

3/2/98

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Revenue

(2) I.D. Number (Governor's Office Use)

15-402

IRRC Number: 1942

(3) Short Title

Payments For Employee Welfare Benefit Plans and Cafeteria Plans

(4) PA Code Cite

61 Pa. Code §§ 101.1, 101.6 and 101.7

(5) Agency Contacts & Telephone Numbers

Primary Contact: Anita M. Doucette (717) 787-1382

Secondary Contact: Douglas A. Berguson (717) 787-1382

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The amendments to §§ 101.1, 101.6, and 101.7 are being added to explain how employe welfare benefit programs and other wage and salary supplemental programs are taxed and to implement amendments to section 301(d) of the Tax Reform Code of 1971 (72 P.S. § 7301(d)) under Act 7-1997.

The amendments provide employers and employees with a detailed explanation of how nondiscriminatory employee welfare benefit programs such as self-insured medical reimbursement accounts or cafeteria plans are taxed under the Commonwealth's personal income tax. They also provide a detailed explanation of how programs that discriminate in favor of officers, owners, and key employees are taxed.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Statutory authority for the regulation is contained in section 354 of the TRC (72 P.S. 7354).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments to §§ 101.1, 101.6, and 101.7 are being added to explain how employee welfare benefit programs and other wage and salary supplemental programs are taxed and to implement amendments to section 301(d) of the Tax Reform Code of 1971 (72 P.S. § 7301(d)) under Act 7-1997.

The amendments provide employers and employees with a detailed explanation of how nondiscriminatory employee welfare benefit programs such as self-insured medical reimbursement accounts or cafeteria plans are taxed under the Commonwealth's personal income tax. They also provide a detailed explanation of how programs that discriminate in favor of officers, owners, and key employees are taxed.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Employers and employees will benefit from the regulation because it provides a detailed explanation of how nondiscriminatory employee welfare benefit programs such as self-insured medical reimbursement accounts or cafeteria plans are taxed under the Commonwealth's personal income tax. The regulation also provides a detailed explanation of how programs that discriminate in favor of officers, owners, and key employees are taxed.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Most employers will be affected by one or more provisions of this regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants and the Pennsylvania Chamber of Business and Industry. The regulation will be listed in the Department's next Agenda of Regulations and will be forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No significant costs will be associated with compliance.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE INCREASE:						
Regulated Community						
Local Government						
State Government	1.9	1.9	2.1	2.1	2.2	2.2
Total Revenue Increase	1.9	1.9	2.1	2.1	2.2	2.2

(20a) Explain how the cost estimates listed above were derived.

The cost estimates listed above relate to non-cash fringe benefits. Compliance with the law is known to have been non-uniform in the past. In order to achieve uniform imposition of the personal income tax, the regulation clarifies the rules for taxing non-cash fringe benefits. The amendments to the personal income tax compensation definition enacted in 1997 (Act 7) were measured by a uniform imposition standard. The expansion of the exemption to so-called cafeteria plan arrangements (IRC section 125 plans) would cost significantly more in General Fund revenue reduction if non-cash fringe benefits are not uniformly taxed as provided in this regulation. This potential revenue loss would be the consequence of not enacting the regulation. The regulation will include benefits such as the personal use of company cars, employer provided day care and dependent care, employer provided housing, personal use of company property, use of professional services, training and educational programs which are not job related, and apprenticeships, under the definition of taxable compensation. A rule simplifying administration of the tax code that also serves to mitigate any increase in tax revenue is that the benefit has to constitute a foregone profit or additional monetary cost or expense to the employer that is sufficiently substantial in amount to make accounting for it reasonable and practical. Another guiding principal is that the benefit is not for the convenience of the employer. The treatment of the benefit under the Internal Revenue Code is likely to be a factor in employer accounting practices. Therefore, the federal tax treatment of the benefits listed in the regulation has been considered. Personal use of a vehicle is taxable under the IRC. Dependent care is not generally taxable under the IRC because the federal tax credit for dependent care (at a minimum of 20%) eliminates most tax derived. Specific costs were derived for two non-cash fringe benefits: personal use of vehicles and day care services. The revenue increase associated with employer provided vehicles is based on the lease value of a \$25,000 vehicle and the assumption that approximately one half of one percent of all employees are provided with this benefit. To illustrate, the average Commonwealth employee with an employer provided vehicle would pay an additional \$20 in personal income tax annually. Employer provided day care is estimated based upon the cost of this benefit in dollars per year per employee as reported in the *Employee Benefits 1996 Edition*.¹ The remaining fringe benefits are either de minimis at the individual level and exempt or expected to generate minimal additional tax revenue in the aggregate. Dependent care, as an employee benefit, is typically offered primarily in the form of referral and counseling services. Similarly, the benefit of professional services is generally derived when an employee consults the employer's legal or accounting department on a personal matter. Personal use of an employer's property often involves one-time costs, which can not be reasonably distributed among all employees. In addition the costs associated with apprenticeships are often difficult to quantify, because the apprentice learns in the course of normal business. Therefore employer provided dependent care, use of professional services, personal use of company property, and apprenticeships are generally deemed to be de minimis. In most cases prior to the regulation, employer provided housing was either provided as a benefit to the employer or the benefit was received in the form of a housing allowance. Since housing allowances have always been taxable and benefits provided for the convenience of the employer are not taxable, the additional tax collected is expected to be minimal. Employer provided training and educational programs are only taxable when not job related. Since most employer provided education is job related, any revenue increase is expected to be minimal.

¹ *Employee Benefits 1996 Edition* (Washington, DC: U.S. Chamber of Commerce, 1996), p. 20.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Personal Income	\$5,083.2	\$5,374.3	\$5,745.6	Unavailable
Tax - Total				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

If the Department does not uniformly impose the tax, equity of the overall tax system is reduced. For example, a taxpayer that pays day care expenses out of pocket has less disposable income than a taxpayer with the same salary and employer provided day care. Although one taxpayer has less disposable income, both taxpayers pay the same amount of tax.

The Commonwealth is open to legal challenge from specific taxpayers or class action suits from employers and employees in compliance with the tax law. The Department's previously published Statement of Policy served as notice to employers and employees prior to January 1, 1998. Compliance and administration of the tax laws will be negatively impacted without this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Department exercised its nonregulatory alternative with the use of a pronouncement to set forth its interpretation of Act 7-1997 in 1997.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no alternative regulatory schemes associated with the regulation.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Pennsylvania law is more stringent than Federal standards. The Pennsylvania Personal Income Tax law has no provisions similar to section 21 of the IRC ("Expenses for household and dependent care services necessary for gainful employment"), section 105(b) of the IRC ("Amounts expended for medical care"), section 120 of the IRC ("Amounts received under qualified group legal services plans"), section 127 of the IRC ("Educational assistance programs"), section 129 of the IRC ("Dependent care assistance programs"), section 137 of the IRC ("Adoption assistance programs") or section 213 of the IRC ("Medical, Dental, etc., expenses").

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Pennsylvania's broader tax base allows a lower tax rate. The regulation will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The regulation will be presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. The Committees may hold public hearings or informational meetings to consider the regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committee. The Commission may hold informational meetings to consider the regulation. The date, time and location of such meetings can be ascertained by contacting the Commission.

At the same time the regulation is presented to the Committees and the Commission, the regulation will be published in the Pennsylvania Bulletin and the public will be invited to comment.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

N/A

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED
LEGISLATIVE REFERENCE BUREAU
APR 10 1998

DO NOT WRITE IN THIS SPACE

3/2/98
Copy below is hereby approved as to form and legality. Attorney General

By: [Signature]
(DEPUTY ATTORNEY GENERAL)

APR 14 1998

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

PA Department of Revenue

(Agency)

Document/Fiscal Note No. 15-402

Date of Adoption: _____

By: [Signature]
Robert A. Judge, Sr.
Secretary of Revenue

Title: _____
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

By: [Signature]

4/9/98

Date of Approval

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§101.1, 101.6 and 101.7

Payments For Employee Welfare Benefit
Plans and Cafeteria Plans

PREAMBLE

Notice is hereby given that the Department of Revenue, under authority contained in section 354 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7354), proposes amendments to 61 Pa. Code by amending Chapter 101. General Provisions, sections 101.1, 101.6 and 101.7 (relating to definitions; compensation; and receipt of income) as set forth in Annex A.

Purpose of Regulation

The amendments to §§ 101.1, 101.6, and 101.7 are being added to explain how employe welfare benefit programs and other wage and salary supplemental programs are taxed and to implement amendments to section 301(d) of the Tax Reform Code of 1971 (72 P.S. § 7301(d)) under Act 7-1997.

Explanation of Regulatory Requirement

The amendments provide employers and employees with a detailed explanation of how nondiscriminatory employee welfare benefit programs such as self-insured medical reimbursement accounts or cafeteria plans are taxed under the Commonwealth's personal income tax. They also provide a detailed explanation of how programs that discriminate in favor of officers, owners, and key employees are taxed.

Amendments are also being added in order to notify employers and employees how the provisions of the personal income tax relating to employee compensation in the form of employer-provided facilities or services shall be enforced by the Department. There is no constitutional or statutory basis for exempting such non-cash fringe benefits from personal income taxation. To be taxable, such benefit has to constitute a foregone profit or additional monetary cost or expense to the employer that is sufficiently substantial in amount to make accounting for it reasonable and practical.

Excluding an item of income from tax merely because it was paid in a form other than money or property raises serious constitutional issues. Utilizing the personal use of the employer's auto as an example, assume that A, B, C, and D have the same annual cash compensation (\$50,000), the annual rental cost of the cars in question is each \$3,600, and the following situations apply:

- Example 1. A is permitted personal use of his employer's auto at no cost for the entire taxable year.

- Example 2. B is directly reimbursed by his employer for the cost B incurred in renting an auto for one-year's personal use.
- Example 3. C is indirectly reimbursed by his employer for the cost C incurred in renting an auto for one-year's personal use, the employer paying the bill rather than C.
- Example 4. D incurs the cost of renting an auto for personal use for the entire taxable year.

Unless the personal use of the employer's auto is included in A's income, B and C would each have \$3,600 more taxable income than A, even though the amounts of their regular pay are identical and each has the benefit of having free personal use of an auto for a year; and, unless the personal use of the employer's auto is included in A's income, A and D would each have identical taxable incomes and the exclusive, unrestricted possession, use, and control of an auto, even though D's disposable income would be \$3,600 less than A's. These are the kinds of results that would cause taxpayers like B, C, and D rightly to question whether they are paying more than their fair share of state taxes and what public purpose would be served by excluding such remuneration from tax.

Moreover, unlike the income tax imposed under the Local Tax Enabling Act, there has never been any personal income tax exclusion from "compensation" for payments made by employers and labor unions for wage and salary supplemental programs such as those addressed in the amendments. For example, 61 Pa. Code § 101.6(a) has, since 1972, provided that taxable compensation includes "tax assumed by an employer." Similarly, § 101.6(c)(7) excludes the value of lodging furnished for the convenience of an employer, not the value of lodging furnished for the convenience of the employee.

If the personal income tax law were to say "received either in cash or in property," it could reasonably be inferred that remuneration received neither in cash nor in property was not to be taxed. However, the General Assembly used the words "whether - or," not "either - or." Thus, even if the uniformity clause of the Pennsylvania Constitution were not implicated, it is reasonable to assume that the General Assembly intended the ordinary meaning and function of the word "whether" when it used it in the Local Tax Enabling Act and Tax Reform Code.

Compensation other than in cash or in property has been taxed under the Philadelphia earned income tax for some time without legal challenge. In relevant part, the Philadelphia tax

is identical to the Commonwealth's personal income tax. The City's regulations specifically provide that compensation other than in cash such as the personal use of the employer's auto are taxable. Like the personal income tax law, there is also no exclusion from "compensation" under the Philadelphia ordinance for fringe benefits.

Fiscal Impact

The Department of Revenue has determined that the proposed regulation will have a positive fiscal impact of \$1.9 million to \$2.2 million on the Commonwealth.

Paperwork

The proposed regulation will not generate significant additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed regulation to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. § 745.1-745.15), the agency submitted a copy of this proposed regulation on *April 15, 1998* to the Independent Regulatory Review Commission and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the agency by 30 days after the

close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the agency, the General Assembly and the Governor.

02/27/98

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.
General Fund Revenues, Article V. Personal Income Tax, Chapter
101. General Provisions.

§ 101.1. Definitions.

The following words and terms, when used in this article,
have the following meanings, unless the context clearly indicates
otherwise:

* * *

Cafeteria plan - A plan maintained by an employer for the
benefit of its employees and under which all participants are
employees and may choose among two or more benefits consisting of
cash or benefits such as accident and health plans, dependent
care assistance plans, group-term life insurance, adoption
assistance plans and Internal Revenue Code section 401(k) plans.
The term includes flexible benefit plans.

* * *

Discriminatory plan - An employee benefit plan where
excludable employer contributions or the benefits attributable to
employer contributions discriminate in favor of highly
compensated participants. In determining whether a cafeteria
plan is discriminatory, the special rules of section 125(g) of
the IRC (26 U.S.C.A. § 125(g)) are applicable.

* * *

Employee benefit plan - An employee welfare benefit plan, retirement benefit program, or other wage and salary supplemental or replacement program established or maintained by an employer or by an employee organization, or by both, for the benefit of eligible employees or their beneficiaries.

Employee welfare benefit plan -

(i) An employee benefit plan established or maintained in order to provide to eligible employees or their beneficiaries plan benefits, such as:

(A) Medical, surgical or hospital care or benefits in the event of sickness, accident or disability.

(B) Death benefits.

(C) Unemployment or strike benefits.

(D) Vacation benefits and other guaranteed pay.

(E) Apprenticeship or other training plans.

(F) Scholarships, tuition reductions or educational assistance.

(G) Legal, accounting or other professional services or assistance.

(H) Food, housing, or food or housing allowances.

(I) Day care centers or dependent care assistance.

(J) Athletic, recreational, or entertainment facilities, services or assistance.

(K) The personal use of the employer's property or services.

(L) Employee discounts.

(M) Transportation and parking.

(ii) The term shall not include plans that offer a benefit that defers the receipt of compensation or operate in a manner that enables participants to defer the receipt of compensation.

* * *

Highly compensated participant -

(i) A plan participant who is one of the following:

(A) An officer.

(B) A shareholder owning more than 5% of the voting power or value of all classes of stock of the employer.

(C) An individual who, for the preceding taxable year:

(I) Received compensation from the employer in excess of the Federal limitation (after adjustment by the Secretary of the United States Treasury for inflation) set forth in section 414(q)(1)(B) of the IRC (26 U.S.C.A. § 414(q)(1)(B)).

(II) Is in the group consisting of the top 20% of all full-time employees of the employer with at least 3 years of service when ranked on the basis of compensation paid during the taxable year.

(ii) A partner or other self-employed individual.

(iii) A spouse or dependent of a highly compensated individual.

* * *

Plan - The term includes temporary or permanent programs or arrangements, a trust that forms part of a plan, and a contract of insurance.

* * *

Poverty income -

(i) For the purpose of determining eligibility for special tax provisions, monies or property, including interest, gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth or under the laws of the United States, received of whatever nature and from whatever source derived, but not including the following:

* * *

(E) Payments to reimburse actual expenses allowable as an ordinary, reasonable and necessary business expense.

(F) Payments made by employers to labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement and Federally excludable no-additional-cost services, employee discounts, working condition fringes, qualified transportation fringes, and de minimis fringes.

* * *

(iii) The following income may not be included: Social Security and Medicare benefits; periodic payments for sickness and disability; workmen's compensation payments; public assistance and relief (welfare); Unemployment Compensation; [reimbursed actual expenses;] pensions or annuities, including Railroad Retirement Benefits received by reason of retirement; and military pay received by servicemen for duty in a combat zone.

* * *

Program covering hospitalization, sickness, disability or death -

(i) An employee welfare benefit plan that satisfies both of the following requirements:

(A) No program benefits are payable or subject to anticipation, assignment or pledge until the commencement of a covered sickness or disability or death, except:

(I) The return of the participant's own contributions and taxable income or gains thereon.

(II) Amounts paid for the prevention of sickness or disability.

(III) Amounts paid for a policy of insurance.

(B) The only means of obtaining entitlement to program benefits other than the return of the participant's own contributions and taxable income or gains thereon or amounts paid

for the prevention of sickness or disability or for insurance is proof of hospitalization, sickness, disability or death.

(ii) The term shall not include programs under which benefits are payable either upon hospitalization, sickness, disability or death or separation from employment or some other contingency.

* * *

Wage or salary supplement -

(i) Employer-provided coverage under an employe benefit plan.

(ii) Any employer payment to provide benefits under an employe benefit plan, separation, vacation, holiday or guaranteed pay, reimbursement for personal expenses, and any other amount paid, pursuant to an agreement, to one or more of the following:

(A) An independently controlled trust or pooled fund established or maintained for the purpose of funding or providing employe benefit plan benefits under the plan.

(B) An insurance company for the purchase of insurance.

(C) A third party for the benefit of the employe.

(iii) Any benefit under an employe benefit plan to the extent attributable to plan coverage or contributions by the employer which were not includible in income of the employe or are paid by the employer.

§ 101.6. Compensation.

(a) Compensation includes items of remuneration received by an employe, whether directly or through an agent, in cash or in property, or based on payroll periods or piecework, for services rendered as an employe, agent or officer of an individual, partnership, but not guaranteed payments to a partner for services rendered to the partnership, business or nonprofit corporation, or government agency. These items include salaries, wages, commissions, bonuses, stock options, incentive payments, fees, tips, termination or severance payments, rewards, vacation and holiday pay and other wage and salary supplements, tax assumed by the employer, and other remuneration received for services rendered.

(b) Scholarships, stipends, grants and fellowships shall be taxable as compensation, if services are rendered in connection therewith. [Compensation paid in a medium other than cash shall be valued at its current market value. Stock options shall be considered to be received when the option is exercised, exchanged, sold or otherwise disposed.]

* * *

(c) Compensation does not mean or include any of the following:

(1) Periodic payments for periods of sickness or disability paid by or on behalf of an employer under a program or plan unless the payments are regular wages. Additionally, no

amount of damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of physical injuries or sickness if pain and suffering, emotional distress or other like non-economic element was, or would have been, a significant evidentiary factor in determining the amount of the taxpayer's damage. No payments made by third-party insurers for periods of sickness or disability would be considered payments of regular wages. A program or plan where any of the following occur would not be considered payment of regular wages:

(i) The periodic payments have no direct relationship to the employee's usual rate of compensation.

(ii) [Employees or employees in the same job classification receive substantially identical periodic payments.] The periodic payments are computed with reference to the nature of the sickness or disability and without regard to the employee's job classification.

(iii) Periodic payments would be reduced by payments arising under Workmen's Compensation Acts, Occupational Disease Acts, Social Security Disability or similar legislation by any government.

(iv) The periodic payments [would in no event] exceed the employee's usual [rate of] compensation for the period.

* * *

(5) Payments made by employers to employes to reimburse actual expenses allowable as an ordinary, reasonable and necessary business expense. [Examples of these expenses are the following:

(i) Traveling expenses, including the cost of transportation, meals, lodging, tips and phone calls.

(ii) Moving expenses, which shall include the following:

(A) The following types of expenses and for which the employe is reimbursed in the exact amount by the employer will not be considered compensation:

(I) The expenses incurred in settling an unexpired lease on an old residence or acquiring a lease on a new residence.

(II) The expenses related to premove house hunting trips by the employe.

(III) The cost of transporting the employe and members of his household to the new location by the shortest and most direct route available and in the shortest period of time commonly required to travel the distance involved.

(IV) The temporary living expenses for the employe and members of his household while waiting to move into permanent quarters.

(V) The cost of moving household goods, if paid directly by the employe.

(VI) The expenses related to return trips to former residence.

(VII) The storage charges, if paid directly by the employe.

(B) The costs of moving the employe's personal belongings and household furnishings, including intransit storage charges, even if paid directly by the employer to the carrier are not includable as compensation.

(C) The following types of payment made to an employe by the employer in connection with the employe's move to a new principal place of employment within this Commonwealth shall be considered to be compensation and reportable as gross wages for Commonwealth income tax purposes:

(I) Additional compensation realized to the extent that the price paid by an employer for the residence of an employe exceeds the fair market value of the property.

(II) Allowances paid to the employe in lieu of transporting his automobile to the new location.

(III) Allowances equivalent to 1 month's average earnings paid an employe to cover certain unreimbursable expenses.

(IV) Allowance for employe's Federal income tax applicable to certain taxable moving expenses.]

(6) [Payments made by employers or labor unions for programs covering hospitalization, sickness, disability, death,

supplemental unemployment benefits, strike benefits, social security and retirement.] Payments made by an employer or labor union or elective contributions deemed to be made by an employer under a cafeteria plan qualifying under section 125 of the Internal Revenue Code for a nondiscriminatory employee welfare benefit plan covering hospitalization, sickness, disability or death.

Example.

(i) P is a Philadelphia-based partnership that is engaged in providing accounting services. On a nondiscriminatory basis, it offers the following fringe benefits to both employees and partners of the firm: (1) Blue Cross/Blue Shield medical coverage; (2) dental and eyeglass coverage with a deductible; and (3) group term life insurance with coverage up to the equivalent of the employee's annual salary.

(ii) P pays the premiums on behalf of all employees and partners for all medical, dental, eyeglass and insurance coverage directly to the insurance carrier or benefit provider. P does not add the premium costs for the benefits to any employee's gross wages and it accounts for the benefit costs as nonsalary fringe benefit expenses. In other words, the value of the benefits are not shown as an addition to any employee's wages on the paystubs furnished to employees.

(iii) The plan is not a Federally qualifying cafeteria or flexible benefit plan.

(iv) Conclusion: For the employees of P (but not partners), the employer-provided hospitalization (Blue Cross/Blue Shield), eyeglass, dental coverage and group life insurance benefits are excludable from compensation and are therefore not subject to withholding.

* * *

(9) Payments made by an employer or labor union for a collectively bargained for or nondiscriminatory supplemental unemployment benefit or strike benefit plan.

(10) Federally excludable no-additional-cost services, employee discounts, working condition fringes, qualified transportation fringes, and de minimis fringes or benefits provided for the convenience of the employer.

(11) Benefits realized from an employee's personal use, before January 1, 1998, of his employer's property or services.

* * *

(e) Compensation paid in a medium other than cash shall be valued at its current market value. Compensation paid in the form of employer-provided coverage under an employee welfare benefit plan shall be valued at cost. The cost shall be the total amount of payment made during the year by the employer on account of the plan and plan participant, except in the following situations:

(1) In the case of tangible property owned or leased by the employer and personally used by a participant or beneficiary after December 31, 1997, the cost shall be its current fair rental value.

(2) In the case of self-insured insurance plans, the cost shall be the annual cost for financial accounting purposes.

(3) The amount of taxable compensation paid in the form of Federally taxable noncash fringe benefits shall be determined in the same manner as is prescribed by the Internal Revenue Service under Federal statutes and regulations.

(4) In the case of Internal Revenue Code section 125 cafeteria plans, amounts specified in the plan document as being available to the participant for the purpose of selecting or purchasing benefits, when so used, shall be included in the total amount of payment made during the year by the employer on account of the plan and plan participant.

(f) Stock options shall be considered to be received:

(1) When the option is exercised if the stock subject to the option is free from any restrictions having a significant effect on its market value.

(2) When the restrictions lapse if the stock subject to the option is subject to restrictions having a significant effect on its market value or when exchanged, sold or otherwise disposed of.

(g) The following rules apply if, under a cafeteria plan, plan participants may choose between benefits consisting of cash, additional paid vacation days, and other benefits or if, outside a cafeteria plan, plan participants can purchase additional paid vacation days:

(1) If additional paid vacation days are elected or purchased and they are used before the next calendar year, the following apply:

(i) The amount of cash foregone in exchange for the paid vacation day is excluded from income.

(ii) The vacation pay is includible in income when paid.

(2) If additional paid vacation days are purchased outside a Federally qualifying cafeteria plan and they are not used before the next calendar year, the amount of cash foregone in exchange for the paid vacation days is excludable for Pennsylvania Personal Income Tax purposes only if both of the following apply:

(i) The value of the vacation day cannot be cashed out or used for any other purpose.

(ii) The vacation day cannot be carried over to the next taxable year.

(3) Example.

(i) Under the Federally qualified cafeteria plan offered by F's employer, employees are provided with \$4,500 in

benefit dollars that can be used to purchase benefits. If the employee wishes to purchase benefits which cost in excess of the employer-provided benefit dollars, the employee must execute a salary reduction agreement. The cafeteria plan contains the following benefits:

<u>Item</u>	<u>Cost</u>
<u>Medical/Accident Insurance</u>	<u>\$2,000 (individual)</u>
	<u>\$3,250 (family)</u>
<u>Life Insurance</u>	<u>\$ 150</u>
<u>Dependent Care</u>	<u>\$2,000</u>
<u>Additional Vacation</u>	<u>\$ 40/day</u>
<u>Days</u>	
<u>Cash</u>	<u>\$2,000 (cash limit)</u>

(ii) F selects individual medical coverage, dependent care and purchases three additional paid vacation days for the 1997 taxable year. F's employer provides 2 weeks of paid vacation to all employees. The total cost of F's benefits is \$4,120 and, as noted above, F received benefit dollars totaling \$4,500 from his employer.

(iii) During 1997, F uses his 2 weeks of vacation time and the 3 additional vacation days that he purchased under the cafeteria plan.

(iv) Conclusion: The employer is not required to withhold Personal Income Tax on \$2,000 which represents the employer-provided benefit dollars F used for medical/accident

insurance, a nontaxable benefit. This amount is excludable from compensation even if F's employer shows or otherwise accounts for it as a periodic deduction from F's wages or a reduction of gross wages.

(v) The employer shall withhold tax on the employer-provided benefit dollars totaling \$2,380. This represents the amounts paid for dependent care (\$2,000) and the extra benefit dollars that were paid to F in the form of cash (\$380). However, the benefit dollars totaling \$120 that were used to purchase the extra paid vacation days are not subject to tax. F is taxed on the 3 paid vacation days when the days are used in 1997.

(h) Employer payments to reimburse employees for uninsured medical or dental expenses are taxable as compensation if the employee is assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses or not. If the amounts available for covered reimbursement cannot be cashed out or used for any other purpose during the taxable year or be carried over to any other taxable year, normal cash compensation that is forgone by an employee under a spending account or otherwise, and credited to a self-insured medical reimbursement account and drawn upon to reimburse the employee for uninsured medical or dental expenses to which section 105(b) of the IRC (26 U.S.C.A. § 105(b)) applies is excludable from tax.

(i) After December 31, 1996:

(1) Payments made after December 31, 1996, for employee welfare benefit plans under a cafeteria plan qualifying under section 125 of the IRC (26 U.S.C.A. § 125) will be deemed to be an "employer contribution" for Pennsylvania Personal Income Tax purposes if the following apply:

(i) They were not actually or constructively received, after taking section 125 into account.

(ii) They were specified in a written cafeteria plan document as being available to the participant:

(A) For the purpose of selecting or purchasing benefits under a plan.

(B) As additional cash remuneration received in lieu of coverage under a plan.

(iii) The benefits selected or purchased are nontaxable under the Internal Revenue Code when offered under a cafeteria plan.

(iv) The payments made for the plan would be nontaxable under the Pennsylvania Personal Income Tax if made by the employer outside a cafeteria plan.

(2) If these conditions are satisfied, cafeteria plan contributions are taxed under the rules as apply to employer payments for employee welfare benefit plans. However, if the benefits are taxable for Federal income tax purposes when offered under a cafeteria plan, the payments will also constitute taxable

compensation for Pennsylvania Personal Income Tax purposes. For example, coverage under a section 132(f) of the IRC (26 U.S.C.A. § 132(f)) transportation plan is nontaxable under the Internal Revenue Code when offered separately but is taxable for both Federal Income Tax and Pennsylvania Personal Income Tax purposes if offered under a cafeteria plan. Payments also will constitute taxable compensation if they would be taxable under the Pennsylvania Personal Income Tax if made by the employer outside a cafeteria plan. For example, although not taxable under the Internal Revenue Code, coverage under a dependent care plan would constitute taxable compensation under the Pennsylvania Personal Income Tax because it would be taxable if made by an employer outside a cafeteria plan.

(3) Examples are as follows:

Example 1. Under his employer's Federally qualifying cafeteria plan, A has the option of receiving his normal cash compensation or reducing his gross pay requirements and having the amount of that reduction applied by the employer toward health insurance in lieu of normal cash compensation payments. Conclusion: For Personal Income Tax purposes, A is taxable only if he opts to receive his normal cash compensation.

Example 2.

(i) Under the Federally qualifying cafeteria plan offered by B's employer, amounts are available as an addition to B's normal cash compensation which, at the option of B, are

either applied by the employer toward providing day care facilities and services or paid directly to B in cash as additional gross pay. Conclusions: For Personal Income Tax purposes, the benefit selected by B is taxable if:

(A) He opts to receive the additional gross pay.

(B) The amount is applied in reimbursement of an expense B incurred for household or dependent care services.

(C) The amount is applied in discharge of a payment required from B for household or dependent care services.

(ii) B's benefits will also be subject to Personal Income Tax if he opts to receive employer-provided day care facilities and services after January 1, 1998.

Example 3.

(i) Under C's Federally qualifying cafeteria plan, amounts are available as an addition to C's normal cash compensation, which at the option of C, are either applied by the employer toward providing adoption assistance or paid directly to C in cash as additional gross pay.

(ii) Conclusions: For personal income tax purposes, C is taxable if:

(A) He opts to receive the additional gross pay.

(B) The amount is applied in reimbursement of an adoption expense C incurred.

(C) The amount is applied in discharge of any payment required from C related to the adoption of a child.

Example 4.

(i) Under the Federally qualifying cafeteria plan of D's employer, each employee is provided with \$4,000 in flexible dollars that can be used to purchase certain benefits or which can be taken in cash in lieu of benefits. An individual who elects no benefits can receive cash only in an amount not exceeding \$2,000. An individual who elects benefits which have a total cost for the taxable year that does not equal or exceed \$4,000 must allocate the flex dollars first to the selected benefits and any remaining flex dollars can be received as cash but only up to \$500. In addition, the plan specifies that the maximum amount that can be contributed by an employee as an elective contribution is \$2,500.

(ii) For the 1997 taxable year, D's employer offers the following benefits under its cafeteria plan:

<u>Benefit</u>	<u>Cost</u>	
	<u>Individual</u>	<u>(Individual and Spouse)</u>
<u>Medical Insurance</u>	<u>\$2,500</u>	<u>\$4,000</u>
<u>Dental Plan</u>	<u>\$500</u>	<u>\$ 750</u>
<u>Group Life Insurance</u>	<u>\$500</u>	<u>\$ 750</u>
<u>Dismemberment/</u>	<u>\$500</u>	<u>\$ 750</u>

Disability Insurance

Dependent Care \$1,500 \$1,500

Service

Cash \$2,000 \$2,000

(iii) Employees who elect benefits with a total cost exceeding the allocated flex dollars (\$4,000) agree to have the necessary additional amounts deducted from their base salary or wages each payroll period during 1997 in order to pay for the benefits.

(iv) Employee D selects individual coverages under the medical insurance, the dental plan, and group term life insurance and \$500 in cash for the 1997 taxable year. The total cost for these benefits is \$3,500.

(v) Conclusions: The \$3,500 of employer-provided flex dollars used to purchase nontaxable benefits are not compensation and are not subject to withholding notwithstanding that D could have applied the flex dollars toward dependent care (a taxable benefit) or taken the benefits in the form of cash up to \$2,000. The \$500 D received as cash in lieu of benefits under the cafeteria plan is taxable compensation.

Example 5. Assume the same facts as in Example 4, except that Employee D is married and selects the following benefits for both his spouse and himself: 1) medical insurance; 2) dental; 3) group life insurance; and 4) dismemberment/disability insurance. Conclusions: For D, the employer is not

required to withhold Pennsylvania Personal Income Tax on the flexible dollars totaling \$4,000. Because the total cost of benefits selected by D is \$6,250 and the employer-provided flexible dollars (\$4,000) are insufficient to pay for all of the benefits, D agrees to have additional sums deducted from his salary. D's employer pays him bi-weekly and the employer must deduct an amount totaling \$86.54 (\$86.54 X 26 pay periods = \$2,250) from D's bi-weekly salary to pay for the benefits. The \$86.54 deducted from the salary of D each payroll period, which totals \$2,250 for the calendar year, is not subject to Pennsylvania Personal Income Tax and withholding.

Example 6.

(i) Assume that E's employer offers a Federally qualified flexible benefits plan under which an employee is required to select some level of medical coverage unless the employee can provide the company's benefits administrator with proof of coverage under another medical insurance plan, for example that of a spouse's employer. The monthly benefit is based upon the number of family members whom the employee chooses to cover under a medical plan. The flexible benefits plan contains the following features:

Flex Dollars to Purchase Benefits

<u>If you elect this coverage:</u>	<u>You receive this number of</u>
	<u>Flex Dollars each month</u>
<u>Employee Only</u>	<u>\$152.44</u>

<u>Employee + Children</u>	<u>\$247.44</u>
<u>Employee + Spouse</u>	<u>\$298.80</u>
<u>Employee + Family</u>	<u>\$395.56</u>

Medical Plan Features

	<u>Plan A</u>	<u>Plan B</u>
<u>Deductible Per Person/Family</u>	<u>\$150/\$300</u>	<u>\$500/\$1,000</u>
<u>Per Year</u>		

What the Plan Pays

<u>Network Provider/Other</u>	<u>90%/75%</u>	<u>80%</u>
<u>Provider</u>		
<u>Out-of-Pocket Maximum</u>	<u>\$1,150/\$2,875</u>	<u>\$5,500</u>

(not including deductible) Per Family Unit Per Year

Network Provider/Other Provider

<u>Accident Coverage</u>	<u>\$500</u>	<u>\$300</u>
<u>Well Baby Care</u>	<u>Yes</u>	<u>No</u>

1. Medical Plan Prices and Election

	<u>Plan A</u>	<u>Plan B</u>
<u>Employee Only</u>	<u>\$168.94</u>	<u>\$142.34</u>
<u>(Your cost/extra pay)</u>	<u>(-\$16.50)</u>	<u>(+\$10.10)</u>
<u>Employee + Children</u>	<u>\$280.94</u>	<u>\$237.34</u>
<u>(Your cost/extra pay)</u>	<u>(-\$33.50)</u>	<u>(+\$10.10)</u>
<u>Employee + Spouse</u>	<u>\$339.30</u>	<u>\$288.70</u>
<u>(Your cost/extra pay)</u>	<u>(-\$40.50)</u>	<u>(+\$10.10)</u>
<u>Employee + Family</u>	<u>\$452.51</u>	<u>\$385.46</u>
<u>(Your cost/extra pay)</u>	<u>(-\$56.95)</u>	<u>(+\$10.10)</u>

2. Dental Election/Flex Dollars

	<u>What You Pay</u>
<u>Basic Plan Coverage</u>	<u>\$ 0.00</u>
<u>Optional Plan Coverage</u>	
<u>Employee Only</u>	<u>\$ 6.02</u>
<u>Employee + Children</u>	<u>\$11.56</u>
<u>Employee + Spouse</u>	<u>\$11.33</u>
<u>Employee + Family</u>	<u>\$18.12</u>

3. Vision Features

Prices and Election

	<u>What You Pay</u>
<u>Employee Only</u>	<u>\$ 6.30</u>
<u>Employee + Family</u>	<u>\$13.86</u>
<u>No coverage</u>	<u>\$ 0.00</u>

4. Spending Accounts

Health Care Account Election

You may deposit from \$10 to \$208.33 per month in this Account

Dependent Care Account Election (Child Care or Elder Care)

You may deposit from \$10 to \$416.66 per month to this Account if

you are single or married.

5. Life Insurance

Prices and Election

	<u>What You Pay</u>
<u>Basic coverage only</u>	<u>\$ 0.00</u>

Additional Life

1x base annual pay	\$ 5.00
2x base annual pay	\$10.00
3x base annual pay	\$15.00

6. Dependent Life

Prices and Election

	What You Pay
\$10,000 spouse/\$5,000 child	\$1.49
\$20,000 spouse/\$5,000 child	\$2.34
No coverage	\$0.00

(ii) Under the plan, the maximum amount available as elective contributions is \$20,000.

(iii) E is married and has one child. E receives flex dollars totaling \$395.56 each month or (\$395.56 x 12 mo. = \$4,746.72 annually). E elects the following benefits:

Benefit	Option	Monthly Cost
Medical	Plan A	\$452.51
Dental	Employee & Family	\$ 18.12
Life Insurance	Basic Coverage Only	\$ 0.00

(v) Conclusion: Because E selected excludable benefits for Pennsylvania Personal Income Tax purposes, the monthly, employer-provided flex dollars in the amount of \$395.56 are not subject tax or withholding. The monthly flex dollars are not subject to tax or withholding irrespective of whether they

are added to E's salary or shown as a deduction from his gross pay on each pay stub.

(vi) Because the total monthly cost of the benefits selected is \$470.63 and the allotted flex dollars are \$395.56, E makes up the difference by agreeing to have the additional necessary funds (\$75.07) deducted from his pay each month as an elective contribution. The \$75.07 is excludable from tax because:

(A) It was not actually or constructively received by E, after taking section 125 of the Internal Revenue Code into account.

(B) It was specified in a written cafeteria plan document as being available to E for the purpose of selecting or purchasing benefits under the plan and as additional cash remuneration received in lieu of coverage under the plan.

(C) The benefits selected or purchased are nontaxable under the Internal Revenue Code when offered under a cafeteria plan.

(D) The payments made for the plan would be nontaxable under the Pennsylvania Personal Income Tax if made by the employer outside a cafeteria plan.

Example 7. Assume that the employer offers the same flexible benefits plan as in Example 6, except that employee E is a single individual with no dependents and she selects the least expensive medical plan for an single individual, Plan B. E

places the leftover flex dollars into the spending account to help defer the cost of medical expenses not paid for by Plan B. Under the flexible benefits plan, E may not withdraw funds from the spending account for any purpose other than to pay for uninsured medical expenses. If E does not utilize the amounts placed into the spending account during the calendar year, she forfeits the benefits. Conclusion: The flex dollars totaling \$152.44, which includes the monthly contribution of \$10.10 to the spending account, are not subject to tax or withholding.

Example 8.

(i) Assume that the employer offers the same flexible benefits plan as in Example 6, except that employee E has a husband and two children. E's husband, but not the children, is covered under the husband's employer's health insurance plan. E receives monthly flex dollars for herself and children (\$247.44) and selects the following items under the employer's plan:

<u>Benefit</u>	<u>Option</u>	<u>Cost (monthly)</u>
<u>Medical</u>	<u>Plan B</u>	<u>\$237.34</u>
	<u>Employee &</u>	
	<u>Children</u>	
<u>Dental</u>	<u>Employee &</u>	
	<u>Children</u>	<u>\$ 11.56</u>
<u>Vision</u>	<u>Employee</u>	
	<u>Only</u>	<u>\$ 6.30</u>

life insurance coverage would be taxable as a currently taxable benefit treated as cash for both Federal income tax and Pennsylvania Personal Income Tax purposes when offered under a cafeteria plan. Thus, the \$1.49 monthly cost would be taxable even if it had been paid by E's employer.

(j) Discriminatory plans. Compensation includes the entire cost of employer-provided coverage provided to a highly compensated participant under any discriminatory employee welfare benefit plan.

(k) 401(k) plans. Contributions made by an employer for Internal Revenue Code 401(k) plans under a cafeteria plan under which the employee unilaterally may elect to have the employer either make the payments as contributions to a 401(k) plan or other plan on behalf of the employee or to the employee directly in cash are not excludable from the employee's taxable compensation.

§ 101.7. Receipt of income.

* * *

(e) Present economic benefit. An amount paid as a contribution shall be considered as received where an employe receives rights, such as coverage under an employe benefit plan:

(1) Of a value which can in no event fall materially below the amount of the contribution;

(2) That presently belong to the employe; and

(3) Are unequivocally provided for the ultimate benefit of the employe under whatever contingency and whatever circumstance the occasion for the benefit should arise.

(f) Wage and salary deductions; taxability. Any amount lawfully deducted and withheld by an employer from the remuneration of an employee and accounted for as a part of the employee's total remuneration shall be considered to have been paid to the employee as taxable compensation at the time the deduction is made unless the amount is specified in a written cafeteria plan document as being available to the participant for the purpose of selecting or purchasing benefits under a plan or as additional cash remuneration received in lieu of coverage under a plan. Whether an amount is specified in a cafeteria plan document as being available to a participant shall be determined using Federal rules.

Example.

(i) Employer M is a manufacturing company situated in this Commonwealth and under its collective bargaining agreement with a union, all nonmanagement personnel must contribute \$15 per week from their gross salary toward the purchase of Blue Cross/Blue Shield coverage and \$3 per week toward the purchase of group life insurance.

(ii) The plan is not a Federally qualifying cafeteria plan.

(iii) Conclusion: M must withhold Pennsylvania Personal
Income Tax from the \$18 contributed by each nonmanagement
employee toward benefits.

02/18/98

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 15-402
 SUBJECT: Payments for Employee Welfare Benefit Plans & Cafeteria Plans
 AGENCY: Department of Revenue

RECEIVED
 98 APR 15 PM 9:19
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. _____ With Revisions
 - b. _____ Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4/15/98	<u><i>[Signature]</i></u>	HOUSE COMMITTEE ON FINANCE
4/15/98	<u><i>[Signature]</i></u>	SENATE COMMITTEE ON FINANCE
4/15/98	<u><i>[Signature]</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
4/15/98	<u><i>[Signature]</i></u>	LEGISLATIVE REFERENCE BUREAU

April 15, 1998