

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 165

TO: R. F. Martin, Director

FROM: R. B. Overton, Attorney

RE: Interpretation of Section 96-10(d) of the Employment Security Law of North Carolina -Liability of Purchaser of Business for Unpaid Contributions of Predecessor

You have requested an interpretation of the provisions of Section 96-10(d) as it would apply to the following factual situation. A, a covered employer, sells his business to B, who, as of the date of purchase, was not a covered employer under the provisions of the law. A owes contributions to the Commission and is liable during the year in which the sale or transfer is made solely by reason of the fact that he had failed to exercise a right of termination as provided in Section 96-11(b) of the law. Within the statutory period of sixty days B files a written request with the Commission to be relieved from the provisions of Section 96-8(5)(b). Such a request is allowed by the Commission.

Question

Is B liable for unpaid contributions owing by A at the time of the transfer of the business?

Section 96-10(d), in substance, provides that contributions or taxes imposed by Chapter 96 and suggestions thereunder of the law shall be a lien upon the assets of any employee subject to the provisions of the law who shall lease, transfer, sell out his business, or shall cease to do business. Such section further provides that such employer (predecessor) shall be required by the next reporting day as prescribed by the Commission to file such reports and pay all contributions due with respect to wages payable for employment up to the date of such sale, transfer, or cessation of business. It further provides that the purchaser, employer-successor, in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and at such time as the former owner shall produce a receipt from the Commission showing that contributions have been paid or showing that none are due. It is further provided that if the purchaser of a business or a successor of such employer shall fail to withhold such purchase money or any money due to such employer in consideration of a lease or other transfer and such contributions shall be due and unpaid after the next reporting date, such successor shall be personally liable to the extent of the assets of the business so acquired for the

payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer.

It is our interpretation of this statute that the purchaser of a business need not necessarily become a successor employer under the provisions of Section 96-8(5) (b) to effectuate liability for unpaid contributions of the seller. Liability for such unpaid contributions attaches by reason of the provisions of Section 96-10(d) when the business is sold, leased, or otherwise transferred. It is, therefore, concluded that the purchaser of a business as outlined in your inquiry who is relieved from the operations of the successor ship clause of the law; that is, Section 96-8 (5) (b), would be personally liable to the extent of the assets acquired for any contributions remaining unpaid by the predecessor after the next reporting date following the date of transfer.

Adopted as an official Interpretation of the Commission on May 2, 1961.