

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

Interoffice Communication

Date: February 28, 1992
TO: Holders of Interpretation Manual
FROM: T. S. Whitaker, Chief Counsel
SUBJECT: Interpretation No. 269

In accordance with Interpretation No. 252, the attached Interpretation No. 269 has been adopted as an official interpretation by the Commission and shall be distributed to all holders of the Interpretation. Also attached is a current index.

You also should make a pen and ink correction to Interpretation No. 265 "Authority to Reconsider State UI Claims" to make it Interpretation No. 266.

Any questions about this Interpretation should be directed to the office of the Chief Counsel at (919) 733-4636.

Attachments.

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 269

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Who May Appeal and/or Protest an Unemployment Tax Rate Assignment, an Unemployment Tax Assessment and Demand for Payment, or an Employer's Status and/or Liability

The Tax Department of the Unemployment Insurance Division has asked who may appeal an Unemployment Tax Rate Assignment, an Unemployment Tax Assessment and Demand for Payment, or an employer's status and/or liability.

An appeal or protest of an Unemployment Tax Assessment and Demand for Payment, an Unemployment Tax Rate Assignment, or an employer's status and/or liability pursuant to N.C.G.S. 96-4(m) must be made in writing by the following appropriate individual. For a sole proprietorship, the sole proprietor must enter the appeal or protest. For a partnership, any partner may enter the appeal or protest. For a corporation, a corporate officer may enter the appeal or protest. An employee of a corporation may appeal for the corporation provided the employee shows that he has been delegated the authority by the corporate officers or the Board of Directors. Proof of such delegation would be a copy of the minutes so delegating, an affidavit, or some other document equally worthy of proof. The appeal or protest from this employee shall be accepted contingent upon the corporation providing the proper proof. An appeal or protest may be entered for any entity by an attorney representing the entity. An appeal or protest may be entered by a non-attorney who is supervised by an attorney pursuant to N.C.G.S. 96-17(b). The attorney who supervises a non-attorney must provide written verification of this supervision with each appeal or protest.

The authority granted by a power of attorney is governed by N.C.G.S. 32A-2(12). If the power of attorney grants the power to act in tax matters generally without restriction, the individual or corporation holding the power of attorney may prepare, execute, verify, and file in the name of the principal and on behalf of the principal any and all types of tax returns or amended returns. It may file reports and applications for corrections. Also, said individual or corporation may obtain an attorney to institute and carry on any proceeding that would constitute a "legal proceeding". It has no authority to institute or carry on such proceeding without an attorney.

A semantics problem has evolved from the Commission interchangeably using the terms appeal, protest, appeal and request for a hearing, and protest and request for a hearing. If an individual or corporation with a power of attorney enters a document that is labeled or uses the words appeal, protest, appeal and request for a hearing, or protest and request for a hearing, it should be accepted and acknowledged as a request for information to which a response is made. Therefore, any documents so labeled shall not be treated as an appeal or protest that would lead to a hearing and will not toll the running of the time to enter an appeal or protest that will lead to the hearing. The individual or corporation filing said document shall be so notified. However, it should be treated as an inquiry concerning the tax rate, tax assessment, status, or liability to which a reply is to be made. If any error is found, the correction shall be made.

Adopted as an official Interpretation by the Commission on February 28, 1992.