

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL TEURL
	DATE September 28, 1995

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 17-95
 CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : MARY ANN WYRSCH *Mary Ann Wyrsh*
 Director
 Unemployment Insurance Service

SUBJECT : Priority of Withholding from Unemployment
 Compensation (UC)

1. Purpose. To advise States of the Department of Labor's position concerning priorities when a claimant subject to withholding required under State law also requests the withholding of income tax.

2. References. The Internal Revenue Code of 1986 (IRC), as amended, including the Federal Unemployment Tax Act; Title III of the Social Security Act (SSA); Section 702 of P.L. 103-465; 26 C.F.R. 31-3402(i)-2; and Unemployment Insurance Program Letter (UIPL) 17-95.

3. Background. UIPL 17-95, dated February 28, 1995, provided guidance concerning the withholding of income tax from UC. This Change 1 provides guidance on a matter left unresolved in that UIPL: the priority of withholding when other amounts are also to be withheld from the same payment of UC.

4. Discussion. Federal law requires withholding from UC in certain cases. Under Section 303(a)(1), SSA, States must have "methods of administration" for enforcing amounts owed to the unemployment fund. The principal "method of administration" for collecting these overpayments is the offsetting of amounts from future payments of UC. Also, States are required to withhold certain child support obligations under Section 303(e)(2), SSA.

RESCISSIONS None	EXPIRATION DATE September 30, 1996
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Additional provisions of the SSA give States the option of withholding other amounts from UC. Section 303(d)(2), SSA, provides for the withholding of Food Stamp overissuances from UC. Section 303(g), SSA, authorizes interstate offset of overpayments as well as offsets of overpayments between State UC and Federal UC programs where the State acts as an agent for the Department of Labor.

Unlike the above forms of withholding, withholding of income tax is voluntary on the part of the claimant. Giving priority to the voluntary withholding of income tax would frustrate the "involuntary" withholding requirements.

Section 3402(p)(2), IRC, provides that, for withholding purposes, a payment of UC shall be treated as if it were a payment of wages by an employer to an employee. Implementing regulations at 20 C.F.R. 31.3402(i)-2 provide that an employee may request the employer to withhold an additional amount from the employee's wages. The employer must comply with the employee's request, but only to the extent that the requested amount does not exceed the amount remaining after the employer has withheld all amounts required to be withheld by Federal, State and local laws.

Based on the above, the Department has concluded that amounts required to be withheld under State law must be withheld prior to any voluntary withholding requested by the claimant. The Department continues to leave to the States the matter of priorities among amounts that are required to be withheld. Although States are encouraged to be more specific on this point, Section (4) of the attached revised draft language does not specify any priorities among the required withholdings. States may, of course, also make any changes to the draft language necessary to conform with State usage.

5. Action Required. State agencies should take action to assure that the above position is reflected in State law. States not using the draft language are reminded that they will need to submit a plan to the appropriate Regional Office no later than September 30, 1996.

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

7. Attachment. Revised Draft Language to Implement a Voluntary Withholding Program.

REVISED DRAFT LANGUAGE TO IMPLEMENT
A VOLUNTARY WITHHOLDING PROGRAM

- (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:
 - (A) Unemployment compensation is subject to Federal, State and local income tax;
 - (B) Requirements exist pertaining to estimated tax payments;
 - (C) 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;
 - (D) The individual may elect to have State income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of ___ percent;
 - (E) The individual may elect to have local income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of ___ percent;
 - (F) The individual may elect to have State and local income taxes deducted and withheld from the individual's payment of unemployment compensation for other States and localities outside this State at the percentage established by such State or locality; and
 - (G) The individual shall be permitted to change a previously elected withholding status.
- (2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the Federal, State or local taxing authority as a payment of income tax.
- (3) The commissioner shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.
- (4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp overissuances or any other amounts required to be deducted and withheld under this Act.