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DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 38-01

TO: ALL STATE EMPLOYMENT SECURITY ADMINISTRATORS

FROM: GRACE A. KILBANE 
Administrator
Office of Workforce Security

SUBJECT: Income Tax Withholding from Unemployment Compensation (UC)
and Treatment of Employer-provided Educational Assistance

1. Purpose. To advise states of the provisions of Public Law (P.L.) 107-16 relating to the UC program.

2. References. P.L. 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001 (115 Stat. 38); the Internal Revenue Code of 1986 (IRC), as amended, including the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letters (UIPL) 17-95 (60 Fed. Reg. 15794, March 27, 1995) and 25-00 (65 Fed. Reg. 41729, July 6, 2000).

3. Background. On June 7, 2001, the President signed into law P.L. 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001. This enactment affects the UC program in two ways—

- The voluntary withholding rate on UC benefits has been reduced from 15 percent to 10 percent.

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- The exclusion of employer-provided educational assistance from the FUTA definition of wages has been extended to graduate education and has been made permanent.

4. Voluntary Withholding Rate. Since January 1, 1997, states have been required to withhold federal income tax from payments of UC when the individual so elects. (See UIPL 17-95.) At that time, Section 3402(p)(2), IRC, provided that the amount of federal income tax withheld from UC “shall be an amount equal to 15 percent of such payment.” The “15 percent” withholding rate was changed to “10 percent” by Section 101(c)(7) of P.L. 107-16. As a result, states are now required to withhold, if the individual so elects, “an amount equal to” 10 percent of the amount of a payment of UC. States may not, with respect to an individual who requests the withholding, withhold an amount greater or less than 10 percent.

Each state will need to determine whether its UC law needs to be amended to change the withholding rate for federal income taxes. If a state must amend its law, the Department recommends that the state use language designed to accommodate any future changes in the withholding rate. The Draft Language previously provided by the Department contained the following language—

The individual may elect to have Federal income tax deducted and withheld from the individual’s payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code. [Attachment II to UIPL 17-95.]

The change to a 10 percent withholding rate is effective with respect to payments made after 60 days after the date of enactment of P.L. 107-16. (Section 101(d)(2) of P.L. 107-16.) Since the date of enactment was June 7, 2001, the amendment pertains to payments made on and after August 7, 2001. Therefore, for purposes of conformity and compliance with federal law, the withholding rate for all payments made on and after August 7, 2001, is 10 percent.

5. Employer Provided Educational Assistance. 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 or 129.

Under Section 127, IRC, employer-paid education expenses are excludable from the gross income and wages of an employee if provided under an educational assistance plan. Prior to the amendments made by P.L. 107-16, this exclusion did not apply to—

- Graduate courses beginning after June 30, 1996, and
- Undergraduate courses beginning after December 31, 2001.

Section 411 of P.L. 107-16 extends the exclusion to graduate courses and makes the exclusion permanent for **both** undergraduate and graduate courses. The amendment is effective with respect to courses beginning after December 31, 2001. (Section 411(d) of P.L. 107-16.) States are not required to exclude these payments/benefits from their state law definition of wages.

6. Action Required. State Administrators should provide this information to appropriate staff. All states should immediately take steps to change the voluntary withholding rate.

7. Inquiries. Questions should be directed to the appropriate Regional Office.