

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA  
RALEIGH, NORTH CAROLINA

Interpretation No. 173

TO: R. F. Martin, Director

FROM: W. D. Holoman, Chief Counsel

SUBJECT: Interpretation - General Statutes Section 148-33.1 - Prisoners Employed under Work Release Plan - in Employment

You have inquired whether wages paid to certain prison labor employed by "A" Construction Company of Charlotte are taxable and if the prisoners can draw benefits after they are released.

Prisoners as described can only be employed by private industry or private individuals under the so-called work release plan. Section 148-33.1., subsections (e), (f), (g), and (h) of the General Statutes read as follows:

"(e) The State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons.

"(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Prison Department their earnings less standard payroll deductions required by Law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Prison Department shall cause to be paid through the county department of public welfare such part of the balance as is needed for the support of the prisoner's dependents. Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The State Board of Public Welfare is authorized to promulgate uniform rules and regulations governing the duties of county welfare departments under this section.

"(g) No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system while working in the free community or going to or from such employment.

"(h) Any prisoner employed under the provisions of this section shall not be entitled to any benefits under Chapter 96 of the General Statutes entitled 'Employment Security' during the term of the sentence." (1957, c.540)

The prisoners involved are performing services for remuneration. Therefore, the amounts paid to the prisoners are taxable if the base periods covered by such payments have not expired when the prisoner is released, or to state it differently, if the prisoner has a base period still in effect and becomes unemployed and eligible for benefits after his release, he would be entitled to benefits.

Note specifically that subsection (h) provides that any prisoner employed under the provisions of this section; namely, 143.33.1, shall not be entitled to any benefits under Chapter 96 of the General Statutes, the Employment Security Law, during the term of the sentence.

Adopted as an official Interpretation of the Commission on June 12, 1962.