

9/18/03

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Revenue

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

15-418

IRRC Number:

2209

(3) Short Title

Employer Withholding Provisions

(4) PA Code Cite

61 Pa. Code §§ 113.2, 113.3, 113.3a,
113.3b, 113.4, 113.16 and 121.16

(5) Agency Contacts & Telephone Numbers

Primary Contact: Anita M. Doucette (717) 346-4637

Secondary Contact: Jeffery S. Snavely (717) 772-9212

(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 are intended to serve the following purposes: 1. Section 113.3(c) and (d) (relating to computing withholding of Pennsylvania Personal Income Tax) is being amended to add the provisions of the act of May 7, 1997 (P.L. 85, No. 7) (Act 7) relating to cafeteria plans and other employee compensation arrangements. See section 301(d) of the TRC (72 P.S. § 7301(d)). 2. The amendments establish new employer identification number requirements in order to facilitate the Department's Keystone Integrated Tax System. 3. The amendments establish new employer registration requirements to facilitate the common employer registration form of the Department and the Department of Labor and Industry. 4. The amendments change W-2 filing requirements in order to facilitate the Department's new Infoimage System and make more use of electronic and magnetic media. 5. The Federal employee reporting and withholding requirements for tip income are being adopted so that businesses will not have to deal with conflicting requirements at the Federal and State level. 6. Section 113.16 pertaining to the statutory trust fund provisions, will enhance the Department's enforcement powers.

(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).

Regulatory Analysis Form

(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?

Reference should be made to the response to question (8).

(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 having the Department's personal income tax regulations updated to address issues regarding employer withholding provisions.

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.)

All employees, employers and tax practitioners will be required to comply with the 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 Society of 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 33 Pa.B. 3186 (July 5, 2003) 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.

Compliance with the regulation could result in a savings to the regulated community by reducing the possibility of assessment of penalty and interest. No legal, accounting or consulting procedures are required by the regulation. There are no additional costs associated with the electronic filing requirement (§ 113.4(c)) in that businesses falling into that category are currently required to file electronically for Federal purposes.

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:	\$Mil	\$Mil	\$Mil	\$Mil	\$Mil	\$Mil
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE GAIN:						
Regulated Community						
Local Government						
State Government	\$8.2	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5
Total Revenue Gains	\$8.2	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5

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

The regulation establishes specific requirements for the reporting and withholding of tips income. Instead of being remitted with the taxpayers' estimated or annual payments, tips income will be withheld by employers. As a result, tax collection on tips income will be accelerated to the extent that employers comply with the withholding requirements. This accelerated tax collection should result in tax savings and improved tax compliance of tips income earners.

Using an effective date of January 2004 (for calculation purposes only), and using an average interest rate at which the Commonwealth invests funds, the Department has estimated a tax revenue gain of about \$8.2 million for fiscal year 2003-04 and about \$0.5 million additional revenue in interest thereafter. This estimate may be overstated because actual interest earnings will depend on cash balances in the Treasury's funds and some taxpayers may qualify for 100% tax forgiveness. The estimate could be understated because the estimate assumes that these persons are reporting all of the tip income currently. To the extent that they are not, there could be an additional revenue increase.

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.

N/A

(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.

The employer identification number requirements set forth in § 113.3a (relating to employer identification number) are more stringent than federal requirements; however, they are necessary to facilitate the Department's Keystone Integrated Tax System.

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

The regulation is either similar or less burdensome than those of other states except for the employer identification requirements outlined in § 113.3a. 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. The 10-day registration requirement proposed in § 113.3b differs with the registration requirement set forth in the Department of Labor and Industry's regulation 34 Pa. Code § 63.51 (relating to form UC-1) which requires immediate registration. The Department has met and discussed the issue with representatives of the Department of Labor and Industry.

(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 meeting 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.

The regulation does not change existing reporting or record keeping requirements. The regulation will reduce paperwork requirements in that form W-2 will no longer be required to be filed with each individual return.

(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; however, the needs of the food service industry were addressed by the Department adopting the Federal rules regarding tips thereby creating uniformity in reporting requirements.

(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?

The 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 the regulation.

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

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

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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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)

DOCUMENT/FISCAL NOTE NO. 15-418

DATE OF ADOPTION _____

BY Gregory C. Fajt
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

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

BY John V. Curran

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

Personal Income Tax

61 Pa. Code §§ 113.2, 113.3, 113.3a, 113.3b,
113.4, 113.16 and 121.16

Employer Withholding Provisions

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 Chapters 113 and 121. (relating to withholding of tax; and final returns), sections 113.2, 113.3, 113.3a, 113.3b, 113.4, 113.16 and 121.16 to read as set forth in Annex A.

Purpose of Regulation

The amendments are intended to serve the following purposes:

1. Section 113.3(c) and (d) (relating to computing withholding of Pennsylvania Personal Income Tax) is being amended to add the provisions of the act of May 7, 1997 (P.L. 85, No. 7) (Act 7) relating to cafeteria plans and other employee compensation arrangements. See section 301(d) of the TRC (72 P.S. § 7301(d)).

2. The amendments establish new employer identification number requirements in order to facilitate the Department's Keystone Integrated Tax System.

3. The amendments establish new employer registration requirements to facilitate the common employer registration form of the Department and the Department of Labor and Industry.

4. The amendments change W-2 filing requirements in order to facilitate the Department's new Infoimage System and make more use of electronic and magnetic media.

5. The Federal employee reporting and withholding requirements for tip income are being adopted so that businesses will not have to deal with conflicting requirements at the Federal and State level.

6. Section 113.16 pertaining to the statutory trust fund provisions, will enhance the Department's enforcement powers.

Explanation of Regulatory Requirements

Section 113.2 (relating to compensation subject to withholding) is amended by adding a new paragraph (3) relating to tips. Employers are required to deduct and withhold tax on tips of which the employer has the control, receipt, custody or payment or that are reported by the employee and only to the extent that the employer can collect the tax by deducting it from the employee's compensation exclusive of tips.

Section 113.3 is amended by adding a new subsection (c) that addresses special situations pertaining to the deduction or payment of amounts by an employer for or on behalf of an employee. A new § 113.3(d) provides that amounts specified in a cafeteria plan as being available to the employee for purposes of selecting or purchasing benefits under a plan or as additional cash remuneration received in lieu of coverage are excludible from tax and withholding if certain enumerated conditions are met.

A new § 113.3a (relating to employer identification number) is added to explain the various rules relating to Federal and State employer identification numbers.

A new § 113.3b (relating to registration) details when an employer must register with the Department.

Section 113.4 (relating to time and place for filing reconciliation and withholding statements) has been amended by deleting unnecessary language relating to the completion of W-2's for tax year 1971. Subsection (b) is updated to provide for the filing of quarterly withholding returns. Subsection (c) is amended by providing that reconciliation statements with accompanying withholding statements for each employee can be forwarded to the Department by means of first class mail or electronic or magnetic media. The subsection is further amended to provide that if an employer is required to file 250 or more withholding statements, the reconciliation statement with accompanying withholding statements shall be forwarded via electronic or magnetic media as specified in the instructions of the Department available on its website or at its Harrisburg or district offices.

A new § 113.16 (relating to enforceable trust fund) is added to provide guidance regarding deducted and withheld tax.

Finally, § 121.16 (relating to Form W-2) is deleted in its entirety, consistent with the changes regarding W-2 filing requirements previously referenced.

Affected Parties

Affected parties are employers, employees and tax professionals.

Comment and Response Summary

Notice of proposed rulemaking was published at 31 Pa. B. 4956 (September 1, 2001). This 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 the proposal, the Department added subsections (d) and (e) to § 113.3 to explain statutory trust fund provisions. In its comments, IRRC suggested that the trust fund provisions should be moved to a separate and distinct section. The Department agrees with IRRC's suggestion and creates a new § 113.16 (relating to enforceable trust fund). The new language clarifies who may be held liable for withheld tax and how the amount of the liability is determined.

2. With regard to § 113.3(f)(3), since the nontaxable payments referenced are delineated in existing § 101.6, IRRC recommended that the Department insert a reference to § 101.6. The Department agrees and amends paragraph (3) accordingly.

3. In § 113.3b IRRC suggested that the Department modify the section to state how employers can access a registration form. The Department agrees with IRRC's suggestion and amends the section accordingly.

4. Section 113.4(c) states that when employers file withholding statements via electronic or magnetic media, the date shall be forwarded as specified in the instructions of the Department. IRRC suggested that the Department explain what the instructions are and where they can be found. The Department agrees with IRRC's suggestion and amends subsection (c) accordingly.

Comment that did not result in an amendment to the regulation is as follows:

IRRC raised a concern with regard to proposed § 113.3(f) which provides that certain amounts specified in a cafeteria plan document are excluded from tax and withholding if the enumerated conditions are met. IRRC indicated that paragraph (3) should appear as a separate subsection because it addresses payments that are outside of a qualifying cafeteria plan but are still nontaxable for Pennsylvania personal income tax purposes. It is

the Department's position that paragraph (3) should be read in conjunction with paragraphs (f)(1) and (f)(2) and not as a separate, state alone statement; therefore, no revision was made to the paragraph.

Fiscal Impact

The regulation establishes specific requirements for the reporting and withholding of tips income. Instead of being remitted with the taxpayers' estimated or annual payments, tips income will be withheld by employers. As a result, tax collection on tips income will be accelerated to the extent that employers comply with the withholding requirements. This accelerated tax collection should result in tax savings and improved tax compliance of tips income earners.

Using an effective date of January 2004 (for calculation purposes only), and using an average interest rate at which the Commonwealth invests funds, the Department has estimated a tax revenue gain of about \$8.2 million for fiscal year 2003-04 and about \$0.5 million additional revenue in interest thereafter. This estimate may be overstated because actual interest earnings will depend on cash balances in the Treasury's funds and some taxpayers may qualify for 100% tax forgiveness. The estimate could be understated because the estimate assumes that these persons are reporting all of the tip income currently. To the

extent that they are not, there could be an additional revenue increase.

Paperwork

The amendments will not require additional paperwork for the public or the Commonwealth. The amendments will reduce paperwork requirements in that form W-2 will no longer be required to be filed with each individual return.

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 August 17, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 4956 (September 1, 2001), 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 Chapters 113 and 121 (relating to withholding of tax; and final returns), sections 113.2, 113.3, 113.3a, 113.3b, 113.4, 113.16 and 121.16 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.

GREGORY C. FAJT
SECRETARY OF REVENUE

09/18/03

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
113. Withholding of Tax.

§ 113.2. Compensation subject to withholding.

All compensation shall be subject to withholding of tax by
an employer. Regulations for residents and nonresidents shall be
as follows:

* * *

(3) Tips.

(i) Every employe who, in the course of his employment, receives in any calendar month cash tips which are wages as defined in section 3401(a) of the IRC (26 U.S.C.A. § 3401(a)) shall report those tips in one or more written statements furnished to his employer on or before the 10th day following that month.

(ii) Employers are required to deduct and withhold tax only on tips of which the employer has the control, receipt, custody or payment or tips that are reported by the employe and only to the extent that the employer can collect the tax by deducting it from the employe's compensation exclusive of tips.

§ 113.3. Computing withholding of Pennsylvania Personal Income Tax.

* * *

(c) Except as provided in subsection ~~(f)~~ (D):

(1) Any amount lawfully deducted by an employer from the remuneration of an employee shall be deemed to be a part of the employee's remuneration and to have been paid to the employee as compensation at the time the deduction is made.

(2) Any amount paid by an employer on behalf of an employee without deduction from the remuneration of, or other reimbursement from, the employee on account of any liability or obligation of, or payment required from, an employee shall be deemed to be paid to the employee as compensation at the time the payment is made.

(3) Any payment made to an employee, third party or fund under a cash or deferred arrangement under which an employee may unilaterally elect to have the employer make payments to the third party or fund for the benefit of the employee or to the employee directly in cash shall be deemed to be paid to the employee as compensation at the time the payment is made.

(4) Any payment made to an employee, third party or fund under an arrangement under which an employee may unilaterally choose between two or more benefits consisting either of cash and coverage under a plan or coverage under two or more plans shall

be deemed to be paid to the employee as compensation at the time the payment is made.

(d) Tax deducted from the State wages of an employee shall be considered to have been withheld at the time of payment of the State wages against which the deduction was charged.

(e) If an employer fails or refuses to pay over any withheld tax or to deposit it in a separate account in trust for and payable to the Department or otherwise identify and segregate it from other funds, it shall be deemed that:

(1) Withheld tax would be on deposit in the general operating account of the employer at the time of payment of the state wages from which deduction was made.

(2) The employer would disburse withheld tax last.

(3) Once withheld tax is disbursed, subsequent deposits would not replenish it.

(4) The lowest intermediate balance of cash on deposit in the general operating account is withheld tax that constitutes a trust fund for the Commonwealth that is enforceable against the employer or any person receiving any part of the fund.

(5) Any excess of the tax deducted over the lowest intermediate balance is withheld tax that has been received by the employer and disbursed.

(f) Amounts specified in a cafeteria plan document as being available to the employee for the purpose of selecting or purchasing benefits under a plan or as additional cash

remuneration received in lieu of coverage under a plan are excludible from tax and withholding if the following apply:

(1) They were not actually or constructively received, after taking section 125 of the IRC (26 U.S.C.A. § 125) into account.

(2) The benefits selected or purchased are nontaxable under the IRC when offered under a cafeteria plan described in section 125 of the IRC.

(3) The payments made for the plan would be nontaxable under the ~~Pennsylvania Personal Income Tax~~ § 101.6 (RELATING TO COMPENSATION) if made by the employer outside a cafeteria plan described in section 125 of the IRC.

§ 113.3a. Employer identification number.

An employer shall use both the Federal and Pennsylvania employer identification numbers to report all Pennsylvania withholding. Employers who have not yet received a Federal employer identification number will be assigned a temporary Pennsylvania number until the Federal employer identification number is obtained, at which time the Department shall be notified. If an employer has multiple divisions using the same Pennsylvania employer identification number but remitting and reconciling withholding tax separately, the employer shall request a separate Pennsylvania number for each division.

§ 113.3b. Registration.

Every employer having an office or transacting business within this Commonwealth and making payment of wages for the first time to one or more nonresident individuals performing services on behalf of the employer within this Commonwealth or to one or more resident individuals shall, within 10 business days of the payment, register with the Department by completing and filing the form PA-100 PENNSYLVANIA COMBINED REGISTRATION FORM prescribed by instructions of the Department AVAILABLE ON ITS WEBSITE OR AT ITS HARRISBURG OR DISTRICT OFFICES.

§ 113.4. Time and place for filing reconciliation and withholding statements.

(a) An employer shall submit a wage and tax withholding statement to each of his employees on or before January 31 following the year of payment of compensation, or within 30 days from the date of the last payment of compensation if employment or the business is terminated.

(1) An employer shall use the combined Federal-State Wage and Tip Withholding Statement (Form W-2) issued by the Internal Revenue Service or one that conforms thereto with the [name] word "Commonwealth" printed, stamped[,] or typed thereon.

[(i)] The statement shall show the name of employer, address and identification number of the employer; the name, address and Social Security number of the employee; the total compensation paid during the taxable year; and the total amount of Pennsylvania tax withheld during the taxable year.

[(ii) For the year 1971, the employer shall also show on Form W-2 the actual compensation paid, for example, on and after June 1, 1971, through December 31, 1971, or, in the alternative, actual compensation paid for the period July 1, 1971, through December 31, 1971, plus, 1/3 of the calendar quarter July 1, 1971, to September 30, 1971.]

* * *

[(3) With prior approval of the director of the Commonwealth Personal Income Tax Bureau, an employer or his agent may be permitted to submit a magnetic tape or computer printed listing in lieu of copies of Form W-2.]

(b) A completed Reconciliation Statement (Return Form [RIT-W-3] PA-W3), reconciling Personal Income Tax withheld with related quarterly withholding returns and deposit and employee withholding statements shall be submitted by the following:

* * *

(c) Reconciliation Statements (Form [RIT-W-3] PA-W3), with accompanying withholding statements (Form W-2) for each employee shall be forwarded via first class mail with sufficient postage [to Department of Revenue, Personal Income Tax Bureau, Harrisburg, Pennsylvania 17129] or electronic or magnetic media as specified in instructions of the Department to the Department.

[If an employer has a large number of Form W-2's to be forwarded, he may use as many packages as are conveniently necessary which shall be numbered consecutively and contain the name of the

employer and identification number thereon. If more than one package is forwarded, Form RIT-W-3 shall be placed in the package numbered one.] If an employer is required to file 250 or more withholding statements, the reconciliation statement, with accompanying withholding statements shall be forwarded by means of electronic or magnetic media as specified in the instructions of the Department AVAILABLE ON ITS WEBSITE OR AT ITS HARRISBURG OR DISTRICT OFFICES.

§ 113.16 ENFORCEABLE TRUST FUND.

(A) FOR PURPOSES OF ASSESSMENT AND COLLECTION OF DEDUCTED TAX AND WITHHELD TAX THAT IS NOT PAID OVER TO THE DEPARTMENT, ALL TAXES DEDUCTED AND WITHHELD FROM EMPLOYEES PURSUANT TO THIS ARTICLE OR UNDER COLOR OF THIS ARTICLE SHALL CONSTITUTE A TRUST FUND FOR THE COMMONWEALTH AND SHALL BE ENFORCEABLE AGAINST SUCH EMPLOYER, HIS REPRESENTATIVE, ANY PERSON KNOWINGLY RECEIVING A DISBURSEMENT OF ANY PART OF SUCH FUND, ANY PERSON RECEIVING A DISBURSEMENT OF ANY PART OF SUCH FUND WITHOUT GIVING FAIR AND VALUABLE CONSIDERATION THEREFOR OR ANY OTHER PERSON WHO IS REQUIRED TO COLLECT, ACCOUNT FOR AND PAY OVER SUCH TAX. SUCH TAXES, HOWEVER, SHALL NOT BE ENFORCEABLE AGAINST A PERSON RECEIVING A DISBURSEMENT FROM AN EMPLOYER IF, BEFORE THE NEGLIGENT FAILURE TO TRUTHFULLY ACCOUNT FOR AND PAY IT OVER TO THE COMMONWEALTH IS DISCOVERED, THE MONEY IS EXPENDED IN PAYMENT OF A GENUINE, UNCONTESTED AND ENFORCEABLE OBLIGATION, JUDGMENT, CLAIM, LIEN OR OTHER LIABILITY OF SUCH PERSON EXISTING AT THE

TIME THE MONEY WAS OBTAINED OR OTHERWISE SUPERIOR TO THE RIGHTS OF THE COMMONWEALTH.

(B) TAX DEDUCTED FROM THE STATE WAGES OF AN EMPLOYEE SHALL BE CONSIDERED TO HAVE BEEN WITHHELD AT THE TIME OF PAYMENT OF THE STATE WAGES AGAINST WHICH THE DEDUCTION WAS CHARGED.

(C) IF AN EMPLOYER FAILS OR REFUSES TO PAY OVER ANY WITHHELD TAX OR TO DEPOSIT IT IN A SEPARATE ACCOUNT IN TRUST FOR AND PAYABLE TO THE DEPARTMENT OR OTHERWISE IDENTIFY AND SEGREGATE IT FROM OTHER FUNDS, IT SHALL BE DEEMED THAT:

(1) WITHHELD TAX WOULD BE ON DEPOSIT IN THE GENERAL OPERATING ACCOUNT OF THE EMPLOYER AT THE TIME OF PAYMENT OF THE STATE WAGES FROM WHICH DEDUCTION WAS MADE.

(2) THE EMPLOYER WOULD DISBURSE WITHHELD TAX LAST.

(3) ONCE WITHHELD TAX IS DISBURSED, SUBSEQUENT DEPOSITS WOULD NOT REPLENISH IT.

(4) THE LOWEST INTERMEDIATE BALANCE OF CASH ON DEPOSIT IN THE GENERAL OPERATING ACCOUNT IS WITHHELD TAX THAT CONSTITUTES A TRUST FUND FOR THE COMMONWEALTH THAT IS ENFORCEABLE AGAINST THE EMPLOYER OR ANY PERSON RECEIVING ANY PART OF THE FUND.

(5) ANY EXCESS OF THE TAX DEDUCTED OVER THE LOWEST INTERMEDIATE BALANCE IS WITHHELD TAX THAT HAS BEEN RECEIVED BY THE EMPLOYER AND DISBURSED.

Chapter 121. Final Returns.

[§ 121.16. Form W-2.

This form is a receipt for the taxes withheld from the salary of an employee. It shall accompany his return Form PA-40 as evidence of taxes withheld. If an employee works for more than one employer during the year, he shall usually have more than one Form W-2. A copy of each Form W-2 shall accompany his return. If a person is unable to furnish his Form W-2, a statement shall be attached to the return explaining the reason.] Reserved.

09/18/03

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

I.D. NUMBER: 15-418
SUBJECT: Employer Withholding Provisions
AGENCY: DEPARTMENT OF REVENUE

TYPE OF REGULATION

Proposed Regulation
X 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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2003 SEP 30 PM 4:39
INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/30/03	<i>Linda Galambosi</i>	HOUSE COMMITTEE ON FINANCE
9/30/03	<i>Janice Hess</i>	SENATE COMMITTEE ON FINANCE
9/30/03	<i>Elena Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 23, 2003