

**WEST VIRGINIA LEGISLATURE**  
**Joint Committee on Government and Finance**

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The Honorable Jeffrey V. Kessler, President  
West Virginia State Senate  
Post Audits Sub-Committee, Co-Chair  
Room 227 M, Building 1  
State Capitol Complex  
Charleston WV 25306

The Honorable Timothy R. Miley, Speaker  
West Virginia House of Delegates  
Post Audits Sub-Committee, Co-Chair  
Room 228 M, Building 1  
State Capitol Complex  
Charleston, West Virginia

Dear Co-Chairs:

The Post Audit Division has completed a special project to determine the availability of educational assistance programs (post-secondary education) available to employees of state agencies<sup>1</sup> and the tax treatment of such programs. This project was conducted at the request of the Legislative Auditor following the release of the Attorney General's Office (AGO) audit report (May 2014). The AGO report contained a finding related to tax excludable tuition and fee payments and reimbursements for AGO employees, made absent of a written plan required by the Internal Revenue Service (IRS) Publication 15-B Employer's Tax Guide to Fringe Benefits. Publication 15-B permits employers to offer educational assistance as a tax free fringe benefit to their employees provided, among other qualifying requirements, employers have a written plan governing educational payments made on behalf of employees. This project was intended to determine if other state agencies may be providing tax excludable educational assistance without a mandatory written plan, and if agencies offering educational assistance, report payments exceeding the IRS excludable limit with-in a calendar year, as employee wages.<sup>2</sup>

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<sup>1</sup> State agencies also includes state higher education institutions.

<sup>2</sup> We reviewed agency policies, if available, for compliance with IRS Publication 15-B and inquired from agencies if educational assistance payments were ever considered taxable income to employees; however, we did not review any specific agency transactions for this audit project and can therefore not attest to the accuracy of agency responses nor can we confirm agencies are abiding by the policies and procedures provided to us for review.

## **Scope of Work Performed**

The audit team compiled a list of WV state agencies and higher education institutions, excluding smaller boards and commissions. Each agency was asked the following:

1. Does your agency provide educational assistance opportunities to employees? (i.e. higher education tuition & fee payments, employee reimbursements for educational expenses, and/or tuition waivers)
2. If so, does your agency have any written policies and procedures for the educational assistance program? (If yes, please attach a copy with your response).

Next, the team evaluated the responses received and posed the following questions to the agency respondents that indicated educational assistance is currently available to employees.

1. Is the educational assistance provided to employees ever considered taxable income to respective employees?
2. If so, how does the agency report the taxable income?

## **Results of Work Performed**

Responses were received from 114 of the 115 state agencies surveyed, giving a response rate of 99%. After multiple attempts, no correspondence was received from the WV State Treasurer's Office. However, of the 114 agencies responding, 80, or 70%, offer post secondary educational opportunities to its employees in the form of educational assistance payments and/or tuition reductions as described below.

- Fifty-two (52) agencies exclusively offer educational assistance to employees as described in IRS Pub 15-B;
- Twenty (20) agencies exclusively offer tuition reductions or have agreements with particular higher education institutions offering reduced or waived tuition for a specific degree program to employees<sup>3</sup>; and
- Eight (8) agencies<sup>4</sup> offer both forms of educational assistance to employees.

*Please see the table on the following page for a listing of the 80 agencies that offer secondary educational opportunities to their employees.*

Therefore, a total of 60 agencies offer educational assistance payments that under IRS require the agency to have a written plan. All but two written plans were provided to the audit team by these agencies. Those written plans were not provided due to the following reasons:

- WV State Auditor's Office drafts unique contract terms for every employee receiving assistance<sup>5</sup>;
- Water Development Authority was unable to locate its plan.

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<sup>3</sup> "Qualified tuition reductions" and "working condition fringe benefits" are not considered taxable regardless of amount in accordance with IRS Publication 970 and 15-B; however, we did not render an opinion on the taxability of the benefits offered by these 20 agencies.

<sup>4</sup> All 8 agencies are higher education institutions.

<sup>5</sup> We did not request unique contracts due to the information contained in the agency's response meeting IRS compliance standards for educational assistance program's requiring written plans.

<b>Agencies Providing Exclusively Employee Educational Assistance As Defined in IRS Pub 15-B</b>	
1. Water Development Authority	27. Bureau for Behavioral Health & Health Facilities
2. Department of Education and the Arts	28. Bureau for Child Support Enforcement
3. Department of Commerce	29. Bureau for Children and Families
4. WV Development Office	30. Developmental Disabilities Council
5. Division of Energy	31. Office of the Inspector General
6. Miners' Health, Safety and Training	32. Bureau for Medical Services
7. Division of Tourism	33. DHHR Operations
8. Geological and Economic Survey	34. Bureau for Public Health
9. Division of Financial Institutions	35. State Department of Education
10. Alcohol Beverage Control Administration	36. Department of Transportation
11. Offices of the Insurance Commissioner	37. Parkways, Economic Development, and Tourism Authority
12. Department of Administration	38. State Rail Authority
13. Consolidated Public Retirement Board	39. Public Port Authority
14. Finance Division	40. Division of Public Transit
15. General Services Division	41. Division of Motor Vehicles
16. Public Defender Services	42. Department of Environmental Protection
17. Public Employees Insurance Agency	43. Center for Professional Development
18. Purchasing Division	44. Public Service Commission
19. Technology, Office of	45. Division of Rehabilitation Services
20. Real Estate Division	46. WV Health Care Authority
21. Fleet Management Office	47. Homeland Security & Emergency Management
22. Aviation Division	48. Workforce West Virginia
23. Children's Health Insurance Program	49. Division of Culture and History
24. Prosecuting Attorneys Institute	50. Division of Natural Resources
25. Division of Personnel	51. State Auditor's Office
26. Department of Health & Human Resources	52. Supreme Court of Appeals
<b>Agencies Exclusively Providing Tuition Reductions or Have Agreements with Higher Ed Institutions</b>	
1. Division of Highways	11. WV Network
2. Division of Corrections	12. WV Higher Education Policy Commission
3. Division of Juvenile Services	13. Bridge Valley CTC
4. Regional Jail & Correctional Facility Authority	14. Glenville State College
5. Division of Protective Services	15. Marshall University
6. West Virginia State Police	16. Mount West CTC
7. West Liberty University	17. Potomac State College
8. Fairmont State University	18. Southern WV CTC
9. Pierpont Community & Technical College	19. WV Northern Community College
10. Eastern WV Community & Technical College	20. WVU at Parkersburg
<b>Agencies Offering Both Forms of Educational Assistance</b>	
1. Blue Ridge Community & Technical College	5. Shepherd University
2. New River Community & Technical College	6. WV School of Osteopathic Medicine
3. West Virginia University	7. Concord University
4. WVU Institute of Technology	8. Bluefield State College

## **Tax Treatment**

Of the 60 agencies providing educational assistance payments for employees, 12 agencies state they report educational assistance payments above the IRS tax excludable amount of \$5,250 as employee wages. Of the remaining,

- Seven (7) agencies stated they are not currently or have not made payments in recent years;
- six (6) agencies stated they do not provide educational assistance to employees over the excludable amount and did not give any further explanation of tax treatment if employees were to receive assistance above \$5,250 in a calendar year;
- one (1) agency did not respond to our taxable income question;
- three (3) report payments exceeding the excludable amount as 1099 miscellaneous income; and,
- thirty-one (31) agencies do not report any educational payments as employee taxable wages.

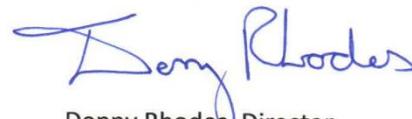
## **Conclusion**

Although most state agencies providing educational assistance to employees have a written plan as required by the IRS, the tax treatment of this employee benefit varies greatly for each agency. Since only 12 of 60 agencies (20%) report educational assistance payments above the IRS tax excludable amount of \$5,250 as employee wages, there is a risk that agencies and state employees may not be remitting the appropriate amount of state and federal taxes.

## **Recommendation**

Most state agencies are required to follow the Division of Personnel's (DOP) Education Expense Reimbursement/Leave Program policy which provides guidance to agencies on establishing educational assistance programs as described in IRS Publication 15-B. However, the policy does not instruct agencies on how and when to report taxable income. The auditors recommend DOP provide guidance on how agencies should comply with federal regulations regarding taxable education subsidy income. In addition, the auditors recommend state agencies report taxable educational assistance as employee wages on W-2 forms.

Respectfully submitted,



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