

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 239

TO: R. F. Martin, Director

FROM: D. G. Ball, Chief Counsel

RE: Interpretation of Section 96-10(b)(1) of the Employment Security Law of North Carolina - Collection of Contributions Where Employer Does Not Protest or Request a Hearing Within Apt Time

As a result of an investigation by a Field Representative, we administratively held X liable. We notified him by letter on December 20, 1971, that he was liable effective January 1, 1969. On December 31, 1971, we issued a Notice and Demand for Payment of contributions due for 1969 and 1970, which was received by X on January 3, 1972. Expiration date was January 10, 1972. On February 2, 1972, we received a letter from X protesting the tax assessment and requesting a hearing.

Form NCUI 649, Notice and Demand for Payment, sets out that unless a protest in writing or request for hearing is made within 10 days, the assessment shall become final and the Commission will docket a certificate in the office of the Clerk of Superior Court in the county in which X carries on business operations. Not having heard from the employer, we did docket a judgment on January 13, 1972.

G.S. 96-10(b)(1) provides in part that if any contribution imposed by this chapter, or any portion thereof, and/or penalties duly provided for the non-payment thereof, shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Commission, under the hand of its chairman, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Commission has reason to believe such delinquent has property located. Such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court.

Contributions in this case were first due and payable on July 31, 1969. The employer was given notice that he could protest the tax assessment and have a hearing to determine his status. Upon his failure we docketed a judgment covering 1969 and 1970 based upon an administrative determination which was not protested in apt time. The certificate so docketed by statute has the same force and effect as a judgment rendered by the Superior Court. Because of the procedure in cases of this

nature as set out in the statute, this matter has become final as to the status of the employer during 1969 and 1970.

The employer feels that one of the persons administratively determined by the Commission to be an employee is actually an independent contractor and should not be considered; therefore, he desires a hearing to determine his status. Since the certificate or judgment covers the employer's operations for 1969 and 1970 only, there is a possibility that the status of the individual in question has changed since that time.

When we get a case of this kind in the future, it is suggested that we inform the employer that the matter is final with respect to the years or periods covered by the judgment, but that we will afford him an opportunity for a hearing on future periods or years if he will make his wishes known.

Adopted as an official Interpretation of the Commission on February 22, 1972.