

9/28/01

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Revenue

2001 007 31 PM 2: 53

REVIEW COMMISSION

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

15-414

IRRC Number:

2111

(3) Short Title

Supplemental Unemployment Benefit Plan

(4) PA Code Cite

61 Pa. Code §§ 101.1 and 101.6

(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.

This regulatory amendment will provide an explanation of the meaning and scope of the exclusion from compensation in the Pennsylvania Income Tax law section 301(d)(vi) of the TRC (72 P.S. § 7301(d)(vi)) for employer or labor union payments for supplemental unemployment benefits. The proposed changes will address the tax treatment of plans offered to provide supplemental benefits to employees terminated from service as a result of layoff, workforce reduction, plant closings or other involuntary terminations.

(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 regulations.

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

The regulation is necessary to provide an explanation of the meaning and scope of the exclusion from compensation for employer or labor union payments for supplemental unemployment benefits.

(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.)

Taxpayers and tax practitioners will benefit from an explanation of the meaning and scope of the exclusion set forth at 72 P.S. § 7301(d)(vi).

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(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.)

Persons receiving employer or labor union payments for supplemental unemployment benefits may be affected by 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.

The regulation was published in the Pennsylvania Bulletin and the public was invited to comment. The Department received comments from the Independent Regulatory Review Commission. The Department considered the comments in preparing the final form regulation. In addition, a copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants; the Pennsylvania Chamber of Business and Industry and all parties who commented on the proposal. The regulation was listed in the Department's Agenda of Regulations published at 31 Pa.B. 711 (February 3, 2001) and was 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.

There are no specific costs and/or savings to the regulated community associated with compliance with this regulation. No legal, accounting or consulting procedures are required by the regulation.

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. No legal, accounting or consultant procedures are required by the regulation.

(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. No legal, accounting or consultant procedures are required by the regulation.

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	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A					

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

The regulation provides clarification of existing policy and therefore has no fiscal impact.

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
N/A	N/A	N/A	N/A	N/A

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

This regulation will facilitate compliance by providing clarification of existing Departmental policy.

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

There are no nonregulatory alternatives associated with the regulation.

(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.

There are no provisions in the regulation that are more stringent than Federal standards.

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

Generally, other states tax supplemental unemployment benefit plans. 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 agency. The numbering of the new paragraph being added to § 101.6(c) changed because of the adoption of Regulation 15-402, relating to payments for employee welfare benefit plans and cafeteria plans and because of the pending adoption of Regulation 15-413, relating to termination pay, severance pay and early retirement incentive programs.

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

The Department has not scheduled any public hearings or informational meetings to discuss the regulation.

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.

This regulation does not change existing reporting, record keeping or other paperwork requirements.

(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)

2001 OCT 31 PM 2:53

REVIEW COMMISSION

1/23/01

#2111

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: _____
(DEPUTY ATTORNEY GENERAL)

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)

15-414

Document/Fiscal Note No. _____

Date of Adoption: _____

By: Larry P. Williams

Larry P. Williams
Secretary of Revenue

Title: _____
(Executive Officer, Chairman or Secretary)

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

By: John V. Z...

10/4/01
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 FINAL RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§101.1 and 101.6

Personal Income Tax

Supplemental Unemployment Benefit Plan

PREAMBLE

The Department of Revenue (Department), under the authority contained in section 354 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7354), by this order amends 61 Pa. Code, Chapter 101. General Provisions, sections 101.1 and 101.6 (relating to definitions; and compensation) to read as set forth in Annex A.

Purpose of Regulation

This regulatory amendment provides an explanation of the meaning and scope of the exclusion from compensation in the Pennsylvania income tax law section 301(d)(vi) of the TRC (72 P.S. § 7301(d)(vi)) for employer or labor union payments for supplemental unemployment programs. The changes also address the tax treatment of programs offered to provide supplemental benefits to employees terminated from service as a result of layoff, workforce reduction, plant closings or other involuntary terminations.

Explanation of Regulatory Requirements

Section 101.1 (relating to definitions) is amended by adding the definition of supplemental unemployment benefit plan. Section 101.6 (relating to compensation) is amended by adding a new paragraph (14) relating to benefits payable under a supplemental unemployment benefit plan, under subsection (c) which enumerates what compensation does not mean or include. The numbering of this new paragraph was changed from the proposal because of the Department's adoption of Regulation 15-402, relating to payments for employe welfare benefit plans and cafeteria plans and because of the pending adoption of Regulation 15-413, relating to termination pay, severance pay and early retirement incentive programs.

Affected Parties

Persons receiving employer or labor union payments for supplemental unemployment programs may be affected by this regulation.

Comment and Response Summary

Notice of proposed rulemaking was published at 30 Pa. B. 2236 (May 6, 2000). The proposal is being adopted with changes as set forth in Annex A.

No comments were received from the public during the public comment period. No comments were received from the House and Senate Finance Committees. The Department did receive comments from the Independent Regulatory Review Commission (IRRC).

Amendments to the proposed rulemaking in response to comments are as follows:

(1) In its comments, IRRC questioned the use of the phrase "established or maintained by an employer or by an employee organization, or by both" in the definition of "supplemental unemployment benefit plan" and requested an explanation of how the phrase is consistent with 72 P.S. § 7301(d)(vi).

Labor unions are employee organizations; however, not all employee organizations are labor unions, for example, voluntary employees' beneficiary associations (VEBAs) or employee representation committees. 72 P.S. § 7301(d)(vi) does not deal with payments made by employee organizations other than labor unions. To clarify the proposal, the Department added the phrase "by an employer or labor union" to § 101.6(c)(14).

(2) IRRC also questioned the necessity of the phrase "under the plan" in subparagraph (i) and (ii) of the definition of "supplemental unemployment benefit plan" as well as the use of the term "permanent" in subparagraph (i)(A). The Department reviewed these areas of the definition and determined that the language was not necessary and deleted it from the regulation.

(3) In subparagraph (i) and (ii) of the definition of "supplemental unemployment benefit plan," IRRC questioned what was meant by the phrase "or subject in any manner to anticipation, assignment or pledge by." To clarify its intent, the Department amended the subparagraphs by deleting the phrase IRRC found unclear and adding language that more clearly explains the provision.

Amendments initiated during the Department's internal review of the regulation are as follows:

(1) For clarity and to respond to questions raised by the public since the publication of the proposal, the Department has revised the definition of supplemental unemployment benefit plan by adding a third necessary attribute that employer payments to provide benefits are paid to an independently controlled trust or pooled fund established or maintained for the purpose of funding or providing benefits under the plan.

(2) As referenced in the proposed preamble, certain proposed amendments to § 101.6 would need to be reclassified with the adoption of Regulation 15-402. Because Regulation 15-402 was adopted at 30 Pa.B. 3938 (August 5, 2000) and because of the pending adoption of Regulation 15-413, relating to termination pay, severance pay and early retirement incentive programs, proposed § 101.6(c)(9) was moved to paragraph (14).

Explanations to questions raised by IRRRC:

(1) In subparagraph (i) of the definition of "supplemental unemployment benefit plan," IRRRC questioned why the parenthetical phrase "(whether or not such separation is temporary)" was needed. The purpose of the parenthetical is to make sure that it is clear that no distinction is to be drawn between a temporary layoff and a permanent termination of employment.

(2) In subparagraph (i)(E) and (ii)(B)(III) within the definition of "supplemental unemployment benefit plan," the Department uses the phrases "similar circumstances" and "similar acts." In its comments, IRRRC asked the Department to explain what criteria it will use to determine similarity. The determining factor in subparagraph (i)(E) is that the circumstance be beyond the control of the participant and in subparagraph (ii)(B)(III) it is that the act be within the control of the participant.

(3) In its comments, IRRRC noted that § 101.6(c)(6) references supplemental unemployment benefits; however, the Department's proposal provides that supplemental unemployment benefits also be listed in a new paragraph (9). For clarity, IRRRC suggested that the Department incorporate the provisions for supplemental unemployment benefits under one paragraph.

Paragraph (6) under § 101.6(c) deals with the funding for supplemental unemployment benefit pay plans, not the actual supplemental unemployment benefit plan distributions. Conversely, proposed paragraph (9) (now paragraph (14)), deals with the actual distribution of benefits; therefore, the two paragraphs should remain separate.

(4) Given the definition of "supplemental unemployment benefit plan" in § 101.1, IRRRC questioned why the qualifying phrase "whether payable on a periodic basis or in the form of cash, services or property" is needed in § 101.6(c).

The qualifying phrase questioned by IRRC is needed only if there might be some question whether aperiodic cash payments and benefits payable in the form of services or property are taxable. As the Department's position was previously that aperiodic cash payments and benefits payable in the form of services or property were taxable, the possibility for questions seems quite likely.

Fiscal Impact

The Department has determined that the amendments will have no fiscal impact on the Commonwealth.

Paperwork

The amendments will not require additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The amendments 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

The contact person for an explanation of the amendments is Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 26, 2000, the Department submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 2236, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were (deemed) approved by the Committees on _____ and were (deemed) approved by IRRC on _____, in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by amending Chapter 101. General Provisions, sections 101.1 and 101.6 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

LARRY P. WILLIAMS
SECRETARY OF REVENUE

08/31/01

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:

* * *

Supplemental unemployment benefit plan - A plan established
or maintained by an employer or by an employee organization, or
by both, that has both ALL of the following attributes:

(i) ~~Under the plan, no~~ NO benefit is payable to, or ~~subject
in any manner to anticipation, assignment or pledge by, any plan
participant except upon~~ CAN BE TAKEN, ASSIGNED, PLEDGED OR
OTHERWISE CHARGED OR DEALT WITH BY, ANY PLAN PARTICIPANT EXCEPT
UPON lay-off or involuntary separation from the employment of the
employer (whether or not such separation is temporary) resulting
directly from:

- (A) A ~~permanent~~ reduction in force.
- (B) Plant closing.
- (C) Change in organizational structure.
- (D) Discontinuance of an operation.

(E) The participant's failure to meet or maintain standards of performance for the position due to inability to carry out the responsibilities of the position, health, obsolescence, failure to meet the changed responsibilities of the position or similar circumstance beyond the control of the participant.

(ii) Under the plan, no NO benefit is payable to, or subject in any manner to anticipation, assignment or pledge by, any plan participant who CAN BE TAKEN, ASSIGNED, PLEDGED OR OTHERWISE CHARGED OR DEALT WITH BY, ANY PLAN PARTICIPANT IF THE PARTICIPANT either:

(A) Voluntarily separates from service.

(B) Is separated or discharged from service for any of the following reasons:

(I) Refusal to accept another position with reasonably comparable compensation.

(II) The commission of illegal acts.

(III) Insubordination, failure or refusal to comply with rules or regulations or similar acts within the control of the participant.

(III) EMPLOYER PAYMENTS TO PROVIDE BENEFITS ARE PAID TO AN INDEPENDENTLY CONTROLLED TRUST OR POOLED FUND ESTABLISHED OR MAINTAINED FOR THE PURPOSE OF FUNDING OR PROVIDING BENEFITS UNDER THE PLAN.

* * *

§ 101.6. Compensation.

* * *

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

* * *

~~(9)~~ (14) Benefits payable BY AN EMPLOYER OR LABOR UNION under a supplemental unemployment benefit plan, whether payable on a periodic basis or in the form of cash, services or property.

* * *

08/31/01

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

I.D. NUMBER: 15-414
 SUBJECT: Supplemental Unemployment Benefit Plan
 AGENCY: DEPARTMENT OF REVENUE

TYPE OF REGULATION

- 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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/31/01	<i>P. Macent</i>	HOUSE COMMITTEE ON FINANCE
10/31/01	<i>C. Taylor</i>	SENATE COMMITTEE ON FINANCE
10/31/01	<i>P. Eckert</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

October 3, 2001