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**I can *Hammer out* any Problem!**

John B. Goldhamer is an “*Authored Tax Law Expert*” with *Education and Experience in all Business Disciplines*, including J.D. Equivalent Legal Education, Finance, Marketing, MBA, Accounting, and Information Systems. John’s *Free Position Papers* are *Educational, Entertaining, and Empowering* that provide definitions, procedures, website links for cross reference and Table of Contents for easy review

**WHY UNEMPLOYMENT BENEFIT PAYMENTS ARE TAXABLE FOR INDIVIDUAL INCOME TAX?**

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# Why Unemployment Benefit Payments Are Taxable for Individual Income Tax?

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## Definitions

VEC FAQ's - Glossary

<http://www.vec.virginia.gov/faqs/glossary>

16VAC5-10-10 of the Virginia Administrative Code "Definitions"

<https://law.lis.virginia.gov/admincode/title16/agency5/chapter10/section10/>

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**Act** - The Virginia Unemployment Compensation Act as set out in Title 60.2 (§ 60.2-100 et seq.) of the Code of Virginia. Commission means the Virginia Employment Commission as defined in § 60.2-108 of the Code of Virginia.

**Actively Seeking Work** - That you *personally* visit several employers each week in your efforts to find work. You are required to provide the VEC, when requested, with information about each employer or company you visit while seeking work. These visits are called *job contacts*. (\*)

**Actively Seeking Work - Job Contacts** - You must conduct an *active work search* and report two (2) or more Job Contacts each week. (\*) Resumes are acceptable job contacts if that is the employer's requirement. Certain occupations require the use of resumes as the usual and customary means of soliciting work. If you have one of these occupations, *faxing, mailing, and Emailing resumes to prospective employers will be acceptable in lieu of personally contacting employers*. The VEC has also made the decision to permit telephone calls as an allowable method of making work search contacts. If a *claimant fails to provide enough information to verify a job contact* then the Commission cannot exercise its option to do so, but it does not establish falsification. [www.vec.virginia.gov/book/export/html/915](http://www.vec.virginia.gov/book/export/html/915)

**Base Period** - The base period is the first four of the last five completed calendar quarters prior to the effective date of your claim. If your claim is filed in January, February, or March 2009, your base period is October 2007 through September 2008. If your claim is filed in April, May, or June 2009, your base period is January 2008 through December 2008. If your claim is filed in July, August, or September 2009, your base period is April 2008 through March 2009. If your claim is filed in October, November, or December 2009, your base period is July 2008 through June 2009. The wages earned in the base period determine your monetary entitlement. Determine your base period.

**Benefits** - The compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state or under any federal program in which such compensation is payable in accordance with applicable state law.

**Blind Ad** - Any job announcement or advertisement where the name of the employer/company is not provided. Responses to blind ads for jobs or openings are not acceptable as job contacts.

**Burden of Proof** - The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. Black's Law Dictionary

**Burden of Proof, Unemployment Compensation Benefits** - The burden of proof is on the *employer to show misconduct* by a preponderance of evidence. Once the employer has proven misconduct, the burden shifts to the *claimant to prove mitigating circumstances*. When Claimant is Discharged (fired), then the burden is on the *employer to prove the claimant was fired due to misconduct*. When Claimant Quits, then the *employer must show the claimant was not forced to quit*, and once established the *claimant must show good cause for leaving*. [Virginia Unemployment Compensation- What Employers Need To Know](#)

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**Calendar Quarter** - The period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st.

**Claim** -- A notice of unemployment filed to request a determination of eligibility and the amount of benefit entitlement or to claim benefits.

**Claimant** - An unemployed individual who files a claim for unemployment compensation.

**Covered Employment** - Employment as defined in Section 60.2-612 through Section 60.2-618 of the Code of Virginia performed for an employer or federal employment as in Chapter 85, Title 5, U.S. Code

**Duration of Benefits** - The number of total weeks of benefits a claimant may potentially draw during a benefit year. §60.2-602, §60.2-607

**Earned Income** - According to the IRS, all income from employment, such as Wages; Salaries; Commissions; Bonuses; Tips; and other taxable employee compensation derived from paid work for working for an organization or the profit from owning a business. Examples of Income that are *Not Earned Income* are: Interest, Dividends, Retirement Income [Pension or 401(k) Withdrawals] Social Security Benefits, Unemployment Benefits, Alimony, and Child Support.

**Employer** - An employing unit that meets the liability requirements under the law and is required to pay unemployment insurance taxes. §60.2-210

**Employment** - Any service performed by an individual for remuneration under any written or oral contract of hire with an employing unit. §60.2-212 (Exemptions to "employment," Section §60.2-219.)

**Executive or Corporate Officer** - Is (i) the president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operation agreement of a limited liability company. It does not include persons with the title of director or LLC member. A Corporate Officer who is a primary owner of the legal entity and files a claim for benefits will require a determination if the officer is unemployed through no fault of their own and beyond their control.

**Extended Benefits (EB)** - Unemployment benefits paid to a claimant after regular benefits have been exhausted, during periods of prescribed high national or state unemployment levels. §60.2-610, 611

**In-Person Hearing** - A hearing where the parties, witnesses and representatives personally appear before the appeals examiner or special examiner.

**Interstate Claimant** - An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the commission finds that this exclusion would create undue hardship on such claimants in specified areas.

**Liable Employer** - The employing unit for whom a claimant last worked during 30 days, whether or not such days were consecutive, or 240 hours prior to filing an initial, additional claim for benefits.

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**Maximum Benefit Amount** - The total amount of benefits that an individual may receive during his benefit year. (This amount is determined by multiplying his weekly benefit amount and the number of weeks of benefits for which he may qualify.) §60.2-607

**Monetary Determination** - A written notice issued to inform an individual whether or not he meets the employment and wage requirement necessary to establish entitlement to compensation under a specific unemployment insurance program, and, if entitled, the weekly and maximum benefit amounts the individual may receive and the duration of benefits payable.

**Nonmonetary Determination** - A decision made by the deputy based on facts related to an "issue" under the following conditions: (1) the present, past, or future benefit rights of a claimant are involved; (2) a week of unemployment is claimed and the determination affects such week or could result in a reduction of the monetary award; (3) there are identifiable documents showing the type and disposition of an issue, the material facts considered in arriving at the determination, and if it involves the denial of benefits, is issued in the form of a written determination notice to the claimant. (No determination denying benefits may be issued until the claimant has been afforded an opportunity to furnish any facts he may have relating to disqualifying information received from other sources.)

**Partially Unemployed Individual** - An individual who during a particular week (i) had earnings, but less than weekly benefit amounts, (ii) was employed by a regular employer, and (iii) worked, but less than his normal customary full-time hours for such regular employer because of lack of full-time work.

**PIN** - It is your personal identification number. You must use it each time you claim your weekly benefits through the VRS. You will be asked to provide the last four digits if you make a telephone inquiry about your claim. Your PIN will be sent to you in a separate mailing after you file your claim. It is very important that you keep the number confidential and do not share it.

**Qualification For Benefits** - After filing application for benefits, the VEC will decide if you meet three separate requirements: 1) Monetary eligibility; 2) Separation qualification; and 3) Weekly eligibility.

**Minimum Benefit** - In Virginia, an individual must have *earned income at least a total of \$3,000 in two quarters in the base period*. The Minimum Benefit is \$60 per week.

**Maximum Benefit** - In Virginia, an individual must have *earned income at least \$18,900.01 in two quarters during the base period* for the maximum weekly benefit amount. The Maximum Benefit amount is \$378 per week. [www.vec.virginia.gov/pdf/uitransactben.pdf](http://www.vec.virginia.gov/pdf/uitransactben.pdf)

(Base Period is the first four of the last five completed calendar quarters prior to the claim date)

**Qualifying Wages** - The amount of wages in covered employment an individual must have within the two highest quarters within his base period in order to be entitled to compensation.

**Severance And Dismissal Pay** - For the purpose of taxation and benefits, all payments made by an employer at or subsequent to an employee's separation, except that payments which are exclusively for services performed prior to separation shall not be treated as severance or dismissal pay. Such payments may be allocated by the employer for any period following separation so long as such allocation is at a weekly rate at least equal to the average weekly wage received by such employee during the last calendar quarter preceding the separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation.

*If no allocation is made by the employer, payments will be deemed allocated to the last day of work.*

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**Suitable Work** - Many factors are taken into consideration in determining whether work is suitable. These factors include your *previous work experience, your physical and mental fitness, risk to your health, safety, or morals, and the distance from your home*. You must report all job offers that you decline when you file your weekly claim for benefits.

**Telephone Hearing** - A hearing where all parties, witnesses and representatives participate before the appeals examiner by way of a telephone conference call.

**Total Unemployment** - The unemployment of an individual for any week in which he performs no work and has no wages payable to him, whether or not he is attached to an employing unit's payroll.

**Unemployment Compensation** - The state program that provides benefits to individuals covered under state and federal unemployment compensation laws, supplemental extended compensation (payable to eligible individuals under other provisions of state and/or federal laws during periods of high unemployment) and other special programs which compensate individuals involved in situations which adversely affect their employment status through no fault of their own.

**Unemployment Insurance** - The program term, which encompasses all state and federal unemployment compensation laws and related programs, is administered by the state and federal Unemployment Insurance Services.

**The [Virginia] Guide For Effective Unemployment Insurance Adjudication, 2010** - A synthesis of the basic legal principles followed by adjudicators and judges in resolving issues that arise under the Virginia Unemployment Compensation Act, Title 60.2. Its dual aims are to provide training for new Agency adjudicators and a reference for veteran adjudicators.  
[vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf](http://vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf)

**Wages** - All remuneration payable for personal services including commission, bonuses, tips, back pay, dismissal pay, severance pay, and any payment made by an employer to an employee during his employment, thereafter. The cash value of all remuneration payable in any other medium other than cash.

**Waiting Week** - The first week of eligibility in a claim year is a waiting week and is not paid. Only one waiting period week is served in a benefit claim year. §60.2-612.9

**Week** - Seven consecutive days *beginning on Sunday and ending the following Saturday at midnight*.

**Weekly Benefit Amount** (WBA) - The weekly benefits payable to a totally unemployed individual. The amount is based on prior earnings. §60.2-602

**Workers' Compensation** - A mandatory insurance requirement for most employers. It provides statutory benefits to covered workers who are injured in their employment. Virginia law requires every employer who regularly employs more than two employees part-time or full-time to carry workers' compensation coverage. *Glossary of Workers' Compensation Terms*:  
[www.vwc.state.va.us/sites/default/files/documents/VWC-Glossary-of-Terms.pdf](http://www.vwc.state.va.us/sites/default/files/documents/VWC-Glossary-of-Terms.pdf)

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## State Unemployment Weekly Maximum Benefit Amounts

Unemployment Insurance Taxes are paid by the employer organization to the federal government and the state, which then pays the unemployed person. Just like medical insurance benefits, unemployment benefits are simply another “*Employee Benefit*” to the employee, but it is considered “*Wage Income*,” and is taxable to the unemployed person at the Federal level, but it is exempt in Virginia.

Each state provides its own *Unemployment Monetary Determination* or *Weekly Benefit Amount*. The current U.S. unemployment weekly benefit maximum amount, average is \$422; from a high of \$1,103 per week for 30 weeks for Massachusetts to a low of \$235 per week for 26 weeks for Mississippi. Virginia unemployment maximum weekly benefit at \$378 per week for 26 weeks is *near* the average.

U.S. DEPARTMENT OF LABOR  
Office of Unemployment Insurance  
**SIGNIFICANT PROVISIONS OF STATE UNEMPLOYMENT INSURANCE LAWS**  
EFFECTIVE JULY 2017

	BENEFITS						COVERAGE	TAXES		
	Earnings/ Employment Needed in Base Period to Qualify <sup>1</sup>	Computation of Weekly Benefit Amount	Weekly Benefit		Weekly Earnings Disregarded <sup>3</sup>	Calculation of Number of Benefit Weeks <sup>4</sup>		Number of Benefit Weeks <sup>5</sup>	2017 Wages Subject to Tax	2017 Minimum & Maximum Rates <sup>7</sup> New Employer Rate <sup>8</sup>
			Mini- mum	Maxi- Mum						
<b>VA</b>	\$3,000 in highest 2 qtrs of BP	1/50 of the 2 highest qtrs.	\$60	\$378	\$50	See table in law	12-26	20 weeks or \$1,500 in any qtr	\$8,000	0.13% 6.23% 2.53%

<https://ows.doleta.gov/unemploy/content/sigpros/2010-2019/July2017.pdf>

During the Great Recession, the federal government extended unemployment benefits additional weeks, but as the economy improved they were discontinued.

### VEC Procedures

The VEC (Virginia Employment Commission) procedures are that after you apply for unemployment benefits online, you will receive an *Award Statement* listing your *Monetary Determination*, which currently is a maximum of \$378 Gross per week for a maximum of 26 Weeks. Some applicants might receive less money and a shorter time span. If you worked in another state within the last 18 months, then you might receive more money by filing with that state.

It is recommended that you have 10% Federal Taxes withdrawn from your unemployment benefit payments. Of the 41 states that tax wages, 5 states completely exempt unemployment benefits from tax (California, New Jersey, Oregon, Pennsylvania, and Virginia). VA Code §58.1-322 (C)(25)

Filing and receiving unemployment benefits will not appear on credit reports. Credit reports only list credit and debt-related information. Only a former employer’s Payroll Department and the VEC will know about your filing and receiving unemployment benefits.

The VEC only communicates by U.S. Mail and will refer to you as “*The Claimant*.”

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## Why Unemployment Benefit Payments Are Taxable for Individual Income Tax?

### Employer Pays Unemployment Insurance Tax

Generally, when employees work for an organization, their employer must pay *state unemployment insurance tax* based on a percentage of salaries to the state where the work is performed and federal unemployment taxes (Federal Unemployment Tax Act (FUTA) also based on a percentage of salaries.

When you file for unemployment benefits, the state pays you from a *State Unemployment Trust Fund*, which is funded from *State Unemployment Taxes* paid by employers; plus funds from the *Federal Unemployment Trust Fund*, which is funded by *federal unemployment taxes* paid by employers.

Similar to employee medical insurance benefits, unemployment benefits are just another “*Employee Benefit*” and not a charity.

### IRS Considers Unemployment Insurance Benefits a Substitute for Wages

Generally, most insurance proceeds or payments are not taxable for income tax. Insurance proceeds for auto insurance, flood, fire, and property insurance are not taxable because they use the *Principle of Indemnity*, or to *return an insured property to its pre-loss condition*. Disability, life, and medical insurance proceeds are not taxable by statute. Normally, law suit settlements are also not taxable.

Although *unemployment is an insurance paid by employers, to protect salaries*, starting with the Tax Reform Act of 1986, unemployment insurance benefits became taxable as a substitute for wages.

Unemployment compensation generally includes any amounts received under the unemployment compensation laws of the United States or of a state. It includes state unemployment insurance benefits and benefits paid to you by a state or the District of Columbia from the Federal Unemployment Trust Fund. It also includes railroad unemployment compensation benefits, but *not Worker's Compensation*. <https://www.irs.gov/individuals/employees/unemployment-compensation>

According to The Tax Foundation, of the 41 states that tax wage income, 5 states completely exempt unemployment benefits from tax (California, New Jersey, Oregon, Pennsylvania, and Virginia).

Two states (Indiana and Wisconsin) partially exempt a fixed dollar amount of unemployment benefits from state income tax but tax the rest, following federal practice from 1982 to 1986. The remaining states fully tax unemployment benefits. <https://taxfoundation.org/state-taxation-unemployment-benefits/>

### Virginia Exempts Unemployment Compensation Benefits

Starting in 2000, unemployment benefits received during the taxable year and included in federal adjusted gross income may be subtracted on the Virginia return. The amount of the subtraction is the amount of unemployment benefits that were included on your federal return. VA Code §58.1-322 [C] [25] <https://www.tax.virginia.gov/subtractions#unemployment-compensation>

Subtract unemployment compensation benefits on Virginia Forms 760, 760PY, and 763 by keying *Subtraction Code 37 to Schedule ADJ*. “Enter the amount of unemployment compensation benefits received during the taxable year reported as income on your federal income tax return.”

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### Federal Form 1099-G, Certain Government Payments

By January 31 of the following year, the unemployed person or claimant should receive Federal Form 1099-G, *Certain Government Payments* listing their unemployment compensation, federal income tax withheld, and if any state income tax was withheld.

Specifically, the unemployed person or claimant should list in their *federal individual income tax return*, the unemployment compensation as listed on the Federal Form 1099-G, *Certain Government Payments* on the following form line numbers:

Federal Form	1040EZ (Easy Form)	Line 3 Unemployment Compensation
Federal Form	1040A (Short Form)	Line 13 Unemployment Compensation
Federal Form	1040 - (Long Form)	Line 19 Unemployment Compensation

### Workmen's Compensation

Workmen's Compensation benefit payments for on the job injuries are not taxable for individual Income tax purposes.

#### IRS - Five Tax Tips on Unemployment Benefits

<https://www.irs.gov/newsroom/five-tax-tips-on-unemployment-benefits>

IRS Tax Tip 2017-25, March 7, 2017

Taxpayers who received unemployment benefits need to remember that it may be taxable. Here are five key facts about unemployment:

1. **Unemployment is Taxable.** Include all [unemployment compensation](#) as income for the year. Taxpayers should receive a [Form 1099-G](#), Certain Government Payments, by Jan. 31. This form shows the amount received and the amount of any federal income tax withheld.
2. **There are Different Types.** Unemployment compensation includes amounts paid under federal law or state law as well as railroad, trade readjustment and airline deregulation laws. Even some forms of disability payments can count. For more information, see IRS [Publication 525](#).
3. **Union Benefits May be Taxable.** Benefits received from regular union dues as income might be taxable. Other rules may apply if a taxpayer contributed to a special union fund and those contributions to the fund are not deductible. In this case, report only income exceeding the amount of contributions made.
4. **Tax May be Withheld.** Those who receive unemployment can choose to have [federal income tax withheld](#) by using [Form W-4V](#), Voluntary Withholding Request. Those choosing not to have tax withheld may need to make [estimated tax](#) payments during the year.
5. **Visit IRS.gov for Help.** Taxpayers facing financial difficulties should visit the IRS.gov page: ["What Ifs" for Struggling Taxpayers](#). This page explains the tax effect of various life events such as job loss. For those who owe federal taxes and can't pay, the [Payments tab](#) on IRS.gov provides some options. In many cases, the IRS can take steps to help ease financial burden.

Beginning in 2017, taxpayers using a software product for the first time may need their Adjusted Gross Income (AGI) amount from their prior-year tax return to verify their identity. Taxpayers can learn more about how to verify their identity and electronically sign tax returns at [Validating Your Electronically Filed Tax Return](#).

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### Unemployment Benefits for 501(C)(3) (Non-Profit) Employees

An organization that is exempt from income tax under Section 501(c)(3) (Non-profit) of the Internal Revenue Code is also exempt from Federal Unemployment Taxes (FUTA).

<https://www.irs.gov/charities-non-profits/exempt-organizations-what-are-employment-taxes>

#### The Federal Unemployment Tax Act

The Federal Unemployment Tax Act, Section 3309 *enables* 501(c)(3) (Non-profit) organizations to *opt out of the tax system* and to *reimburse the state for unemployment claims the state has paid out* to the non-profits' former employees.

<http://www.501ctrust.org/unemployment-tax-exemption-for-501c3s-explained/>

#### State Unemployment Benefits for Non-profit Employees

In some states, a non-profit reimbursing claim is voluntary.

In Virginia, VA Code Ann §60.2-213 (B)(1) *only exempts* organizations operating primarily for religious purposes from reimbursing claims to the state. Generally, since these groups are not required to reimburse the state, then their employees are not eligible for unemployment.

<https://law.lis.virginia.gov/vacode/title60.2/chapter2/section60.2-213/>

