

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 113

TO: R. F. Martin, Director

FROM: R. B. Overton, Senior Attorney

RE: Interpretation of Section 96-9(b)(4)(A) of the Employment Security Law of North Carolina -Use of Payrolls in Computing Contribution Rates on Re-established Liability after Computation Date

You submit the following inquiry and request a ruling thereon:

A, a covered employer, sold his place of business in W on April 1, 1949. The account thereafter was placed in suspense as of that date. On September 1, 1949, A began operation of another place of business in S, North Carolina, and has had a continuous payroll since that time. A did not report to the Commission that he had re-entered business. He was discovered in May 1952, by a Field Representative. A did not transfer his reserve account to the purchaser of his business in W, and the reserve account was maintained in the name of A. The Accounting Department, in establishing the rate of contributions of A on his operations in S, took into consideration the reserve account of A accumulated at W, North Carolina, on the basis that he had payrolls in all of the fiscal years even though unreported and paid on. This resulted in a reduced contribution rate for all years involved.

Question

Did the Accounting Department correctly determine the rate of A on his operations at S?

It is our conclusion, after studying the statutes on this matter, that the rate of contributions was properly determined in that it appears that upon application of the tests provided in the statutes all provisions or conditions were met, even though this Commission had not been advised thereof. Of course, it is assumed that the Accounting Department did not give credit for any contributions having been paid during this period but only took into consideration the payrolls of the employer; that is, that the reserve balance had not received any additional credits by reason of the fact that no payments had been made during the period beginning September 1, 1949, until May, 1952. It is therefore, our conclusion that, as above stated, the rate was properly determined.

However, if employer A had been mailed a “Cumulative Reserve Account Statement as of July 31, 19950, and Computation of 1951 Rate, “and had not filed an application for review or redetermination prior to May 1, 1951, as provided in Section 96-9 (c)(3) of the Employment Security Law of North Carolina, the rate as established would have been final.

Adopted as an official Interpretation of the Commission on July 29, 1952.