

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 237

TO: R. F. Martin, Director

FROM: D. G. Ball, Chief Counsel

RE: Interpretation of Sections 96-11(c)(1) and 96-10(i) of the Employment Security Law of North Carolina – Request by Employer X Held Liable under the Federal Unemployment Tax Act for Eight Years That He Be Allowed to Volunteer Coverage under the Employment Security Law for All Eight Years in Order to Get Tax Credit Beyond the Five-Year Statute of Limitations

Employer X has had four employees for 20 weeks or more in each year since 1964. It was first “discovered” in 1972 that he was liable. Under the Federal Unemployment Tax Act, the Internal Revenue Service is going back eight years, 1964 through 1971. X had no employees whose services did not constitute employment as defined by the act. X desires to pay the Commission the tax for the years 1964 through 1971 so that he can get credit from the Internal Revenue Service for all eight years. To do this, it is his desire to volunteer coverage for the years 1964, 1965, 1966.

We are constrained to say that employer X cannot volunteer coverage under G.S. 96-11(c)(1) because this statute provides in part that any employing unit not otherwise subject to this chapter may elect coverage. Since the employer was “otherwise subject to this chapter, “he cannot make a voluntary election. Therefore, Regulation 1.213 relative to voluntary elector would not be applicable with respect to an effective date.

By way of observation, G.S. 96-10(i) is a 5-year statute of limitations with respect to the collection of unpaid contributions or establishment of liability. This section provides that no suit or proceeding for the purpose of establishing liability may be begun with respect to any period occurring more than five years prior to the first day of January of the year in which such suit or proceeding is instituted, in the absence of fraud.

The statute further provides that a proceeding shall have been instituted or begun upon the date of issuance of an order by the Chairman or upon the date that notice and demand for payment is mailed. In interpreting a statute, we look to the intent of the Legislature. We think that the intent was to bar the Commission from any action toward establishing liability or collecting contributions after five years as the case may be.

When employer X has been liable for eight years, if such fact had not been brought to light, it is our thinking that we should not go beyond the 5-year limit with respect to establishing liability or for collecting contributions.

We do not think that X could volunteer coverage and pay the tax for the three years prior to the 5-year limit and have such tax applied for the purpose of getting tax credit under the Federal Unemployment Tax Act. However, it could make a voluntary contribution under G.S. 96-9(5)(2)g., but such contribution could not be designated as payment for any particular period.

Adopted as an official Interpretation of the Commission on February 15, 1972.
Cancels and replaces Interpretation No. 236, adopted January 25, 1972.