

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-398
SENATE BILL 974

AN ACT TO AUTHORIZE THE EMPLOYMENT SECURITY COMMISSION TO WAIVE INTEREST ON LATE CONTRIBUTIONS, TO MODIFY THE CALCULATION AND COLLECTION OF UNEMPLOYMENT INSURANCE TAXES, AND TO GIVE FLEXIBILITY TO THE EMPLOYMENT SECURITY COMMISSION IN SCHEDULING WHEN CLAIMANTS MUST REPORT TO THE LOCAL COMMISSION OFFICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-10(j) reads as rewritten:

"(j) Waiver of Interest and Penalties. – The Commission may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The Commission ~~shall have the power to~~ may reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

- (1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;
- (2) Destruction of the employer's place of business or business records by fire or other casualty;
- (3) Failure of the Commission to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;
- (4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Commission upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;

- (5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
- (6) Other circumstances where, in the opinion of the Chairman, the Assistant Administrator, or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the Chairman, the Assistant Administrator, or their designees, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

~~Such waiver~~ The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the Commission. The reason for any ~~such~~ reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

Section 2. G.S. 96-10(a) reads as rewritten:

"(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate of ~~one half of one percent (0.5%)~~ set under G.S. 105-241.1(i) per month from and after ~~such~~ that date until payment plus accrued interest is received by the Commission. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added, but ~~said~~ that penalty shall in no event be less than five dollars (\$5.00). Penalties and interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Commission, ~~which~~ and the contributions were legally payable to this State, ~~such~~ the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of ~~such~~ the other state or the United States."

Section 3. G.S. 96-10(i) reads as rewritten:

"(i) ~~No~~ Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this ~~chapter~~ Chapter after five years from the date on which ~~such~~ the contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which ~~such~~ the suit or proceeding is ~~instituted; provided, that this~~ instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter: Provided, further, that a Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the chairman of the Commission directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by ~~registered~~ certified mail to the last known address of the employing ~~unit:~~ unit. The order shall be deemed to ~~Provided, further, that the order mentioned herein~~ unit.

have been issued on the date ~~such~~ the order is mailed by ~~registered~~ certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Commission is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed."

Section 4. G.S. 96-9(b)(2) reads as rewritten:

"(2) Experience Rating. –

- a. **Waiting Period for Rate Reduction.** – No employer's contribution rate shall be reduced below the standard rate for any calendar year until its account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters pursuant to G.S. 96-9(a).
- b. **Credit Ratio.** – The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.
- c. **Debit Ratio.** – The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all its contributions paid and credited for all past periods in accordance with G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to its account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of

all benefits charged to the account of the employer for such periods is the employer's debit balance.

- d. ~~Other Provisions. – For purposes of this subsection, the first date on which an account shall be chargeable with benefits shall be the first date with respect to which a benefit year as defined in G.S. 96-8 can be established, based in whole or in part on wages paid by that employer.~~

No employer's contribution rate shall be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements of that schedule used in computing rates for the following calendar year, unless the employer's liability was established under G.S. 96-8(5)b and its predecessor's account was transferred as provided by G.S. 96-9(c)(4)a.

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the Commission shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith."

Section 5. G.S. 96-13(a) reads as rewritten:

"(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that –

- (1) The individual has registered for work at and thereafter has continued to report at an employment office as directed by the Commission at regular intervals ~~no more than four of~~ not less than three weeks and not more than six weeks apart and in accordance with such regulations as the Commission may prescribe;
- (2) He has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);
- (3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time

employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:

1. a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;
 - b. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and
 - c. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,
 2. Such approval is required for the Commission to receive the benefits of federal law.
- (4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.
- (5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services."

Section 6. Section 2 of this act becomes effective January 1, 1998, and applies to contributions due on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 1:58 p.m. this 14th day of August, 1997