

UNEMPLOYMENT COMPENSATION COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 49

Opinion of Attorney General

January 25, 1944

SUBJECT: Unemployment Compensation Law; Effect of Docketing Judgment for Contributions; Refunds

Receipt is acknowledged of your letter of January 21, in which you advise that you have a case pending in which it develops you assessed contributions against an employer upon his failure to pay within the time prescribed by the statute. You docketed a summary judgment and issued execution which was collected by the sheriff, together with interest, a remittance of which was made to you by the sheriff. You advise further that, thereafter, this judgment was canceled and later, after a hearing, in an examination of the payroll records of the employer for the same period involved in that for which the assessment had theretofore been made, it was ascertained that the employer was indebted for contributions in a sum in excess of that for which the original assessment was made, and that the assessment was thereupon made for the total amount ascertained in the second instance, which amount was later paid by the employer in full.

You further advise that the question arises as to which amount should be refunded, the latter amount which was collected not by a judgment, but which is the correct amount, or the amount collected by the judgment.

Your question involves a consideration of the provisions of the Unemployment Compensation Act found in G.S. 96-10(b), authorizing a summary judgment in cases of this kind where the contributions remain unpaid.

In the instant case, the Commission would have authority under G.S. 96-10(e) to make a refund of the excess payment made by the employer; that is to say, the sum above that which was actually due by the employer. This would not, in my opinion, amount in any sense to setting aside the judgment which was placed on record under the provisions of the statute. The refund should be made in accordance with the provisions of the section referred to and no question of fraud whatever would enter into this, and, in my opinion, the question of fraud would not affect this repayment in any way. The other case to which you refer would be guided by the same consideration. If there is fraud in any case, the penalties would be those prescribed by G.S. 96-18.

The docketing of a judgment under the provisions of the statute is not considered by me as amounting to a judicial determination of the amount of the contributions which would preclude the Commission or the employer from properly raising a question as to the amount, in the event of under assessment or over assessment. If the Commission later found that the amount as certified and assessed was less than the amount due, upon proper notice to the employer, the additional sum might be assessed. If the assessment was overstated, the employer would have a right to pay it under protest and have the claim reduced by the Commission if the Commission found that the payment was excessive. The provisions of the statute permitting the docketing of the claim as a judgment amounts to no more than providing an expeditious remedy for collection of a contribution which may be properly due.