

TEXT, EXPLANATION AND INTERPRETATION OF  
CHANGES AFFECTING THE FEDERAL-STATE  
UNEMPLOYMENT COMPENSATION PROGRAM

Made by Public Law 101-508

(Sections 5021, 11333, 11403, and 11404)

I. Section 5021. Amendments to Sections 903(a)(2) and 903(c)(2), SSA

A. Text of Amendment.

SEC. 5021. AMOUNTS TRANSFERRED TO STATE UNEMPLOYMENT  
COMPENSATION PROGRAM ACCOUNTS.

(a) ALLOCATION OF AMOUNTS.--Paragraph (2) of section 903(a) (42 U.S.C. 1103 (a)(2)) is amended to read as follows:

"(2) Each State's share of the funds to be transferred under this subsection as of any October 1--

"(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

"(B) shall bear the same ratio to the total amount to be so transferred as--

"(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

"(ii) the total amount of wages subject to such tax during such year."

(b) USE OF TRANSFERRED AMOUNTS.--Paragraph (2) of section 903(c) (42 U.S.C. 1103(c) (2)) is amended --

(1) by striking "and" at the end of subparagraph

(c), and

(2) by striking so much of such paragraph as follows subparagraph (C) and inserting the following:

"(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which --

"(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

"(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

"(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

"(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor."

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

## B. Discussion.

1. Section 903, SSA, provides for the transfer (or "distribution") of certain amounts, commonly called Reed Act funds, to the States when the balances in certain accounts in the Unemployment Trust Fund reach the ceiling levels specified in Title IX, SSA. Section 903(a)(2), SSA, provides the formula for allocating Reed Act funds to the States. Prior to amendment this formula provided that each State's share of the Reed Act funds to be transferred was based on a ratio relating to State taxable wages as defined in that section. Section 5021 of the OBRA 90 amended Section 903(a)(2), SSA, to provide that future Reed Act distributions will be based on Federal taxable wages instead of State taxable wages.

2. Prior to amendment, Section 903(c)(2)(A), SSA, required the Secretary of Labor to determine the amount to be transferred to the States "on the basis of reports furnished by the States to the Secretary of Labor before September 1." Because the determination of the amount to be transferred is no longer based on the State's taxable wage base, there is no need for States to furnish these reports. Accordingly, Section 5021(a) of the OBRA 90 amended Section 903(a)(2)(A) to delete reference to State reports.

3. Prior to the amendment to Section 903(c)(2), SSA, Reed Act funds transferred to the States were available for obligation for specified administrative purposes only within a limited number of years (specified in Section 903(c)(2)(D), SSA) from the date of the transfer. Depending on the State's 12-month period for Reed Act purposes, this period has varied from slightly more than 34 years up to 35 years. As a result of this "35-year limitation," authority to obligate Reed Act funds transferred in 1956 has expired in some States and is due to expire in all States by June 30, 1991. Section 5021, OBRA 90, amended Section 903(c)(2)(D) to remove the 35-year limitation on the obligation of Reed Act funds, effective October 1, 1991. Section 5021(c), OBRA 90, sets the effective date of the amendments in subsections (a) and (b) of Section 5021 as applying to fiscal years beginning after the date of enactment of OBRA 90. Consistent with the use of the term "fiscal year" elsewhere in Section 903, SSA, "fiscal year" means the Federal fiscal year beginning October 1. OBRA 90 was enacted on November 5, 1990, and the first Federal fiscal year beginning after this date begins on October 1, 1991. Therefore, the effective date for the amendments to Sections 903(a) and 903(c) is October 1, 1991. As a result of this effective date, all States will experience a "gap" between the expiration of the 35-year period and October 1, 1991, during which Reed Act funds transferred in 1956 may not be obligated for any administrative purpose, and some States will also experience a similar "gap" with respect to obligation of Reed Act funds transferred in 1957.

States using 12-month periods beginning on October 1 (for purposes of accounting for Reed Act obligations) lost the authority to obligate Reed Act funds transferred in 1956 as of September 30, 1990. States using 12-month periods beginning on January 1 lost the authority to obligate such Reed Act funds as of December 31, 1990, and States using 12-month periods that begin on July 1 will lose such authority to use such funds on June 30, 1991. Similarly, any State using 12-month periods beginning on September 1, lost the authority to obligate Reed Act funds transferred in 1956 as of August 31, 1990, and will also lose the authority to obligate Reed Act funds transferred in 1957 as of August 31, 1991. The States' authority to obligate Reed Act funds transferred in 1956 and 1957 will be restored upon the amendments made by Section 5021, OBRA 90, becoming effective on October 1, 1991.

Although the 35-year limitation will expire as of September 30, 1991, Section 903(c)(2)(D)(i) will continue to limit the amount of Reed Act funds which may be obligated at any time. In effect, a State may not obligate an amount in excess of the amount that equals the difference between the total amount transferred to the State under Section 903 and amounts previously used and charged against transferred amounts. Thus, in regard to calculating the amount available for obligation at any time, there is no substantive change from prior law. However, new Section 903(c)(2)(D)(ii) expresses a charging rule that is merely implicit in the last sentence of present Section 903(c)(2). Thus, clause (ii) specifies that (in determining the amounts available for obligation) amounts used by a State for administration shall be chargeable against the transferred amounts "at the exact time the obligation was entered into." Therefore, at no time may a State enter into an obligation of Reed Act funds in an amount which exceeds the amount of unused Reed Act funds then standing to the credit of the State in the Unemployment Trust Fund at the exact time any such obligation is entered into.

4. Section 5021, OBRA 90, added a new subparagraph (E) to Section 903(c)(2), SSA, which requires that the use of Reed Act funds be accounted for in accordance with standards established by the Secretary of Labor. We will provide more information regarding the Secretary's accounting standards in the future. In the meantime, those accounting rules set forth in Section 3040 of Part IV of the Employment Security Manual shall continue to be followed.

### C. Amendments to State Law and Reed Act Appropriations.

1. A State which desires to take advantage of the removal of the 35-year time limit made by Section 5021 of OBRA 90 should amend the provision in its law authorizing the use of Reed Act money which may still be available. Otherwise, if the law retains the previous 35-year limitation, the law will conflict with any appropriation act which correctly refers to the new language included in OBRA 90 and will raise issues under Federal law. These amendments should be made effective no earlier than October 1, 1991.

2. In the past we have found that some States enacting Reed Act appropriation bills have not included all of the requirements contained in Section 903(c)(2) of the Social Security Act. In doing so, these States have raised issues as to the consistency of such bills with those requirements. To help prevent such issues from arising in the future, we are including two draft appropriation bills in Attachment II which include all of the provisions necessary to satisfy the requirements of Section 903(c)(2) of the Social Security Act for Reed Act appropriations authorizing the obligation of money on and after October 1, 1991. We strongly urge that States make use of these draft bills.

3. Reed Act appropriation acts which authorize obligation prior to October 1, 1991, must continue to contain the 35-year limitation. For these appropriations, States should use the recommended Reed Act appropriation language found in Attachment III to UIPL 4-83. States wishing to regain authority to obligate Reed Act funds immediately on October 1, 1991, without enacting a new appropriations act, should add a sentence to the section containing the 35-year limitation. This sentence should state that the 35-year limitation is not in force, effective October 1, 1991.

For example, a State wishes to appropriate and obligate \$300,000 of Reed Act funds, \$100,000 of which was transferred in 1956. This State has a fiscal year beginning July 1. Therefore, the authority to obligate 1956 Reed Act money expires June 30, 1991. The State may appropriate the entire \$300,000, but, due to the 35-year limitation, the State may not obligate the \$100,000 transferred in 1956 after June 30, 1991. However, if the appropriation law limits the applicability of the 35-year requirement to the period ending September 30, 1991, the \$100,000 in 1956 Reed Act money previously appropriated will again become available for obligation on October 1, 1991.

D. Effective Date. Under Section 5021(c) of OBRA 90, the amendments made by Section 5021 apply to fiscal years beginning after the date of enactment. In other words, as discussed above in Section

B.2., these amendments will be effective October 1, 1991. Until then, the present law, including the 35-year limitation on obligation, will remain in effect.

II. Section 11333. Amendments to Section 3301, FUTA.

A. Text of Amendment.

SEC. 11333. EXTENSION OF FUTA SURTAX

(a) IN GENERAL.--Section 3301 (relating to rate of FUTA tax) is amended--

(1) by striking "1988, 1989, and 1990" in paragraph (1) and inserting "1988 through 1995", and

(2) by striking "1991" in paragraph (2) and inserting "1996".

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to wages paid after December 31, 1990.

B. Discussion. Section 3301, FUTA was amended by Section 11333(a) of OBRA 90 to extend the 0.2 percent temporary tax through December 31, 1995. However, in extending the 0.2 percent temporary tax, Congress did not extend Section 901(g), SSA, which established special rules for calendar years 1988, 1989, and 1990, for the distribution of the amount equal to the amount raised by the 0.2 percent temporary tax. OBRA 90 did not extend Section 901(g) (1) of the Social Security Act which governed the transfer from the Employment Security Administration Account (ESAA) of an amount equal to the 0.2 percent temporary tax for calendar years 1988, 1989, and 1990, with fifty (50) percent allocated to the Extended Unemployment Compensation Account (EUCA) and fifty (50) percent allocated to the Federal Unemployment Account (FUA). As a result of the expiration of Section 901(g), SSA, there will be no special distribution of the amount equal to the revenue generated by the 0.2 percent temporary tax on wages paid after December 31, 1990. As to wages paid after December 31, 1990, therefore, distributions of the amounts appropriated to the ESAA under Section 901(b)(1), SSA, will be as provided in Title IX, SSA, without consideration of the special rules in Section 901(g). Of the amount equal to the net tax of 0.8 percent, which is appropriated under Section 901(b)(1) and transferred to the ESAA under Section 901(b)(2) (less repayments under Section 901(b)(3)), ten (10) percent of such amount is transferred from time to time from the ESAA to the EUCA in accordance with Section 905(b)(1), SSA. There is no other distribution of the amount of the net 0.8 percent which is appropriated and transferred to the ESAA.

C. Effective Date. The amendments made by Section 11333(a) shall apply to wages paid after December 31, 1990.

D. Implementation. The Internal Revenue Service is responsible for collecting the temporary tax.

III. Section 11403. Amendments to Section 127 of the Internal Revenue Code of 1986 and Section 7101 of the Revenue Reconciliation Act of 1989 (P.L. 101-239).

A. Text of Amendment.

SEC. 11403. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.--Subsection (d) of section 127 (relating to educational assistance

programs) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) REPEAL OF LIMITATION ON GRADUATE LEVEL ASSISTANCE.--Section 127(c)(1) is amended by striking the last sentence.

(c) CONFORMING AMENDMENT.--Subsection (a) of section 7101 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(d) EFFECTIVE DATES.--

(1) IN GENERAL.--Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) SUBSECTION (b).--The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1990.

B. Discussion. Section 3306(b)(13), FUTA, excludes from the definition of wages "any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 . . ." of the IRC. Prior to the amendments made by Section 11403 of OBRA 90, Section 127, IRC, which excludes from gross income of the employee certain amounts paid, or expenses incurred, by the employer for educational assistance to the employee, did not apply to taxable years beginning after September 30, 1990. Section 11403(a) of OBRA 90 amended Section 127, IRC, to extend the exclusion from income of employer-provided educational assistance benefits through taxable years beginning before January 1, 1992 (effective for taxable years beginning after December 31, 1989). In addition, Section 11403(b) struck the last sentence of Section 127(c)(1), IRC, repealing the exclusion of graduate level assistance from the definition of educational assistance. Finally, Section 11403(c) repealed Section 7101(a)(2) of the Revenue Reconciliation Act of 1989 (Title VII of the Omnibus Budget Reconciliation Act of 1989), which provided that, for taxable years beginning in 1990, only those amounts paid prior to October 1, 1990 by the employer for educational assistance to the employee were to be taken into account in determining the amount excludable from the employee's income under Section 127.

C. Effective Dates. The amendments made by subsections (a) and (c) of Section 11403, OBRA 90, apply to taxable years beginning after December 31, 1989. The amendment made by subsection (b) of Section 11403, repealing the provision on graduate level assistance, applies to taxable years beginning after December 31, 1990.

D. Implementation. Because the Internal Revenue Service has primary authority for interpreting IRC tax provisions, it will be responsible for interpreting and applying these amendments.

IV. Section 11404. Amendment to Section 120 of the Internal Revenue Code of 1986 and Section 7102 of the Revenue Reconciliation Act of 1989 (P.L. 100-239).

A. Text of Amendment.

SEC. 11404. GROUP LEGAL SERVICES PLANS:

(a) IN GENERAL.--Subsection (e) of section 120 (relating to amounts received under qualified group legal services plans) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.--Subsection (a) of section 7102 of the Revenue

Reconciliation Act of 1989 is amended by striking paragraph (2).

(c) EFFECTIVE DATE.--The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

B. Discussion. Section 3306(b)(12), FUTA, excludes from the definition of wages "any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of Section 120, IRC, (relating to amounts received under qualified group legal services plans)." Prior to amendment, Section 120, which excludes from an employee's gross income amounts contributed by an employer to a qualified group legal services plan for an employee or amounts reimbursed to an employee for legal services under such plan, did not apply to taxable years ending after September 30, 1990.

Section 11404(a) of OBRA 90 amended Section 120, IRC, to extend the exclusion for employer-provided group legal services through taxable years beginning before January 1, 1992. In addition, Section 11404(b) repealed Section 7102(a)(2) of OBRA 89 which provided that, for taxable years beginning in 1990, the exclusion is limited to amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan" for periods before October 1, 1990.

C. Effective Date. The amendments made by Section 11404, OBRA 90, apply to taxable years beginning after December 31, 1989.

D. Implementation. Because the Internal Revenue Service has primary authority for interpreting IRC tax provisions, it will be responsible for interpreting and applying this amendment.