

STATEMENTS OF POLICY

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 67]

Reports Regarding Professional Employer Arrangements

The Department of Labor and Industry (Department), Office of Unemployment Compensation Tax Services, adds § 67.1 (relating to reports regarding professional employer arrangements under section 315 of the law) as a statement of policy to read as set forth in Annex A. The statement of policy is added under section 315 of the Unemployment Compensation Law (law) (43 P. S. § 795), added by the act of June 15, 2005 (P. L. 8, No. 5) (Act 5).

A. Effective Date

This statement of policy will be effective immediately upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

The contact person for this statement of policy is R. Scot Miedrich, Director, Office of Unemployment Compensation Tax Services, Department of Labor and Industry, Room 915, Labor and Industry Building, 7th and Forster Streets, Harrisburg, PA 17121, (717) 787-2097, rmiedrich@state.pa.us.

C. Statutory Authority

Section 315(a)(4) of the law provides that an entity to whom some or all of a workforce is transferred, as part of or resulting in a professional employer arrangement under section 4(j)(2.1) of the law (43 P. S. § 753(j)(2.1)), shall file a report with the Department for each calendar quarter. See section 315(a)(4) of the law. Section 315(b) of the law provides that this report must be made in the manner prescribed, and contain the information required, by the Department.

This statement of policy is published under the authority of section 201(a) of the law (43 P. S. § 761(a)), which authorizes the Department to adopt regulations and require reports from employers to administer and enforce the law. This statement of policy is being issued pending the promulgation of regulations in accordance with section 315 of the law.

D. Purpose of the Statement of Policy

A report required under section 315(a)(4) of the law is due by the last day of the month immediately following the calendar quarter for which the report is filed. Section 315(a)(4) was added to the law by Act 5. Under section 13 of Act 5, the requirements of section 315(a)(4) of the law apply to calendar quarters beginning on or after July 1, 2005.

Section 315(b) of the law provides that a report required under section 315(a)(4) of the law must be made in the manner prescribed, and contain the information required, by the Department. Because the reporting requirements of section 315(a)(4) of the law have taken effect, it is necessary that the Department expeditiously establish the manner of filing and content of the reports.

The purpose of this statement of policy is to designate the manner of filing and content of reports under section 315(a)(4) of the law and implement section 315(b) of the law, pending the adoption of regulations.

(Editor's Note: The regulations of the Department, 34 Pa. Code, are amended by adding a statement of policy in § 67.1 to read as set forth in Annex A.)

STEPHEN M. SCHMERIN,
Secretary

Fiscal Note: 12-73. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 67. STATEMENTS OF POLICY

§ 67.1 Reports regarding professional employer arrangements under section 315 of the law.

(a) Under section 315(a)(4) of the law (43 P. S. § 795(a)(4)), an entity to which some or all of a workforce is transferred as part of or resulting in a professional employer arrangement under section 4(j)(2.1) of the law (43 P. S. § 753(j)(2.1)), shall file a report with the Department for each calendar quarter.

(b) The report is due by the last day of the month immediately following the calendar quarter for which the report is filed. The reporting requirements of section 315(a)(4) of the law apply to calendar quarters beginning on or after July 1, 2005.

(c) The report must be made on the Department of Labor and Industry's website (www.peoreporting.state.pa.us) and contain the information requested at the website.

[Pa.B. Doc. No. 06-328. Filed for public inspection February 24, 2006, 9:00 a.m.]

Title 37—LAW

JUVENILE COURT JUDGES' COMMISSION

[37 PA. CODE CH. 200]

Standards Governing the Administration of Restitution Funds

The Juvenile Court Judges' Commission (Commission) adopts Chapter 200, Subchapter F (relating to standards governing the administration of restitution funds) as a statement of policy to read as set forth in Annex A.

Authority

This statement of policy is promulgated in response to the act of November 30, 2004 (P. L. 1703, No. 217) (Act 217) under the authority of the Commission under section 4 of the act of December 21, 1959 (11 P. S. § 270-4).

Purpose and Requirements

This statement of policy is intended to provide guidance to president judges of courts of common pleas regarding the administration of restitution funds established under

42 Pa.C.S. § 6352(a)(5) (relating to disposition of delinquent child), which gives juvenile courts the authority to order payment by a child who has been found to be a delinquent child, as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child, including a contribution to a restitution fund.

Affected Parties

This statement of policy will affect courts of common pleas in this Commonwealth whose president judges have established restitution funds under Act 217.

Cost and Paperwork Estimates

Although advisory in nature, this statement of policy recommends the development of written guidelines that may not currently exist in all jurisdictions.

Effective Date

This statement of policy will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

For further information regarding this statement of policy, contact Lisa J. Freese, Director of Policy and Program Development, Juvenile Court Judges' Commission, 401 Finance Building, Harrisburg, PA 17120-0018, (717) 705-9003.

Findings

The Commission finds that this statement of policy is necessary for the effective administration of restitution funds established under Act 217.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 37 Pa. Code Chapter 200, are amended by adding a statement of policy in §§ 200.501, 200.502 and 200.511—200.514 to read as set forth in Annex A.

(b) The Executive Director of the Commission will certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) The order shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES E. ANDERSON,
Executive Director

Fiscal Note: 23-5. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart N. JUVENILE COURT JUDGES' COMMISSION

CHAPTER 200. JUVENILE COURT JUDGES' COMMISSION

Subchapter F. STANDARDS GOVERNING THE ADMINISTRATION OF RESTITUTION FUNDS

GENERAL PROVISIONS

Sec.

200.501. Purpose.

200.502. Definitions.

ESTABLISHMENT AND ADMINISTRATION OF RESTITUTION FUNDS

200.511. Establishment of a restitution fund.

200.512. Written guidelines.

200.513. Disbursements from a restitution fund.

200.514. Elements of written guidelines.

GENERAL PROVISIONS

§ 200.501. Purpose.

(a) Pennsylvania's juvenile justice system is mandated to provide programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

(b) Section 6352(a)(5) of the Juvenile Act (relating to disposition of delinquent child), gives juvenile courts the authority to order payment of reasonable amounts of money, as fines, costs, fees or restitution by a child who has been found to be a delinquent child, as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child, including a contribution to a restitution fund. This section further provides that the president judge of the court of common pleas shall establish a restitution fund for the deposit of all contributions to the restitution fund which are received or collected.

(c) The Juvenile Act provides, as well, that the terms and conditions of an informal adjustment or consent decree disposition may include contributions by a child to a restitution fund, and that the court may direct that any part of the money received from a child regarding whom notice has been certified to the court that the child has failed to comply with a lawful sentence imposed for a summary offense, shall be deposited into a restitution fund established by the president judge.

(d) This subchapter is intended to provide guidance to president judges in the administration of restitution funds established under the Juvenile Act.

§ 200.502. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Juvenile Act—42 Pa.C.S. Chapter 63.

Restitution fund—A fund established by the president judge of a court of common pleas under section 6352(a)(5) of the Juvenile Act (relating to disposition of delinquent child), from which disbursements are made at the discretion of the president judge pursuant to written guidelines promulgated by the president judge and the limitations of the Juvenile Act, and used to reimburse crime victims for financial losses resulting from delinquent acts.

ESTABLISHMENT AND ADMINISTRATION OF RESTITUTION FUNDS

§ 200.511. Establishment of a restitution fund.

In jurisdictions where a contribution to a restitution fund by a child may be included among the terms and conditions of an informal adjustment or consent decree or as part of a plan of rehabilitation resulting from an adjudication of delinquency, the president judge of the court of common pleas shall establish a restitution fund under 42 Pa.C.S. § 6352(a)(5) (relating to disposition of delinquent child) for the deposit of all contributions to the restitution fund which are received or collected.

§ 200.512. Written guidelines.

The president judge shall promulgate written guidelines for the administration of a restitution fund.

§ 200.513. Disbursements from a restitution fund.

Disbursements from the restitution fund shall be made at the discretion of the president judge, under the written guidelines and the limitations of the Juvenile Act, and shall be used to reimburse crime victims for financial losses resulting from delinquent acts.

§ 200.514. Elements of written guidelines.

Written guidelines promulgated for the administration of a restitution fund shall, at a minimum, include the following elements:

(1) The court may direct that any portion of the money received from a child alleged to be delinquent for failing to comply with a lawful sentence imposed for a summary offense may be deposited into the restitution fund.

(2) The terms and conditions of an informal adjustment or a consent decree may include a contribution by the child to the restitution fund.

(3) The terms and conditions of a disposition following an adjudication of delinquency may include a contribution by the child to the restitution fund.

(4) Disbursements from the fund shall be used to reimburse crime victims for financial losses resulting from delinquent acts.

(5) Disbursements from the fund shall require the signatures of at least two persons designated by the president judge.

(6) A policy requiring an annual report, detailing the aggregate and individual data regarding payments to and disbursements from the restitution fund.

(7) A requirement for an annual audit, under county policy, of all payments to and disbursements from the fund.

[Pa.B. Doc. No. 06-329. Filed for public inspection February 24, 2006, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 125]

Allowance of Deduction for Cost Depletion and Percentage Depletion

The Department of Revenue (Department) has adopted a statement of policy under § 3.2 (relating to statements of policy). The statement of policy adds §§ 125.51 and 125.52 (relating to allowance of deduction for cost depletion; and percentage depletion) to read as set forth in Annex A. This statement of policy takes effect immediately upon publication in the *Pennsylvania Bulletin*.

This statement of policy is promulgated by the Department to clarify the scope and application of allowances of deductions for cost depletion to the Personal Income Tax. The allowance of deductions for percentage depletion is not generally acceptable by standards of the accounting profession and constitutes an unconstitutional item of tax preference under the Pennsylvania Constitution after the cost of recoverable units has been fully recovered. In

addition, the Department is defining the allowable set of circumstances for a deduction for percentage depletion.

Specific questions regarding information provided in this statement of policy should be directed to the Department of Revenue, Office of Chief Counsel, Dept. 281061, Harrisburg, PA 17128-1061.

(*Editor's Note:* The regulations of the Department, 61 Pa. Code Chapter 125, are amended by adding a statement of policy in §§ 125.51 and 125.52 to read as set forth in Annex A.)

GREGORY C. FAJT,
Secretary

Fiscal Note: 15-432. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE V. PERSONAL INCOME TAX

CHAPTER 125. PERSONAL INCOME TAX

PRONOUNCEMENTS—STATEMENTS OF POLICY DEPLETION

§ 125.51. Allowance of deduction for cost depletion.

(a) *General rule.* In the case of mines, oil and gas wells, other natural deposits, and timber, there will be allowed as a deduction in computing income a reasonable allowance for depletion. In any case in which it is ascertained as a result of operations or development work that the recoverable units are greater or less than the prior estimate thereof, the prior estimate (but not the basis for depletion) will be revised and the allowance under this section for subsequent taxable years will be based on the revised estimate.

(b) *Recoverable units.* Recoverable units are the number of units (for example—tons, pounds, ounces or barrels) of minerals, oil or gas in the ground and economically worth extracting, estimated according to the best available information and industry standards.

(c) *Special rules.*

(1) *Leases.* In the case of a lease, the deduction under this section will be apportioned between the lessor and lessee in accordance with Federal Income Tax requirements.

(2) *Life tenant and remainderman.* In the case of property held by one person for life with remainder to another person, the deduction under this section will be computed as if the life tenant were the absolute owner of the property and will be allowed to the life tenant.

(3) *Property held in trust.* In the case of property held in trust, the deduction under this section will be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of those provisions, on the basis of the trust income allocable to each.

(4) *Property held by estate.* In the case of a decedent's estate, the deduction under this section will be apportioned between the estate and the heirs, legatees and devisees on the basis of the income of the estate allocable to each.

(5) *Basis for depletion.* The basis on which depletion is to be allowed in respect of any property will be the adjusted basis for the purpose of determining the gain upon the sale or other disposition of the property.

§ 125.52. Percentage depletion.

(a) *Deduction.* A deduction for percentage depletion will be allowed only in the following set of circumstances:

(1) The deduction is allowable in computing Federal taxable income.

(2) Insufficient information is available to estimate the amount of recoverable units in accordance with industry standards.

(3) The cost of the recoverable units is fixed and certain.

(4) The cost of the recoverable units has not been fully recovered.

(b) *Effective date.* This section will apply for taxable years beginning on or after January 1, 2005.

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