

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 169

TO: R. F. Martin, Director

FROM: R. B. Billings, Attorney

RE: Interpretation of the Employment Security Law of North Carolina – Covered Employment I. Section 96-8(6)f4, 96-8(6)g6, and 96-8(20) – American Aircraft; II. Section 96-8(6)g2 – Federal Instrumentalities; III. Section 96-8(6)g8 – Nonprofit, Charitable, Religious, and Educational Organizations; IV. Section 96-8(6)g11 – Fraternal Benefit Societies, Orders, or Associations

The 1961 General Assembly amended the Employment Security Law of North Carolina to conform to certain changes enacted by Congress to the Federal Unemployment Tax Act. These changes relate to certain types of coverage effective January 1, 1962. Employer liability brought about by these changes must be based on the general coverage provision of our act which requires the employer to have as many as four or more workers in twenty different weeks. This requirement would be applicable to the calendar year 1962 and any subsequent years. These types of coverage fall into four categories; namely, workers in connection with American aircraft overseas; certain federal instrumentalities; nonprofit organizations; certain types of services formerly exempt and consisting of services performed in connection with the collection of dues or premiums for a fraternal society, order, or association performed away from the home office or which are ritualistic in connection with such society; and services of an individual performed in any calendar quarter for an organization exempt from income tax under Section 501(a) of the Internal Revenue Code where remuneration for such services is less than \$50 in a calendar quarter. These types of organizations will be enumerated in this interpretation in a full discussion of this group later.

I. American Aircraft

With respect to the first category relating to workers performing services in connection with American aircraft overseas, it was necessary that Section 96-8(6)f4, Section 96-8(6)g6, and Section 96-8(20) be amended. These changes provided that services in connection with an American aircraft are covered only under a contract which is entered into in the United States, or if during the performance of the services and while the employee is employed on the aircraft it touches at a port in the United States, provided that such individual is employed on or in connection with the aircraft when outside of the United States. The services, in order to be within the definition

of employment under the law, must also be performed on or in connection with the operations of an American aircraft which are regularly supervised, managed, directed, and controlled from an operating office maintained in North Carolina. "American aircraft" is defined as meaning an aircraft registered under the laws of the United States. In connection with this change in the North Carolina law it is our opinion that no individuals will be found who are performing services under the conditions necessary to bring such services within coverage of our law. We do not know of any operating office of any airlines located or doing business in North Carolina from which any overseas activities of an aircraft are regularly supervised, managed, directed, and controlled.

II. Federal Instrumentalities

With respect to the change in the Federal Unemployment Tax Act relating to federal instrumentalities, it was not necessary that any amendment be made during 1961 to the Employment Security Law of this state for the reason that an amendment has previously been enacted into the law which provided for coverage of federal instrumentalities in case the Congress of the United States permitted such coverage. The authority to bring the federal instrumentalities under the coverage of the North Carolina act a permitted by the 1960 amendments of the Federal Unemployment Tax Act is provided in Section 96-8(6)g2 of our law. In this section it is provided that federal instrumentalities are brought within coverage to the extent permitted by the Congress. The permission granted by Congress in the 1960 amendments to the Federal Unemployment Tax Act makes applicable all the provisions of the Employment Security Law of North Carolina with respect to the instrumentality to the same extent and on the same terms as to all other employers. The permission granted by Congress in the 1960 amendments does not include any permission for federal instrumentalities to come within the voluntary coverage provisions of the law. These instrumentalities, of course, in order to be within coverage of the North Carolina act, must have had four or more workers in at least twenty different weeks during 1962, or some other calendar year thereafter, in order to establish liability. The instrumentalities which are affected by the amendment are: federal reserve banks, federal home loan banks, federal land banks, federal land bank associations, and federal credit unions. A list of these instrumentalities will be furnished to the field representatives.

III. Nonprofit, Charitable, Religious, and Educational Organizations

Section 96-8(6)g8 of the act was amended relating to services performed after January 1, 1962, by individuals in the employ of certain nonprofit, charitable, religious, and educational organizations. The change in the act was made to conform to the change in the Federal Unemployment Tax Act and primarily brings under coverage "feeder organizations" which are formed for the purpose of making profits

which in turn are donated to a nonprofit charitable or religious organization, or the other types of organizations of this nature which are exempted under the law.

Before the amendment to the Federal Unemployment Tax Act, services were exempted if performed by an individual in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inured to the benefit of any private shareholder or individual and no substantial part of the activities of which was carrying on propaganda, or otherwise attempting to influence legislation. The Federal Act was changed to provide that services are exempt in the employ of a religious, charitable, educational, or other organization described in Section 501(c)(3) (Internal Revenue Code, 1954) which is exempt from income taxes under Section 501(a). The organizations referred to in Section 501(c) (3) are the same organizations formerly contained in Section 3306(c)(8), which have been enumerated above. The additional requirement for exemption under the amendment is that the particular type of the organization must also be exempt from income taxes under Section 501 (a) of the Internal Revenue Code, 1954.

In bringing this additional provision for exemption into the Federal Unemployment Tax Act, it brought about the inclusion in the definition of employment services performed in the employ of "feeder organizations". A "feeder organization" is defined in Section 502 of the Internal Revenue Code as "an organization operated for the primary purpose of carrying on a trade or business for profit", and it is further provided that such organization shall not be exempt from income taxes under Section 501(a) of the Code on the ground that all its profits are payable to one or more organizations exempt from taxation under Section 501(a). The term "trade or business" shall not include the rental by an organization of its real property (including personal property leased with the real property).

The North Carolina amendment made the same changes as did the federal amendment with respect to the exemption from income taxes under Section 501(a) of the services performed by an individual in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, when no part of the net earnings of such organizations inure to the benefit of any private shareholder or individual.

Ordinarily, in applying the provisions of the new amendment effective January 1, 1962, to these particular types of services, it can be stated that in those cases where there is a separate legal entity organized for profit and which contributes such profits to one of the types of organizations referred to in Section 96-8 (6) g 8 of the North Carolina act, services performed for the separate entity are not exempted from

employment because its profits are donated to religious, charitable, educational, scientific, etc., type organizations.

It is to be noted that in order for the services to come within the exemption contained in Section 96-8(6)g8, such services must be performed for the particular type organization specifically named and, in addition, the organization must be organized exclusively for one or more of the purposes enumerated; no part of its earnings may inure to the benefit of any private shareholder or individual; and the organization must be exempt from income tax under Section 501(a) of the Internal Revenue Code. If the organization or employing unit is engaged in an unrelated trade or business, services performed for such organization would not be exempt under the law. The term "unrelated trade or business" means any trade or business whose conduct is not substantially related, apart from the need of such organization for income, to the performance by an exempt organization of its charitable, educational, or other tax-exempting functions. The term does not apply to any trade or business carried on by a college or university primarily for the convenience of its members, students, patients, officers, or employees. (United States Code Annotated, Title 26, Guide, page 83.)

Therefore, where a college or school or other exempt type organization is operating a store, barbershop, or other business as a convenience for its students, employees, officers, and members as a part of its normal operations, services performed in such businesses would not be taxable and would still fall within the exemption contained in the act. If the school or college, or other exempt type organization (except a church, convention, or association of churches) operates a business not related to its exempt functions; for instance, if a college should operate a business of some type selling merchandise and products at a location removed from its premises and such operation was not primarily for the convenience of its students, members, offices, or employees, and also operated as a commercial enterprise catering to the general public and for the purpose of making profits, the services would not come within the exemption of the law. This is true even though the profits would go to and be used for the purpose for which the exempt organization was formed. A church or convention of churches may operate an unrelated business or activity and still not be brought within coverage of the act by so doing.

Generally speaking, in the administration of the provision after January 1, 1962, relating to services performed in the employ of religious, charitable, and other type organizations named in Section 96-8(6)g8, it is felt that the only additional coverage which will result from the change will be the bringing in of any "feeder organizations" which may be operating in North Carolina.

IV. Fraternal Benefit Societies, Orders, or Associations

Prior to January 1, 1962, services performed by individuals in connection with the collection of dues or premiums for a fraternal benefit society, order, or association performed away from the home office, or its ritualistic service in connection with any such society, order, or association were specifically exempted from the definition of employment under the provisions of Section 96-8 (6) g 11. In conformance with the amendments of the Federal Unemployment Tax Act, this section of the North Carolina law was amended to provide that these types of services are only exempted prior to January 1, 1962; therefore, all such services performed on and after January 1, 1962, are employment under the provisions of the Employment Security Law.

V. Organizations Exempt from Income Tax under Section 501 (a) and Section 521 of the Internal Revenue Code

Amendments to Section 96-8(6)g were passed which added to the section certain paragraphs, the provisions of which exclude services in the employ of certain organizations exempt from income tax under the provisions of Section 501 (a) or Section 521 of the Internal Revenue Code if the remuneration for such services amounts to less than \$50 in any calendar quarter.

The organizations exempt from income tax under Section 501(a) and Section 521 of the Internal Revenue Code are:

- A. Farmers' Cooperatives – Such cooperatives are defined under the income tax law as follows: The farmers' cooperatives exempt from taxation to the extent provided in subsection (a) are farmers', fruit growers', or like associations organized and operated on a cooperative basis for the purpose of marketing the products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or for the purpose of purchasing supplies and equipment to them at actual cost, plus necessary expenses.(Section 521)
- B. Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.
- C. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

- D. Labor, agricultural, or horticultural organizations.
- E. Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- F. Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.
- G. Fraternal beneficiary societies, orders, or associations –
 - 1. Operating under the lodge system or for the exclusive benefit of the of the members of a fraternity itself operating under the lodge system, and
 - 2. Providing for the payment of life, sick, accident, or other benefits to the members of such society order, or association or their dependents.
- H. Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such associations or their dependents, if –
 - 1. No part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and
 - 2. 85 percent or more of the income consists of amounts collected from members and amounts contributed to the association by the employer of the members for the sole purpose of making such payments and meeting expenses.
- I. Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if –
 - 1. Admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and
 - 2. No part of the net earnings of such association inures (other than through such payment) to the benefit of any private shareholder or individual.
- J. Teachers' retirement fund associations of a purely local character, if –

1. No part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and
 2. The income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.
- K. Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.
- L. Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- M. Credit unions without capital stock organized and operated for mutual purposes and without profit; and corporations or associations without capital stock organized before September 1, 1951, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—
1. Domestic building and loan associations.
 2. Cooperative banks without capital stock organized and operated for mutual purposes and without profit, or
 3. Mutual savings banks not having capital stock represented by shares.
- N. Mutual insurance companies or associations other than life or marine (including inter insurers and reciprocal underwriters) if the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) does not exceed \$75,000.

It is important to keep in mind that services performed for the type of organizations hereinbefore listed are only excluded in any calendar quarter if the remuneration for such services is less than \$50. If the remuneration for the services of the individual during any calendar quarter is \$50 or more, all the services of the individual are

included in employment during the quarter unless the organization is one which is specifically exempted by some provision of our act.

VI. Exempt Services Performed by Students

The law now provides, as a result of the 1960 amendment to the Federal Unemployment Tax Act, to which we conform, that services performed by a student who is enrolled and regularly attending classes at a school, college, or university are exempted if such student performs the services in the employ of the school, college, or university at which he is regularly attending classes.

It may be that in some instances it will be difficult for us to interpret the provisions of the income tax laws in order to administer the new provisions of our statute which have been enacted. The above information probably does not cover all situations brought about by the changes in the law, and it may become necessary later to furnish additional information concerning these changes. If this is found to be advisable and necessary, further steps will be taken to give any additional information which comes to our attention in this matter. In some instances, we may have to ask the cooperation of the federal Internal Revenue Bureau with respect to interpreting the provisions relating to income taxes. We feel that we shall be able to get the cooperation of this agency if we find it necessary.

Adopted as an official Interpretation of the Commission on January 16, 1962.