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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 1, 2001

Honorable Larry P. Williams, Secretary  
Department of Revenue  
Strawberry Square, 11th Floor  
Harrisburg, PA 17128

Re: Regulation #15-418 (IRRC #2209)  
Department of Revenue  
Personal Income Tax; Employer Withholding

Dear Secretary Williams:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Nyce".

Robert E. Nyce  
Executive Director

wbg

Enclosure

cc: Honorable Karl W. Boyes, Majority Chairman, House Finance Committee  
Honorable Fred A. Trello, Democratic Chairman, House Finance Committee  
Honorable Jane M. Earl, Chairman, Senate Finance Committee  
Honorable John N. Wozniak, Minority Chairman, Senate Finance Committee

**Comments of the Independent Regulatory Review Commission**

**on**

**Department of Revenue Regulation No. 15-418**

**Personal Income Tax; Employer Withholding**

**November 1, 2001**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Revenue (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by October 1, 2003, the regulation will be deemed withdrawn.

**1. Section 113.3. Computing withholding of Pennsylvania Personal Income Tax. - Consistency with Statute; Clarity.**

*Subsections (d) and (e) - Employer failure or refusal to pay over any withheld tax.*

These two subsections implement a statutory provision at 72 P.S. § 7320 that states that all taxes withheld by an employer will constitute a trust fund for the Commonwealth. The existing regulations do not specifically address the concept of a trust fund for employer withholding tax purposes.

This proposed regulation adds these two subsections to an existing section related to computing the withholding of personal income tax. For clarity, Subsections (d) and (e) of Section 113.3 should be placed in a separate and distinct section that specifically addresses the concept of a trust fund for employer withholding tax purposes.

*Subsection (f) – Cafeteria plans.*

This subsection describes what is nontaxable under a qualifying cafeteria plan. There are two concerns.

First, Subparagraph (f)(3) addresses payments that are outside of a qualifying cafeteria plan but are still nontaxable for Pennsylvania Personal Income Tax purposes. Hence, it should appear as a separate subsection.

Second, the nontaxable payments alluded to in Subparagraph (f)(3) are delineated in existing regulations at 61 Pa. Code § 101.6. Therefore, this subparagraph should reference Section 101.6.

**2. Section 113.3b. Registration. - Clarity.**

This section requires employers to use a “form prescribed by instructions of the Department.” The form is available on the Commonwealth’s website or at Department district offices throughout the state. This fact should be included in the regulation. In addition, the regulation should identify the form by number or title.

**3. Section 113.4. Time and place for filing reconciliation and withholding statements. - Clarity.**

Subsection (c) states that when employers file withholding statements via electronic or magnetic media, the data will be forwarded as “specified in the instructions of the Department.” It is our understanding that the Department will be flexible in accepting filings via electronic or magnetic media, and will accept filings based on federal standards and requirements. For clarity, the Department should explain what the instructions are and where they can be found.