



**CITY OF PHILADELPHIA  
DEPARTMENT OF REVENUE**

February 6, 2009

XXXXXX XXXXXXXXX  
XXXXXXXXXXXXXX, LLP  
XXXXXXXXXXXXXXX, Suite XXXX  
XXXX XXXXXX Street  
Philadelphia, PA 191XX-XXXX

**Re: Xxxx Corporation Supplemental Unemployment Benefits Plan Trust -  
Wage Tax - Request for Letter Ruling**

Dear XXXXXXXX:

This letter is in response to your request for a Philadelphia Wage Tax ruling on the payments made from the Xxxx Supplemental Unemployment Benefits Plan Trust (öSUB Plan Trustö) to involuntarily- separated employees of the XXXXX (öXXXXö).

**Facts**

This ruling is based upon the following facts as detailed in your letter of October 28, 2008.

- XXXX currently maintains its corporate headquarters and commercial domicile in xxxxx, Pennsylvania but has determined it is doing business within the City Philadelphia.
- The SUB Plan Trust forms a part of the Xxxx Supplemental Unemployment Benefits Plan (öSUB Planö).
- The activity of the SUB Plan Trust includes receiving contributions from XXXX and paying supplemental unemployment compensation benefits to eligible participants under the SUB Plan. The exclusive purpose of the SUB Plan and the Sub Plan Trust is to provide supplemental unemployment compensation benefits to employees as a result of their involuntary separation from XXXX or certain of its subsidiaries.

- The SUB Plan and the SUB Plan Trust were established pursuant to 26 USC § 501(c) (17) and the Internal Revenue Service has confirmed the exempt status of the SUB Plan Trust under that section of the Internal Revenue Code (IRC). In addition, the Pennsylvania Department of Labor and Industry has confirmed that the SUB Plan is an approved unemployment benefits plan for Pennsylvania purposes. The SUB Plan is an employee welfare benefit plan governed by the Federal *Employee Retirement Income Security Act of 1974* (ERISA).
- The eligible participants generally include all active full-time U.S. employees of Xxxx as well as all active part-time U.S. employees of Xxxx who work 20 or more hours per week and have been employed for more than 60 consecutive calendar days prior to a layoff notification.
- When eligible employees are involuntarily terminated, they receive payments from the SUB Plan Trust that are supplemental to state unemployment compensation benefits. Generally, the amount of a participant's weekly SUB payment is his/her weekly base rate of pay less his/her state unemployment compensation benefit.
- The number of weeks that participants are entitled to payments is generally determined by their years of service which could range from 2 weeks to a maximum of 26 weeks.
- The SUB payments are not subject to FICA tax withholding or to the Pennsylvania Personal Income Tax (PIT) or unemployment tax. The payments are not subject to Pennsylvania local earned income taxes as authorized by *The Local Tax Enabling Act* (LTEA).

### **Questions Presented**

1. Are the payments made to involuntarily-separated employees from the SUB Plan Trust considered *Salaries, Wages, Commissions and Other Compensation* subject to the Philadelphia Wage Tax?
2. If the payments from the SUB Plan Trust are determined to be taxable for the Philadelphia Wage Tax, how should the Xxxx SUB Plan Trust calculate the taxable amount for the nonresident employees who worked both inside and outside the City of Philadelphia?

### **Conclusion**

The payments made from the SUB Plan Trust to involuntarily-separated employees is construed by the City of Philadelphia's Department of Revenue (Department) to be termination/severance payments that accrued to the separated employees as a benefit of their employment and therefore pursuant to City of Philadelphia *Income Tax Regulation § 203(h)(2)* is considered taxable compensation. The SUB Plan Trust will therefore need to register for a business tax account number with the Department for the purpose of reporting and remitting the proper Wage Tax on these payments. Based upon the facts provided, the SUB Plan Trust will presumably not

have to register for purposes of the Business Privilege Tax since the trust is a not-for-profit entity under IRC § 501(c) (17).

The Philadelphia Code imposes the Wage Tax on the compensation earned by non-residents of Philadelphia for work done or services performed or rendered in Philadelphia. (§ 19-1502(1)(b)) The SUB Plan Trust payments to a nonresident of Philadelphia are subject to the Wage Tax in the ratio the time they were previously assigned to work within Philadelphia bears to the time they worked everywhere for the period used by the SUB Benefit Plan to calculate the employee's respective SUB Plan payment. If time records are unavailable (due to the passage of several years), the separated employee and the SUB Plan Trust may utilize the most recent time records/documentation available or come up with a reasonable substitute methodology to determine a good faith allocation percentage to be applied to all payments.

A Philadelphia resident would be taxed on 100% of the SUB Plan Trust payment regardless of the office assigned or where the services were rendered.

### **Discussion**

Though the SUB Plan Trust payments are not subject to FICA, Pennsylvania Unemployment Tax, PIT or local earned income taxes imposed under the LTEA, there is no Federal or Pennsylvania statute that would preempt the City of Philadelphia from imposing its Wage Tax on such payments. There is no specific statutory exclusion under Philadelphia's definition of *Salaries, Wages, Commission and Other Compensation* at Philadelphia Code § 19-1501(10) for the SUB Plan Trust payments. The payments made from the SUB Plan Trust are construed to be termination /severance payments that accrued to the separated employees as a benefit of their employment and therefore pursuant to City of Philadelphia *Income Tax Regulation §203(h) (2)* will be considered taxable compensation. It is also noteworthy that the full amount of any separation payment received by the employee is includible in the individual's gross income (due to XXXX making all contributions) for Federal income tax purposes under IRC § 61(a). (See 26 CFR § 1.501(c) (17)-3).

The Philadelphia Code imposes the Wage Tax on the compensation earned by non-residents of Philadelphia for work done or services performed or rendered in Philadelphia. (§ 19-1502(1)(b)) The proper Wage tax for a nonresident of Philadelphia is calculated on the ratio of days/time worked in Philadelphia to the days/time worked everywhere. This methodology (as explained in *Income Tax Regulation §209*) applies to all components of compensation (including the SUB Plan Trust payments). Therefore, the SUB Plan Trust payments to a nonresident of Philadelphia are subject to the Wage Tax in the ratio the time they were previously assigned to work within Philadelphia bears to the time they worked everywhere for the period used by the SUB Benefit Plan to calculate the employee's respective SUB Plan payment. For example, a 4 year employee (who was always a nonresident of Philadelphia) was involuntarily separated and based upon his 4 years of service with XXXX earned a benefit of 4 weeks of SUB Plan Trust payments. The allocation percentage to be applied to all 4 weekly payments is the days/time worked in Philadelphia for the 4 year period over total days worked everywhere for the 4 year period. If time records are unavailable (due to the passage of several years), the separated

employee and Xxxx may utilize the most recent time records/documentation available to determine an average allocation percentage to be applied to all payments.

A Philadelphia resident would be taxed on 100% of the SUB Plan Trust payment regardless of the office assigned or where the services were rendered.

*Income Tax Regulation §203(m)* you used as justification for exempting the SUB Plan Trust payments from the Wage Tax is not controlling in this instance due to the existence of *Income Tax Regulation § 203(h)(2)*. That is, *Income Tax Regulation § 203(h) (2)* is controlling since it subjects a specified *benefit* (i.e. termination or severance payments) to the Wage Tax. It is a *carve-out* of a specified fringe benefit to be specifically subject to the Wage Tax. If not for *Income Tax Regulation 203(h) (2)*, justification for exempting these payments would arguably exist.

This ruling was prepared based upon the facts presented and can only be relied upon by Xxxx. If the facts should change, the Revenue Department can be contacted for an updated ruling.

Sincerely yours,

Joseph F. Procopio Jr., CPA  
Tax and Revenue Conferee

JFP

cc: K. Richardson  
T. Afessa