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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO.25-00

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : GRACE A. KILBANE
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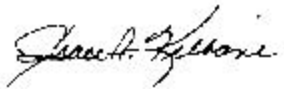

SUBJECT : The Ticket to Work and Work Incentives Improvement Act of 1999 -- Provisions Affecting the Federal-State Unemployment Compensation Program

1. Purpose. To advise State agencies of the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170, which affect the Federal-State Unemployment Compensation (UC) program.

2. References. Sections 405 and 506 of P.L. 106-170; Sections 303(f) and 1137 of the Social Security Act (SSA); Sections 3303(a)(1) and 3306(b)(13) of the Federal Unemployment Tax Act (FUTA); Section 127 of the Internal Revenue Code (IRC); Section 3510, IRC; The Social Security Domestic Employment Reform Act of 1994 (P.L. 103-387); Unemployment Insurance Program Letter (UIPL) 29-83; UIPL 29-83, Change 1.

3. Background. On December 17, 1999, the President signed into law the Ticket to Work and Work Incentives Improvement Act of 1999 (the Ticket to Work Act), P.L 106-170, which contains two provisions affecting the UC program:

- States may now permit employers to submit annual wage reports with respect to certain domestic service employment. Prior to the enactment of the Act, Federal law required wage data for such employment to be reported on a quarterly basis.

RESCISSIONS None	EXPIRATION DATE Continuing

- The exclusion from the FUTA definition of wages for employer-provided educational assistance under Section 127, IRC, was extended for undergraduate courses from May 31, 2000 to December 31, 2001.

These amendments are discussed in detail below.

4. Section 405, Annual Filing of Wage Reports by Domestic Employers.

a. In general. The Social Security Domestic Employment Reform Act of 1994, P.L. 103-387, amended Section 3510, IRC, so that domestic service employers were no longer required to file the annual FUTA return or quarterly returns regarding Social Security and Medicare taxes. Instead, domestic service employers could file such returns for Federal tax purposes at the same time as the filing of their personal income tax returns.

This change to annual reporting for Federal purposes did not change the requirement that wage reports be submitted quarterly to States. This quarterly wage report requirement is found in Section 303(f), SSA, which makes operation of an income and eligibility verification system in accordance with Section 1137, SSA, a condition for the receipt of UC administrative grants. Specifically, Section 1137(a)(3), SSA, requires that a State must have in effect an income and eligibility verification system under which-

> employers . . . in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) . . . .

Section 405 of the Ticket to Work Act amended Section 1137(a)(3), SSA, by adding the following new exception to the quarterly reporting requirement-

> in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis.

As a result of this change, States may, at their option, permit annual wage reporting of domestic service employment by employers making returns under Section 3510, IRC. (Section 3510, IRC, permits returns with respect to domestic service employment taxes to be made on a calendar year rather than a quarterly basis.) This amendment applies only to domestic service employers.

Because the amendments to the SSA refer to Section 3510, IRC, the Internal Revenue Service (IRS) has authority for determining what constitutes domestic service. IRS guidance is found in

the instructions for Schedule H, which refers to individuals performing domestic service as "household employees." The Schedule H for tax year 1999 gives the following examples of household employees: babysitters, caretakers, cleaning people, drivers, health aides, housekeepers, nannies, private nurses, and yard workers.

States electing to use annual wage reporting are not required to grant annual reporting status to all domestic service employers. States may be more restrictive and offer the annual reporting option only to certain domestic service employers. For example, a State could permit annual reporting only for services by nannies while making all other domestic services subject to a quarterly reporting basis.

States also may condition approval of annual filing status on a domestic service employer's compliance with safeguards or other conditions required by State law. For example, a State may require domestic service employers to file "change reports" indicating when wages are increased or decreased, or when a domestic employee is hired or separated. States may also limit annual reporting to domestic service employers who timely pay contributions or make reports.

b. Experience Rating. States that choose to permit annual reporting must ensure that domestic service employers are not treated differently from other employers for experience rating purposes. A domestic service employer may not report wage information or pay contributions with respect to the calendar year until April 15 of the following year. However, all other employers would report wage information and make payments throughout the calendar year. As a result, if a State's computation date for a tax year is July 1, information would be available up to the computation date with respect to non-domestic service employers, but it would not be available up to the computation date for domestic service employers, simply because it had not yet been reported or because contributions had not yet been paid. As a result, the non-domestic service employer might have its rate based on current information, while the domestic service employer would have its rate based on older information, simply because State law provides for two different sets of dates for submitting wage data or paying contributions.

Section 3303(a)(1), FUTA, provides, as a condition of receipt of the additional credit by employers in a State, that "no reduced rate of contributions . . . is permitted to a person (or group of persons) . . . except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the three consecutive years immediately preceding the computation date." The Department of Labor interprets this section to require that the "experience of all employers subject to contributions under a State law must be measured by the same factor throughout the same period of time." This interpretation is referred to as the "uniform method" requirement. See UIPLs 29-83 (56 Fed. Reg. 54891 (1991)) and 29-83, Change 1 (56 Fed. Reg. 54896

(1991)).

A "uniform method" issue is raised if a State has different criteria for including wage and payment data for one group of employers than another group. This will occur if a State grants one group of employers a different filing and payment status than others. States may avoid "uniform method" issues through a variety of means. As they do with other employers where current information is missing, States may provide estimated tax rates which are subject to recomputation once the necessary data has been received. Alternatively, States may delay mailing tax rate notices to domestic service employers filing annually until the necessary information has been obtained.

c. Effective date. Under Section 405 of the Ticket to Work Act, this amendment applies to wage reports required to be submitted on and after the date of enactment. The Ticket to Work Act was effective on the signing date, December 17, 1999.

5. Section 506, 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 educational expenses are excludable from the gross income and wages of an employee if provided under an educational assistance plan. The exclusion for such employer-provided educational assistance expired with respect to graduate courses beginning after June 30, 1996. For undergraduate courses, the exclusion from gross income for employer-provided educational assistance previously had been scheduled to expire with respect to courses beginning after May 31, 2000. Section 506 of the Ticket to Work Act, entitled Employer-Provided Educational Assistance, amended the IRC, to extend the expiration date for employer-provided educational assistance for undergraduate courses. Due to the extension, the expiration of the exclusion is now with respect to courses beginning after December 31, 2001. Thus, the FUTA definition of wages does not include employer-provided educational assistance for undergraduate courses beginning after December 31, 2001.

6. Action Required. State Administrators should provide this information to the appropriate staff.

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