

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 145, SUPPLEMENT A

DATE: MARCH 6, 1968

TO: R. F. Martin, Director

FROM: R. B. Billings, Chief Counsel

SUBJECT: Officers' Salaries – Interpretation No. 145 Supp. “A”

The question has been raised in a memorandum from the Chief Accountant to the Assistant Director under date of February 26, 1968, whether the salaries paid officers of a corporation should, in all cases, be considered taxable unless the records of the corporation show that such remuneration is paid as directors' fees.

It is our opinion that we could not as a matter of law hold that every payment made to an officer as salary and shown as such on the records of the corporation is taxable. [We would, however, suggest in those cases where the records of a corporation disclose that an officer has been paid remuneration as wages that the field representative or auditor should take the position that, nothing else appearing, the officer is in employment.]

In the memorandum written by me on February 16, 1968, it was never intended that we should disregard Interpretation No. 145 with respect to the status of officers of corporations. It was suggested that we take the position as stated here – that where there is a payment of salary to an officer, nothing else appearing with respect to the services performed by him, we should presume that the officer is in employment and that the burden of proof of showing that he is not in employment should be upon the employer.

Since it appears that the auditors and field representatives would have difficulty in defining what is meant by a “substantial” payment in cases involving officers' salaries, it is suggested where there is any payment, regardless of the amount, that we take the position stated above with respect to officers of corporations. We do not feel, however, that we can disregard the distinction which the Commission has made concerning executive duties of officers of corporations. [The Commission has held since 1950, in numerous Opinions, that if the officer is only performing executive duties and not duties that could ordinarily be performed by an employee, he would not be considered an employee.] If the minutes of a corporation instruct an officer to personally take inventory, make bank deposits daily, or do some other work which is ordinarily performed by an employee of the corporation and not related to the

management of the business, it is our opinion such could not be considered executive duties. This is because the Statues provide that the officers of a corporation shall have authority to perform such duties in the management of the corporation as may be provided by the by-laws of the corporation, or as determined by action of the board of directors not inconsistent with the by-laws. (G.S. 55-34 (b))

We have studied all of the Opinions of the Commission relating to the status of officers of corporations as employees and find that, generally speaking, there are about five categories in which the Commission has made rulings. They are as follows:

1. Cases in which there have been no services performed by the officers and no remuneration paid to the officers. In such cases the officers are not considered to be in employment. See: In Re Wood and MacDougall Associates, Inc. – Opinion No. 1196.
2. Cases in which the officers of the corporation only attend board meetings and perform no other services and even though officers in such cases are remunerated, the Commission has ruled they are not in employment. This is when the officers did not take any active part in the business or perform any services for the corporation, except the attendance of board meetings. See: In Re Cape Fear Chemicals, Inc. – Opinion No. 997, in which the officer was paid \$3,000 for each year for a period of three years and was not considered to be in employment. See also: In Re Commonwealth Hosiery Sales Corporation – Opinion No. 1024, to the same effect.
3. Cases in which the officers are active in the business and perform services other than executive duties and an understanding exists they will be paid for services if the profits of the corporation justify such payment. In such cases they are held to be in employment. See: In Re Stewart Machine Company, Inc. – Opinion No. 967.
4. Cases in which the officers are performing services other than those of executive nature, such as waiting on customers, making collections, etc., and a designated amount agreed upon for payment but no payment made pursuant to the agreement. In these cases the officers are considered in employment. See: In Re Farmer's Furniture Company, Inc. – Opinion No. 980.
5. Cases in which the officers are engaged in performing services other than those of executive nature, such as answering correspondence, writing checks, paying bills, conferring with salesmen weekly on trips, and transacting other business, and receiving for such services a certain regular monthly amount during a portion of the period involved,

but no payment with respect to other periods of time involved. In these cases, the Commission held that the officers are employees during all periods of time involved based upon the nature of services performed, and there existed an implied contract between the officers and the corporation that the corporation pay reasonable compensation for the services rendered. See: In Re Rich Plan of the Pee Dee, Inc. – Opinion No. 1036.

The following is a list of Opinions rendered by the Commission in which the status of officers of corporations has been determined. It may be that the auditors and field representatives may desire this list for reference purposes.

In Re:

- Opinion No. 764 – Coble Sporting Goods Co., Inc.
- Opinion No. 912-A – In Re R. W. Norman Co., of Lumberton, Inc.
- Opinion No. 967 – In Re Stewart Machine Co., Inc.
- Opinion No. 980 – In Re Farmer's Furniture Co., Inc.
- Opinion No. 984 – In Re The All Sports Store, Inc.
- Opinion No. 996 – In Re Rutherford Equipment Co., Inc.
- Opinion No. 997 – In Re Cape Fear Chemicals, Inc.
- Opinion No. 1007 – In Re Asheville Coal & Wood Co., Inc.
- Opinion No. 1014 – In Re Carolina Company, Inc.
- Opinion No. 1024 – In Re Commonwealth Hosiery Sales Corp.
- Opinion No. 1031 – In Re Anson Frozen Food Center, Inc.
- Opinion No. 1036 – In Re Rich Plan of the Pee Dee, Inc.
- Opinion No. 1098 – In Re Playhouse, Inc.
- Opinion No. 1123 – In Re H & V Equipment Company, Inc.
- Opinion No. 1130 – In Re Production Development Co., Inc.
- Opinion No. 1142 – In Re Sandhills Bonded Warehouse, Inc.
(Sandhills Enterprises, Inc.; Richmond Enterprises, Inc.; Lee Enterprises, Inc (*T/A the O.K. Bowl))
- Opinion No. 1196 – Wood & MacDougall Associates, Inc.
- Opinion No. 1228 – In Re Atlantic Loan Company
- Opinion No. 1236 – In Re Laughinghouse Carpet Service, Inc.
- Opinion No. 1240 - In Re Funderburg Equipment Co., Inc.
- Opinion No. 1244 – In Re Certified Plating Co., Inc.
- Opinion No. 1276 – In Re AAA Business Machines Corp.
- Opinion No. 1310 – In Re Stout Construction Co., Inc.
- Opinion No. 1317 – In Re Little Colonel Corp., Inc.