

9/28/01

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b> 2001 OCT 31 PM 2:49 REVIEW COMMISSION
(1) Agency  Revenue		IRRC Number: 2113
(2) I.D. Number (Governor's Office Use)  15-413		
(3) Short Title  Termination Pay, Severance Pay and Early Retirement Incentive Programs		
(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)  <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached?  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  <p>This regulatory change will clarify the taxation of termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from service.</p> <p>The regulation also interprets 72 P.S. § 7301(d) to mean that Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership are excluded from compensation.</p>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  <p>Statutory authority for the regulation is contained in section 354 of the TRC (72 P.S. § 7354).</p>		

### 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 regulations.

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

This regulation clarifies the taxation of termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from service. It also interprets 72 P.S. § 7301(d) to mean that Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership are excluded from compensation.

(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 regulatory guidance regarding the taxation of termination pay, severance pay, early retirement incentive programs, Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership.

### 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 employers with early-out incentive programs and employees receiving severance pay 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 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.

N/A

### 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	N/A					
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	N/A					
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	N/A					

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

The regulation will facilitate compliance and is in accordance with current Departmental policy. There are no fiscal savings or costs associated with the regulation.

**Regulatory Analysis Form**

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

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
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.

There are no adverse effects or costs associated with the regulation.

(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 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?

Other states tax termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from compensation. This regulation will no 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 regulation of the Department or any other state agency. The numbering of § 101.6(c)(10) was changed to (c)(13) because of the adoption of Regulation 15-402, relating to payments for employee welfare benefit plans and cafeteria plans. The lettering of § 101.6(e) was changed to (m) because of the adoption of Regulation 15-402.

(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.



CDL-1

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

2001 OCT 01 PM 2:49

REVIEW COMMISSION

9/28/01

# 2113

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) 15-413

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. ...

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

Termination Pay, Severance Pay and  
Early Retirement Incentive Programs

## 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 change clarifies the taxation of termination pay, severance pay, early retirement incentive programs and programs offered by employers to provide benefits to employees in addition to those in qualifying retirement plans upon separation from service.

The regulation also interprets section 301(d) of the TRC (72 P.S. § 7301(d)) to mean that Federal insurance benefits paid under the Railroad Retirement Act and guaranteed payments to a partner of a partnership for services to the partnership are excluded from compensation.

### Explanation of Regulatory Requirements

Section 101.1 (relating to definitions) is amended by adding the definitions of limited plan of termination, qualified annuity and severance pay for use in the regulation. Section 101.6(a) is amended by updating the list of examples of compensation. Section 101.6(c)(3) is amended to reflect the Department's interpretation of the Pennsylvania Income Tax law with regard to Federal insurance benefits paid under the Railroad Retirement Act. Text from § 101.6(a) is deleted and moved to a new paragraph (13) in § 101.6(c). Paragraph (13) reflects the Department's interpretation of the Pennsylvania Income Tax law with regard to guaranteed payments to a partner of a partnership for services to the partnership. 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 employee welfare benefit plans and cafeteria plans.

Finally, a new subsection (m) is added to § 101.6 to explain superannuation requirements and the voluntary discontinuance of a plan. The lettering of this new subsection was changed from the proposal because of the Department's adoption of Regulation 15-402.

## Affected Parties

This regulation could affect all employers with early-out incentive programs and employees receiving severance pay.

## Comment and Response Summary

Notice of proposed rulemaking was published at 30 Pa. B. 2371 (May 13, 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) IRRC indicated that the phrase "in advance" in subparagraph (ii) of the definition of "limited plan of termination" was unclear and requested that the Department be more specific. In response to IRRC's request, the Department has amended the provision by adding an explanatory phrase that modifies "in advance" and provides the necessary clarity.

(2) In its comments, IRRC was unsure what was meant by the phrase "or subject in any manner to anticipation, assignment or pledge by" as it was used in subparagraph (iii) of the definition of "severance pay" in § 101.1 and asked the Department to explain its necessity. To clarify its intent, the Department amended the subparagraph 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, the definition of qualified annuity was amended by adding the phrase "any of the following periods."

(2) The definition of severance pay was amended by adding the word "accruing" to clarify that the provision is referring to compensation accruing during the year.

(3) As referenced in the proposal preamble, certain proposed amendments to § 101.6 would need to be reclassified with the adoption of Regulation 15-402. Regulation 15-402 was adopted at

30 Pa.B. 3938 (August 5, 2000); therefore, proposed § 101.6(c)(10) has been moved to paragraph (13) and proposed § 101.6(e) has been moved to subsection (m).

(4) In addition, an error occurred in the publication of the proposal at § 101.6(e)(1), instead of "he" the text appeared as "the firm." The incorrect text was deleted and "he" was added.

#### 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 May 3, 2000, the Department submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 2371, 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,  
shall have the following meanings, unless the context clearly  
indicates otherwise:

\* \* \*

Limited plan of termination - A plan that has one or more of  
the following attributes:

(i) The plan, when begun, is scheduled to be complete on a  
certain date or upon the occurrence of one or more specified  
events.

(ii) The number, percentage or class of employes whose  
services are to be terminated are specified in advance OF THE  
EMPLOYES' TERMINATIONS OF SERVICE.

(iii) The plan is otherwise temporary or limited.

\* \* \*

Qualified annuity - An arrangement under which the payee is  
entitled to equal, or substantially equal, periodic payments,

paid not less frequently than annually, for ANY OF THE FOLLOWING PERIODS:

(i) The life of the participant, or, if applicable, the joint lives of the recipient and recipient's designated beneficiary.

(ii) The life expectancy of the participant, or, if applicable, the joint life expectancies of the recipient and recipient's designated beneficiary.

(iii) A period of at least 10 years.

\* \* \*

Severance pay - A payment made upon separation from employment under:

(i) A plan which has both of the following attributes:

(A) Payments are not contingent solely upon an employe's retirement from service or being the same age as, or older than, the earliest retirement age under a qualifying retirement benefit plan or qualifying retirement income plan sponsored by the employer.

(B) Total payments cannot exceed twice the employe's annual compensation ACCRUING during the year preceding the employe's termination.

(ii) A plan under which all payments to any plan participant are completed within 120 months of the participant's termination.

(iii) A plan under which no benefit is, OR ONLY REDUCED BENEFITS ARE payable to, or subject in any manner to anticipation, assignment or pledge by, an employee except upon voluntary separation from the employment of the employer before CAN BE TAKEN, ASSIGNED, PLEDGED OR OTHERWISE CHARGED OR DEALT WITH BY, ANY PLAN PARTICIPANT AFTER the participant reaches normal retirement age or service.

(iv) A plan, including a stock bonus or profit-sharing plan formed by a trust that meets the requirements for qualification described in section 401 of the IRC (26 U.S.C.A. § 401) or employe stock ownership plan, with one or more of the following attributes:

(A) The amount of earnings on contributions (or allocations of contributions or earnings) and amount of benefits are determined with regard to the current or accumulated profits or losses of the employer.

(B) The employer can contribute only in those years when it has current or accumulated profits.

(C) The employer's contributions can fluctuate depending on the level of its profits.

(D) The employer's contributions are made out of current or accumulated profits.

(E) Distributions are paid with respect to stock of a corporation which is held by an employee stock ownership plan.



(v) A plan under which the accrued benefit payable to each vested participant who does not die before the payment starting date is neither paid nor payable in the form of a qualified annuity.

(vi) A limited plan of termination.

\* \* \*

§ 101.6. Compensation.

(a) Compensation includes items of remuneration received [by an employe or casual employe], directly or through an agent, in cash or in property, based on payroll periods or piecework, for services rendered as an employe or casual 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, dismissal, termination or severance payments, early retirement incentive payments and other additional compensation contingent upon retirement, including payments in excess of the scheduled or customary salaries provided for those who are not terminating service, rewards, vacation and holiday pay, paid leaves of absence, payments for unused vacation or sick leave, tax assumed by the employer, or casual employer signing bonuses, amounts received under employe benefit plans and deferred compensation

arrangements, and other remuneration received for services rendered.

\* \* \*

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

\* \* \*

(3) [Payments commonly recognized as] Federal old age [or retirement benefits paid to persons retired from service after reaching a specified age or after a stated period of employment] insurance benefits payable under 42 U.S.C.A. § 401 et seq., Railroad Retirement Act benefits payable under 45 U.S.C.A. §§ 228 or § 231 et seq. or any retired or retainer pay of a member or former member of a uniformed service computed under 10 U.S.C.A. § 1401. [Retirement pay includes a distribution of a lump sum upon retirement, but does not include a severance payment by an employer to an employe who terminates employment without retiring. A payment of the latter type shall be considered compensation, if paid upon termination of employment, rather than as a retirement income, to the extent that the payment exceeds the employe's contribution to any plan out of which the payment may be made.]

\* \* \*

~~(10)~~ (13) Guaranteed payments to a partner for services rendered to the partnership.

\* \* \*

(e) (M) For purposes of this section:

(1) A person who separated from service before satisfying superannuation requirements shall be deemed to be retired from service upon reaching retirement age, regardless of whether ~~the firm~~ HE has permanently and wholly withdrawn from active working life or not.

(2) The voluntary discontinuance of a plan within 3 years after it has taken effect, for any reason other than business necessity, will be evidence that such plan was temporary and limited.

08/31/01

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

I.D. NUMBER: 15-413  
 SUBJECT: Termination Pay, Severance Pay & Early Retirement Incentive Programs  
 AGENCY: DEPARTMENT OF REVENUE # 2113

**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	P. Macart	HOUSE COMMITTEE ON FINANCE
10/31/01	C. Saylor	SENATE COMMITTEE ON FINANCE
10/31/01	P. Eckert	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

October 3, 2001