b. 100% of the tax shown on your 2011 tax return. Your 2011 tax return must cover all 12 months.

Note. These percentages may be different if you are a farmer, fisherman, or higher income taxpayer. See *Special Rules* next.

Exception. You do not have to pay estimated tax for 2012 if you were a U.S. citizen or resident alien for all of 2011 and you had no tax liability for the full 12-month 2011 tax year. You had no tax liability for 2011

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if your total tax was zero or you did not have to file an income tax return.

Special Rules

There are special rules for farmers, fishermen, certain household employers, and certain higher income taxpayers.

Farmers and fishermen. If at least two-thirds of your gross income for 2011 or 2012 is from farming or fishing, substitute 66 $\frac{2}{3}$ % for 90% in (2a) under *General Rule* above.

Household employers. When estimating the tax on your 2012 tax return, include your household employment taxes if either of the following applies.

- You will have federal income tax withheld from wages, pensions, annuities, gambling winnings, or other income.
- You would be required to make estimated tax payments to avoid a penalty even if you did not include household employment taxes when figuring your estimated tax.

Higher income taxpayers. If your adjusted gross income (AGI) for 2011 was more than \$150,000 (\$75,000 if your filing status for 2012 is married filing separately), substitute 110% for 100% in (2b) under *General Rule*, earlier. This rule does not apply to farmers or fishermen.

Increase Your Withholding

If you also receive salaries and wages, you may be able to avoid having to make estimated tax payments on

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your other income by asking your employer to take more tax out of your earnings. To do this, file a new Form W-4, Employee's Withholding Allowance Certificate, with your employer.

Generally, if you receive a pension or annuity you can use Form W-4P, Withholding Certificate for Pension or Annuity Payments, to start or change your withholding from these payments.

You also can choose to have federal income tax withheld from certain government payments. For details, see Form W-4V, Voluntary Withholding Request.

Additional Information You May Need

You can find most of the information you will need in Pub. 505, Tax Withholding and Estimated Tax.

Other available information:

- Instructions for the 2011 Form 1040 or Form 1040A.
- Important Changes. Go to IRS.gov, click on *Forms & Pubs*, and then on *Changes to Current Forms and Publications*.

For details on how to get forms and publications see page 93 of the 2011 Instructions for Form 1040 or page 82 of the 2011 Instructions for Form 1040A. If you have tax questions, call 1-800-829-1040 for assistance. For TTY/TDD help, call 1-800-829-4059.

What's New

Use your 2011 tax return as a guide in figuring your 2012 estimated tax, but be sure to consider the following.

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At the time this form went to print, Congress was considering legislation that would extend certain tax provisions that expired at the end of 2011. Legislative actions may impact your estimated tax liability calculation. The IRS will take appropriate steps to notify the public on any legislative developments.

Adoption credit and adoption assistance.

Beginning in 2012, the maximum adoption credit will be \$12,650 and the credit is no longer refundable. The maximum amount of adoption assistance that can be excluded from gross income is \$12,650. The amount of the credit or excludable assistance begins to phase out for taxpayers with modified AGI in excess of \$189,710 and is completely phased out for taxpayers with modified AGI of \$229,710.

Alternative minimum tax (AMT) exemption amounts. The AMT exemption is decreased to \$33,750 (\$45,000 if married filing jointly or a qualifying widow(er) with dependent child; \$22,500 if married filing separately).

Expiring tax benefits. The following benefits are scheduled to expire or have been repealed and will not be available for 2012.

- Credit for non-business energy property.
- Plug-in electric vehicle credit.
- Plug-in conversion credit.

- Alternative fuel vehicle refueling property credit.
- Indian employment credit.
- New energy efficient home credit.
- Energy efficient appliance credit.
- Employer wage differential for active duty members of the uniformed services.

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- Work opportunity credit (except for certain veterans).
- Deduction of expenses for school teachers.
- Deduction for mortgage insurance premiums.
- Deduction for state and local sales taxes instead of state and local income taxes.
- Tuition and fees deduction.
- Tax-free distribution from retirement accounts for charitable purposes.
- Zero percent capital gains rate for DC Zone assets.
- First-time homebuyer credit.

Nonrefundable personal credits and the AMT.

The following credits are no longer allowed to be applied against the AMT.

- Credit for child and dependent care expenses.
- Credit for the elderly or the disabled.
- Education credits.
- Mortgage interest credit.
- Carryforwards of the District of Columbia first-time homebuyer credit.

Instead, a new tax liability limit applies. For most people, this limit is your regular tax minus any tentative minimum tax.

Income limits for excluding education savings bond interest increased. In order to exclude interest, your modified adjusted gross income (MAGI) must be less than \$87,850 (\$139,250 if married filing jointly or qualifying widow(er)).

Foreign earned income exclusion. The maximum exclusion has increased to \$95,100.

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Standard deduction. If you do not itemize your deductions, you can take the 2012 standard deduction listed below for your filing status.

IF your 2012 filing status is...	THEN your standard deduction is...
Married filing jointly or Qualifying widow(er)	\$11,900
Head of household	\$8,700
Single or Married filing separately	\$5,950

However, if you can be claimed as a dependent on another person's 2012 return, your standard deduction is the greater of:

- \$950, or
- Your earned income plus \$300 (up to the standard deduction amount).

Your standard deduction is increased by the following amount if, at the end of 2012, you are:

- An unmarried individual (single or head of household) and are:

65 or older or blind \$1,450

65 or older and blind \$2,900

- A married individual (filing jointly or separately) or aqualifying widow(er) and are:

65 or older or blind \$1,150

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65 or older and blind	\$2,300
Both spouses 65 or older	\$2,300*
Both spouses 65 or older and blind	\$4,600*

* If married filing separately, these amounts apply only if you can claim an exemption for your spouse.

Your standard deduction is zero if (a) your spouse itemizes on a separate return, or (b) you were a dual-status alien and you do not elect to be taxed as a resident alien for 2012.

Personal exemption amount increased. For tax years beginning in 2012, the personal exemption amount is increased to \$3,800.

Earned income credit (EIC). You may be able to take the EIC if:

- Three or more children lived with you and you earned less than \$45,060 (\$50,270 if married filing jointly),
- Two children lived with you and you earned less than \$41,952 (\$47,162 if married filing jointly),
- One child lived with you and you earned less than \$36,920 (\$42,130 if married filing jointly), or
- A child did not live with you and you earned less than \$13,980 (\$19,190 if married filing jointly).

Also, the maximum AGI you can have and still get the credit has changed. You may be able to take the credit if your AGI is less than the amount in the above

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list that applies to you. The maximum investment income you can have and get the credit has increased to \$3,200.

Standard mileage rate. The rate for business use of your vehicle remains 55 $\frac{1}{2}$ cents per mile. The rate for use of your vehicle to get medical care or move is decreased to 23 cents per mile. The rate of 14 cents per mile for charitable use is unchanged.

Social security and Medicare tax for 2012. The employee tax rate for social security is 4.2%. The social security wage base limit is \$110,100. The Medicare tax rate is 1.45%. There is no wage base limit for Medicare tax.

The tax rate for net earnings from self-employment is 10.4%, up to the social security wage base limit of \$110,100.

Lifetime learning credit income limits increased. In order to claim a lifetime learning credit, your modified AGI must be less than \$62,000 (\$124,000 if married filing jointly).

Extended health coverage tax credit. The credit for the cost of health insurance is 72.5% and COBRA benefits continue if you are one of the following eligible individuals.

- Trade adjustment assistance (TAA) recipients.
- Alternative TAA recipients.
- Reemployment TAA recipients.
- Pension Benefit Guaranty Corporation pension recipients.

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- Qualified family members of an individual who fell under one of the categories listed above when he or she died or with whom you finalized a divorce.

Reminder

Roth IRAs. If you rolled over or converted part or all of another retirement plan to a Roth IRA in 2010, or made an in-plan rollover to a designated Roth account after September 27, 2010, and did not elect to include the resulting taxable amount in income for 2010, you reported half of that taxable amount on your 2011 return and must report the other half on your 2012 return. See the instructions for Form 8606 for more information.

How To Figure Your Estimated Tax

You will need:

- The 2012 Estimated Tax Worksheet, later,
- The *Instructions for the 2012 Estimated Tax Worksheet*,
- The 2012 Tax Rate Schedules, and
- Your 2011 tax return and instructions to use as a guide to figuring your income, deductions, and credits (but be sure to consider the items listed under *What's New*, earlier).

Matching estimated tax payments to income. If you receive your income unevenly throughout the year (for example, because you operate your business on a seasonal basis or you have a large capital gain late in the year), you may be able to lower or eliminate the amount of your required estimated tax payment for one

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or more periods by using the annualized income installment method. See chapter 2 of Pub. 505 for details.

Changing your estimated tax. To amend or correct your estimated tax, see *How To Amend Estimated Tax Payments*, later.

You cannot make joint estimated tax payments if you or your spouse is a nonresident alien, you are separated under a decree of divorce or separate maintenance, or you and your spouse have different tax years.

Additionally, registered domestic partners and same-sex spouses cannot make joint estimated tax payments. Each partner can take credit only for the estimated tax payments that he or she made.

Payment Due Dates

You can pay all of your estimated tax by April 17, 2012, or in four equal amounts by the dates shown below.

1st payment	April 17, 2012
2nd payment	June 15, 2012
3rd payment	Sept. 17, 2012
4th payment	Jan. 15, 2013*

* You do not have to make the payment due January 15, 2013, if you file your 2012 tax return by January 31, 2013, and pay the entire balance due with your return.

If you mail your payment and it is postmarked by the due date, the date of the U.S. postmark is considered the date of payment. If your payments are late or you did not pay enough, you may be charged a

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penalty for underpaying your tax. See *When a Penalty Is Applied*, later.

If you want, you can make more than four estimated tax payments. To do so, make a copy of one of your unused estimated tax payment vouchers, fill it in, and mail it with your payment. If you make more than four payments, to avoid a penalty make sure the total of the amounts you pay during a payment period is at least as much as the amount required to be paid by the due date for that period. For other payment methods, see Pay Electronically, later.

No income subject to estimated tax during first payment period. If, after March 31, 2012, you have a large change in income, deductions, additional taxes, or credits that requires you to start making estimated tax payments, you should figure the amount of your estimated tax payments by using the annualized income installment method, explained in chapter 2 of Pub. 505. If you use the annualized income installment method, file Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts, including Schedule AI, with your 2012 tax return even if no penalty is owed.

Farmers and fishermen. If at least two-thirds of your gross income for 2011 or 2012 is from farming or fishing, you can do one of the following.

- Pay all of your estimated tax by January 15, 2013.
- File your 2012 Form 1040 by March 1, 2013, and pay the total tax due. In this case, 2012 estimated tax payments are not required to avoid a penalty.

Fiscal year taxpayers. You are on a fiscal year if your 12-month tax period ends on any day except December 31. Due dates for fiscal year taxpayers are the 15th day of the 4th, 6th, and 9th months of your current fiscal year and the 1st month of the following fiscal year. If any payment date falls on a Saturday, Sunday, or legal holiday, use the next business day.

Name Change

If you changed your name because of marriage, divorce, etc., and you made estimated tax payments using your former name, attach a statement to the front of your 2012 tax return. On the statement, show all of the estimated tax payments you (and your spouse, if filing jointly) made for 2012 and the name(s) and SSN(s) under which you made the payments.

Be sure to report the change to your local Social Security Administration office before filing your 2012 tax return. This prevents delays in processing your return and issuing refunds. It also safeguards your future social security benefits. For more details, call the Social Security Administration at 1-800-772-1213 (TTY/TDD 1-800-325-0778).

How To Amend Estimated Tax Payments

To change or amend your estimated tax payments, refigure your total estimated tax payments due (line 16a of the Estimated Tax Worksheet, later). Then, to figure the payment due for each remaining payment period, see *Amended estimated tax* in chapter 2 of Pub. 505. If an estimated tax payment for a previous period is less than one-fourth of your amended estimated tax, you may owe a penalty when you file your return.

When a Penalty Is Applied

In some cases, you may owe a penalty when you file your return. The penalty is imposed on each underpayment for the number of days it remains unpaid. A penalty may be applied if you did not pay enough estimated tax for the year or you did not make the payments on time or in the required amount. A penalty may apply even if you have an overpayment on your tax return.

The penalty may be waived under certain conditions. See chapter 4 of Pub. 505 for details.

How To Pay Estimated Tax

Pay by Check or Money Order Using the Estimated Tax Payment Voucher

There is a separate estimated tax payment voucher for each due date. The due date is shown in the upper right corner. Complete and send in the voucher only if you are making a payment by check or money order. If you and your spouse plan to file separate returns, file separate vouchers instead of a joint voucher.

To complete the voucher, do the following.

- Print or type your name, address, and SSN in the space provided on the estimated tax payment voucher. If filing a joint voucher, also enter your spouse's name and SSN. List the names and SSNs in the same order on the joint voucher as you will list them on your joint return.
- Enter in the box provided on the estimated tax payment voucher only the amount you are sending in by check or money order. When making payments of

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estimated tax, be sure to take into account any 2011 overpayment that you choose to credit against your 2012 tax, but do not include the overpayment amount in this box.

- Make your check or money order payable to “United States Treasury.” Do not send cash. To help process your payment accurately, enter the amount on the right side of the check like this: \$ XXX.XX. Do not use dashes or lines (for example, do not enter “\$ XXX—” or “\$XXX ^{xx}/₁₀₀”).
- Enter “2012 Form 1040-ES” and your SSN on your check or money order. If you are filing a joint estimated tax payment voucher, enter the SSN that you will show first on your joint return.
- Enclose, but do not staple or attach, your payment with the estimated tax payment voucher.

Pay Electronically

Paying electronically helps to ensure timely receipt of your estimated tax payment. You can pay electronically using the following electronic payment options.

- Electronic Federal Tax Payment System (EFTPS).
- Electronic funds withdrawal (EFW).
- Credit or debit card.

For information on paying your taxes electronically, go to *www.irs.gov/e-pay*.

Instructions for the 2012 Estimated Tax Worksheet

Line 1. Adjusted Gross Income. Use your 2011 tax return and instructions as a guide to figuring the adjusted gross income you expect in 2012 (but be sure to consider the items listed under *What's New*, earlier). For more details on figuring your adjusted gross income, see *Expected AGI-Line 1* in chapter 2 of Pub. 505.

If you are self-employed, be sure to take into account the deduction for self-employment tax. Use the 2012 Self-Employment Tax and Deduction Worksheet for Lines 1 and 11 of the Estimated Tax Worksheet to figure the amount to subtract when figuring your expected AGI. This worksheet also will give you the amount to enter on line 11 of your estimated tax worksheet.

Line 9. Credits. See the 2011 Form 1040, lines 47 through 53, or Form 1040A, lines 29 through 33, and the related instructions for the types of credits allowed.

Line 11. Self-employment tax. If you and your spouse make joint estimated tax payments and both of you have self-employment income, figure the self-employment tax for each of you separately. Enter the total on line 11. When estimating your 2012 net earnings from self-employment, be sure to use only 92.35% (.9235) of your total net profit from self-employment.

Line 12. Other taxes. Use the Instructions for the 2011 Form 1040 to determine if you expect to owe, for 2012, any of the taxes that would have been entered on your 2011 Form 1040, lines 58 (additional tax on

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distributions only), 59a, 59b, and 60. On line 12, enter the total of those taxes, subject to the following two exceptions.

Where To File Your Estimated Tax Payment Voucher if Paying by Check or Money Order

Mail your estimated tax payment voucher and check or money order to the address shown below for the place where you live. Do not mail your tax return to this address or send an estimated tax payment without a payment voucher. Also, do not mail your estimated tax payments to the address shown in the Form 1040 or 1040A instructions. If you need more payment vouchers, you can make a copy of one of your unused vouchers.

Caution: For proper delivery of your estimated tax payment to a P.O. box, you must include the box number in the address. Also, note that only the U.S. Postal Service can deliver to P.O. boxes. Therefore, you cannot use a private delivery service to make estimated tax payments required to be sent to a P.O. box.

IF you live in . . .	THEN send it to “Internal Revenue Service” at . . .
Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, Vermont	P.O. Box 37007 Hartford, CT 06176-0007

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Alabama, Georgia, North Carolina, South Carolina	P.O. Box 105225 Atlanta, GA 30348-5225
Alaska, Arizona, California, Colorado, Hawaii, Nevada, Oregon, Washington	P.O. Box 510000 San Francisco, CA 94151-5100
Kentucky, Missouri, New Jersey, Tennessee, Virginia, West Virginia	P.O. Box 970006 St. Louis, MO 63197-0006
Florida, Louisiana, Mississippi, Texas	P.O. Box 1300 Charlotte, NC 28201-1300
Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Wisconsin, Wyoming	P.O. Box 802502 Cincinnati, OH 45280-2502
A foreign country, U.S. possession or territory;* non-bona fide residents of Guam or the U.S. Virgin Islands; or use an APO or FPO address; or file Form 2555, 2555-EZ, or 4563; or are a dual-status alien	P.O. Box 1300 Charlotte, NC 28201-1300 USA

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Guam: Bona fide residents*	Department of Revenue and Taxation Government of Guam P. O. Box 23607 GMF, GU 96921
U.S. Virgin Islands: Bona fide residents*	Virgin Islands Bureau of Internal Revenue 6115 Estate Smith Bay Suite 225 St. Thomas, VI 00802

* Bona fide residents must prepare separate vouchers for estimated income tax and self-employment tax payments. Send the income tax vouchers to the address for bona fide residents and the self-employment tax vouchers to the address for non-bona fide residents.

Exception 1. Include household employment taxes from Form 1040, line 59a, on this line only if:

- You will have federal income tax withheld from wages, pensions, annuities, gambling winnings, or other income, or
- You would be required to make estimated tax payments (to avoid a penalty) even if you did not include household employment taxes when figuring your estimated tax.

If you meet either of the above, include the total of your household employment taxes on line 12.

Exception 2. Of the amounts for other taxes that may be entered on Form 1040, line 60, do not include on line 12: recapture of a federal mortgage subsidy, uncollected social security and Medicare tax or RRTA tax on tips or group-term life insurance, excise tax on

excess golden parachute payments, look-back interest due under section 167(g) or 460(b), excise tax on insider stock compensation from an expatriated corporation, or additional tax on advance payments of health coverage tax credit when not eligible. These taxes are not required to be paid until the due date of your income tax return (not including extensions).

Recapture of first-time homebuyer credit. If you purchased a home in 2008 and claimed the first-time homebuyer credit, repayment of that credit began with your 2010 tax return and will continue until the credit is fully repaid. If the home ceases to be your main home, then the unpaid balance of the credit is to be repaid on the return for the year when the home was no longer your main home.

If you purchased a home in 2009, 2010, or 2011 and claimed the first-time homebuyer credit, you must maintain that home as your main home for at least 36 months to avoid having to repay the credit.

For details about repaying the first-time homebuyer credit, see the instructions for Form 5405.

Line 14b. Prior year's tax. Enter the 2011 tax you figure according to the instructions in *Figuring your 2011 tax* unless you meet one of the following exceptions.

- If the adjusted gross income shown on your 2011 return is more than \$150,000 (\$75,000 if married filing separately for 2012), enter 110% of your 2011 tax as figured next.

Note. This does not apply to farmers or fishermen.

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- If you will file a joint return for 2012 but you did not file a joint return for 2011, add the tax shown on your 2011 return to the tax shown on your spouse's 2011 return and enter the total on line 14b (both taxes figured as explained next).
- If you filed a joint return for 2011 but you will not file a joint return for 2012, see *General Rule* in chapter 4 of Pub. 505 to figure your share of the 2011 tax to enter on line 14b.
- If you did not file a return for 2011 or your 2011 tax year was less than 12 full months, do not complete line 14b. Instead, enter the amount from line 14a on line 14c.

Figuring your 2011 tax. Use the following instructions to figure your 2011 tax.

1. **Form 1040**—The tax shown on your 2011 Form 1040 is the amount on line 61 **reduced** by:
 - a. Unreported social security and Medicare tax or RATA tax from Form 1040, line 57;
 - b. Any tax included on line 58 on excess contributions to IRAs, Archer MSAs, Coverdell education savings accounts, and health savings accounts, or on excess accumulations in qualified retirement plans;
 - c. Amounts on line 60 as listed under *Exception 2*, earlier; and
 - d. Any refundable credit amounts on lines 64a, 65, 66, 67, and 70, and credits from Forms 8801 and 8885 included on line 71.

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2. **Form 1040A**—The tax shown on your 2011 Form 1040A is the amount on line 35 reduced by any refundable credits on lines 38a, 39, and 40.

3. **Form 1040EZ**— The tax shown on your 2011 Form 1040EZ is the amount on line 10 reduced by the amount on line 8a.

2012 Self-Employment Tax and Deduction Worksheet for Lines 1 and 11 of the Estimated Tax Worksheet

Keep for Your Records

- 1 a. Enter your expected income and profits subject to self-employment tax*
..... 1 a. _____
- b. If you will have farm income and also receive social security retirement or disability benefits, enter your expected Conservation Reserve Program payments that will be included on Schedule F (Form 1040) or listed on Schedule K-1 (Form 1065) b. _____
2. Subtract line 1b from line 1a . . 2. _____
3. Multiply line 2 by 9 2.35%
(.9235) 3. _____
4. Multiply line 3 by 2.9% (.029) . . 4. _____
5. Social security tax maximum income
..... 5. \$110,100
6. Enter your expected wages (if subject to social security tax or the 4.2%

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portion of tier 1 railroad retirement
tax) 6. _____

7. Subtract line 6 from line 5 7. _____

Note. *If line 7 is zero or less, enter -0- on line 9
and skip to line 10*

8. Enter the smaller of line 3 or line 7
..... 8. _____

9. Multiply line 8 by 10.4%
(.104) 9. _____

10. Add lines 4 and 9. Enter the result here
and on line 11 of your 2012 Estimated
Tax Worksheet 10. _____

11. Multiply line 4 by 50% (.50) .. 11. _____

12. Multiply line 9 by 59.6% (.596)
..... 12. _____

13. Add lines 11 and 12. This is your
expected deduction for self-employment
tax on Form 1040, line 27. Subtract this
amount when figuring your expected AGI
on line 1 of your 2012 Estimated Tax
Worksheet 13. _____

* Your net profit from self-employment is found on
Schedule C (Form 1040), line 31; Schedule F (Form
1040), line 34; Schedule K-1 (Form 1065), box 14, code
A; and Schedule K-1 (Form 1065-B), box 9, code J1.

2012 Tax Rate Schedules

Caution. *Do not use these Tax Rate Schedules to figure your 2011 taxes. Use only to figure your 2012 estimated taxes.*

Schedule X— Use if your 2012 filing status is **Single**

If line 5 is:		The tax is:	
<i>Over—</i>	<i>But not over—</i>		<i>of the amount over—</i>
\$0	\$8,700	----- 10%	\$0
8,700	35,350	\$870.00 + 15%	8,700
35,350	85,650	4,867.50 + 25%	35,350
85,650	178,650	17,442.50 + 28%	85,650
178,650	388,350	43,482.50 + 33%	178,650
388,350	-----	112,683.50 + 35%	388,350

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**Schedule Y-1— Use if your 2012 filing status is
Married filing jointly or Qualifying widow(er)**

If line 5 is:		The tax is:	
<i>Over—</i>	<i>But not over—</i>		<i>of the amount over—</i>
\$0	\$17,400	----- 10%	\$0
17,400	70,700	\$1,740.00 + 15%	17,400
70,700	142,700	9,735.00 + 25%	70,700
142,700	217,450	27,735.00 + 28%	142,700
217,450	388,350	48,665.00 + 33%	217,450
388,350	-----	105,062.00 + 35%	388,350

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Schedule Z—Use if your **2012** filing status is **Head of household**

If line 5 is:		The tax is:	
<i>Over—</i>	<i>But not over—</i>		<i>of the amount over—</i>
\$0	\$12,400	----- 10%	\$0
12,400	47,350	\$1,240.00 + 15%	12,400
47,350	122,300	6,482.50 + 25%	47,350
122,300	198,050	25,220.00 + 28%	122,300
198,050	388,350	46,430.00 + 33%	198,050
388,350	-----	109,229.00 + 35%	388, 350

Schedule Y2— Use if your **2012** filing status is
Married filing separately

If line 5 is:		The tax is:	
<i>Over—</i>	<i>But not over—</i>		<i>of the amount over—</i>
\$0	\$8,700	----- 10%	\$0
8,700	35,350	\$870.00 + 15%	8,700
35,350	71,350	4,867.50 + 25%	35,350
71,350	108,725	13,867.50 + 28%	71,350
108,725	194,175	24,332.50 + 33%	108,725
194,175	-----	52,531.00.00 + 35%	194,175

**Privacy Act and Paperwork Reduction Act
Notice.**

We ask for this information to carry out the tax laws of the United States. We need it to figure and collect the right amount of tax. Our legal right to ask for this information is Internal Revenue Code section 6654, which requires that you pay your taxes in a specified manner to avoid being penalized. Additionally, sections 6001, 6011, and 6012(a) and their regulations require you to file a return or statement for any tax for which

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you are liable; section 6109 requires you to provide your identifying number. Failure to provide this information, or providing false or fraudulent information, may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMS control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as stated in Code section 6103.

We may disclose the information to the Department of Justice for civil and criminal litigation and to other federal agencies, as provided by law. We may disclose it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

If you do not file a return, do not give the information asked for, or give fraudulent information, you may be charged penalties and be subject to criminal prosecution.

Please keep this notice with your records. It may help you if we ask you for other information. If you have any questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

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The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this package simpler, we would be happy to hear from you. See the instructions for your income tax return.

2012 Estimated Tax Worksheet

Keep for Your Records

1 Adjusted gross income you expect in 2012 (see instructions)	1	
2 <ul style="list-style-type: none">• If you plan to itemize deductions, enter the estimated total of your itemized deductions.• If you do not plan to itemize deductions, enter your standard deduction.	2	
3 Subtract line 2 from line 1. . . .	3	
4 Exemptions. Multiply \$3,800 by the number of personal exemptions	4	
5 Subtract line 4 from line 3. . . .	5	

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6 Tax. Figure your tax on the amount on line 5 by using the 2012 Tax Rate Schedules. Caution: <i>If you will have qualified dividends or a net capital gain, or expect to exclude or deduct foreign earned income or housing, see chapter 2 of Pub. 505 to figure the tax</i>	6	
7 Alternative minimum tax from Form 6251	7	
8 Add lines 6 and 7. Add to this amount any other taxes you expect to include in the total on Form-1040, line 44	8	
9 Credits (see instructions). Do not include any income tax withholding on this line	9	
10 Subtract line 9 from line 8. If zero or less, enter -0-	10	
11 Self-employment tax (see instructions)	11	
12 Other taxes (see instructions)	12	
13a Add lines 10 through 12 . . .	13a	

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b Earned income credit, additional child tax credit, fuel tax credit, refundable American opportunity credit, and refundable credits from Forms 8801 and 8885	13b	
c Total 2012 estimated tax. Subtract line 13b from line 13a. If zero or less, enter -0-	13c	
14a Multiply line 13c by 90% (66 $\frac{2}{3}$ % for farmers and fishermen) 14a. _____		
b Required annual payment based on prior year's tax (see instructions) 14b. _____		

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<p>c Required annual payment to avoid a penalty. Enter the smaller of line 14a or 14b . .</p> <p>Caution: <i>Generally, if you do not prepay (through income tax withholding and estimated tax payments) at least the amount on line 14c, you may owe a penalty for not paying enough estimated tax. To avoid a penalty, make sure your estimate on line 13c is as accurate as possible. Even if you pay the required annual payment, you may still owe tax when you file your return. If you prefer, you can pay the amount shown on line 13c. For details, see chapter 2 of Pub. 505.</i></p>	<p>14c</p>	
<p>15 Income tax withheld and estimated to be withheld during 2012 (including income tax withholding on pensions, annuities, certain deferred income, etc.)</p>	<p>15</p>	
<p>16a Subtract line 15 from line 14c 16a. _____</p> <p>Is the result zero or less?</p> <p><input type="checkbox"/> Yes. Stop here. You are not required to make estimated tax payments.</p> <p><input type="checkbox"/> No. Go to line 16b.</p>		

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<p>b Subtract line 15 from line 13c 16 b. _____</p> <p>Is the result less than \$1,000?</p> <p><input type="checkbox"/> Yes. Stop here. You are not required to make estimated tax payments.</p> <p><input type="checkbox"/> No. Go to line 17 to figure your required payment.</p>		
<p>17 If the first payment you are required to make is due April 17, 2012, enter $\frac{1}{4}$ of line 16a (minus any 2011 overpayment that you are applying to this installment) here, and on your estimated tax payment voucher(s) if you are paying by check or money order.</p>	<p>17</p>	

* * *

[Remaining Pages Containing Blank Payment Vouchers Omitted for Purposes of this Appendix]