

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

October 15, 1991

TO: Holders of Interpretation Manual

FROM: Ann Q. Duncan, Chairman

SUBJECT: Interpretation No. 268

In accordance with Interpretation No. 252, the attached Interpretation No. 268 has been adopted as an official Interpretation by the Employment Security Commission and shall be distributed to all holders of the Interpretation.

Interpretation No. 265 issued March 1, 1991 is renumbered as Interpretation No. 266. Please make the appropriate changes on your copy.

Any questions about this Interpretation should be directed to the office of the Chief Counsel at (919) 733-4636.

Attachment.

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 268

TO: Employment Security Commission
FROM: T. S. Whitaker, Chief Counsel
SUBJECT: Extended Benefits Charging of Benefits
REQUESTED BY: Preston L. Johnson, Director Unemployment Insurance Division

QUESTION:

- (1) Does Section 96-9(c)(2)b apply to the state portion of the extended benefits paid?
- (2) Does Section 96-9(c)(2)a apply to the state portion of the extended benefits paid?

CONCLUSION:

- (1) Yes.
- (2) Yes.

N.C.G.S. § 96-12 (e)G, in pertinent part, provides as follows:

On or after January 1, 1978, the federal portion of any extended benefits shall not be charged to the account of any employer who pays taxes as required by this Chapter but the State portion of such extended benefits shall be charged to the account of such employer. All state portions of the extended benefits paid shall be charged to the account of governmental entities or other employers not liable for FUTA taxes who are the base period employers. (Emphasis added.)

This provision mandates the charging of the State portion of extended benefits to experienced rated and reimbursement base period employers. It does not define what charging method or scheme the State should use to allocate the extended benefits payments to the amounts of the base period employers. Furthermore, it does not, expressly or impliedly, limit the applicability of any provision of G.S. § 96-9(c)(2).

The above provision is consistent with the Federal Unemployment Tax Act (FUTA) 26 U.S.C. 3301-3311, and Federal Regulations. Regulation 20 CFR 615.10(a) reads as follows:

(a) Charging contributing employers. Section 3303(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(a)(1)), does not require that Extended Benefits paid to an individual be charged to the experience rating accounts of employers. A State law may, however, consistently with Section 3303(a)(1), require the charging of Extended Benefits paid to an individual, and if it does, it may provide for charging all or any portion of such compensation paid. Shareable regular compensation must be charged as all other regular compensation is charged under the State law.

Accordingly, North Carolina has the right to choose whether or not to charge extended benefits to employers' unemployment insurance tax accounts.

The North Carolina General Assembly has provided a standard statutory scheme for charging benefit payments. That scheme is set forth in G.S. § 96-9(c)(2)a which provides as follows:

Benefits paid shall be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as hereinafter provided in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c, and 96-12(e)G. The amount so allocated shall be multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid shall be charged to the employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

This subsection contains no language from which it may be concluded that the charging method or scheme set forth therein is limited to the charging of regular benefit payments, and not applicable to extended benefit payments. The "except as hereinafter provided in . . . 6-12(e)G" language is included to exclude from the definition of "benefits paid" the federal portion of extended benefits which "shall not be charged to the account of any employer who pay taxes as required by this chapter . . ." G.S. S96-12(e)G. This is a reasonable interpretation of this "except" language because all other statutory provisions referenced provide for the "non-charging" or exclusion of specific benefit payments.

For extended benefit payments made prior to January 1, 1978, the Legislature specifically stated that G.S. § 96-9(c)(2)b was not to be applied to the charging of

extended benefit payment. No such language is contained in the pertinent part of G.S. § 96-12(e)G, as set out above, which addresses extended benefit payments made after January 1, 1978. By its specific language, G.S. § 96-9(c)(2)a makes G.S. § 96-9(c)(2)b applicable to the charging of benefit payments. In view of the exclusionary language used by the Legislature as to extended benefit payments made prior to January 1, 1978, it is reasonable to assume, and it is concluded, that the inapplicability of G.S. § 96-9(c)(2)b must be specifically stated in order for it not to be applied to the charging of any benefit payments.

In sum, the statutory charging scheme of benefit payments set forth in G.S. § 96-9(c)(2), paragraphs a and b included, is applicable to the charging of the State portion of extended benefits to the accounts of base period employers.

Adopted as an official Interpretation by the Commission on October 14, 1991.