

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA  
RALEIGH, NORTH CAROLINA

**INTERPRETATION NO. 153**

TO: R. F. Martin, Director

FROM: W. D. Holoman, Chief Counsel

RE: Interpretation of the Employment Security Law of North Carolina, Section 96-8(6)(b) (formerly Section 96-8(f)(2)) Successor—Section 96-9(c)(4)b (formerly Section 96-9(c)(4)(B)) Rate of Successor—Section 96-11(a) (No Change) Effective Date of Liability

Several questions have been raised recently in respect to (1) the successor clause, (2) the rate of the successor who becomes an employer solely by virtue of being a successor, (3) the effective date of liability, and (4) the rate of the successor who, subsequent to the date of acquisition and the assignment of the predecessor's rate, becomes liable by reason of any other provision under Chapter 96 of the Employment Security Law.

Interpretation No. 82 – Supplement 2 deals with this subject, but it does not deal with the rates to be assigned; consequently, this Interpretation cancels and replaces Interpretation No. 82 – Supplement 2.

When liability as a successor is established under Section 96-8 (6) b, the section dealing with successor ship, and liability is predicated solely upon the provisions of Section 96-8(6)b, then the date of liability is the date of acquisition. If the successor employer was an employer subject to the Employment Security Law prior to the date of the acquisition of the business, his rate, of course, for the period from such date until the end of the then current contribution year will be the same as his rate which was in effect on the date of such acquisition.

If the successor was not an employer prior to the date of the acquisition of the business, he shall be assigned the standard rate of contributions as provided for in Section 96-9(c)(4) b for the remainder of the year in which he acquired the business of the predecessor. If such successor, however, makes an application for the transfer of the account of the predecessor within sixty days after the notification by the Commission of his right to do so and the account is transferred, he shall be assigned, for the remainder of such year, the rate applicable to the predecessor employer, or employers, on the date of the acquisition of the business, provided there was only one predecessor or if more than one and the predecessors had identical rates. In the event the rates of the predecessors were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of the

acquisition of the business. This is so by reason of the provisions under Section 96-9(c)(4) b of the Employment Security Law.

Reference is again made to Section 96-8(6)b which is the section dealing with successor ship. I quote from that section as follows:

“\* \* \* The provisions of § 96-11(a), to the contrary notwithstanding, any employing unit which becomes an employer solely by virtue of the provisions of this paragraph shall not be liable for contributions based on wages paid or payable to individuals with respect to employment performed by such individuals for such employing unit prior to the date of acquisition of the organization, trade, business, or a part thereof as specified herein, or substantially all the assets of another, which at the time of such acquisition was an employer subject to this chapter. This provision shall not be applicable with respect to any employing unit which is an employer by reason of any other provision of this chapter. \*

\* \* (Underscoring ours)

Particular attention should be called to the word “solely” as used in the above-quoted section, and in particular to the underscored sentence.

The acquiring employing unit, which has no employees prior to the acquisition of a covered business, and which becomes an employer solely because of the acquisition of the business, or a part thereof, of the predecessor covered employer, and which acquires the account of the predecessor effective as of the date of the transfer of the business, will take the rate of the predecessor employer for the remainder of the year, Section 96-9(c)(4) b of the law. The successor employer becomes an employer solely because of the acquisition of the business, or a part thereof, as provided for in Section 96-8(6)b. If thereafter, during the remainder of the calendar year, such successor employer becomes an employer by reason of any other section of the law, the rate of the predecessor will still be applicable for the remainder of such year.

Consider the acquiring employing unit, not an employer, which has less than the requisite number of individuals in employment to cause it to be liable, which acquires the business, or a part thereof, of a covered employer as provided for in Section 96-8(6) b. If, after such acquisition, upon combining the employment records of the predecessor and the successor employers, and treating them as a single employing unit, it is shown that there are not a sufficient number of employees during the calendar year to cause liability under Section 96-(6)b of the law, or if the employing unit does not become liable by reason of any other provision of the law during such year, such successor employer would be assigned the predecessor’s rate for the remainder of the year after the transfer of the predecessor’s account. If such successor does not apply for the predecessor’s rate, the standard rate will be

applicable. In a case of this nature the liability of the successor is based solely upon the acquisition of the business of the predecessor.

Irrespective of the fact that a successor employer may have been assigned the rate of the predecessor employer at any time during the calendar year, if it appears that the combined employment records of both the predecessor and the successor are sufficient at any time during the calendar year to cause liability, the liability date of the successor will be January 1 of that year by reason of Section 96-11(a) of the law, or the date on which the successor first had individuals in employment in that year; consequently, the successor does not become liable "solely" by reason of succession.

The successor would, therefore, in a case such as described in the preceding paragraph, be assigned the standard rate from January 1 of such year until the date that it acquired the business. Thereafter, for the remainder of the year the rate of the predecessor would be the applicable rate.

In summarizing, a successor which is not an employer on the date of the acquisition of the business of the predecessor and which has the account of the predecessor transferred to it, shall be assigned the rate of the predecessor effective on the date of the acquisition of the business, and such rate shall remain in effect for the remainder of that year. If the successor at any time during the year becomes liable by reason of any other provision of the law, the standard rate is assigned to be effective from January 1 until the effective date of the transfer of the account. Thereafter, for the remainder of the year, the predecessor's rate will be in effect. In the event the successor does not make application for the transfer of the predecessor's account within sixty days after notification by the Commission of its right to have such account transferred, the successor's rate for the entire year will be the standard rate.

Adopted as an official Interpretation of the Commission on June 9, 1959.

This Interpretation cancels and replaces Interpretation No. 82 – Supplement No. 2, adopted August 30, 1949.