

Office of the Attorney General
State of North Dakota

Opinion No. 81-132

Date Issued: December 15, 1981

Requested by: Shirley Peterson
Executive Director
Job Service North Dakota

--QUESTIONS PRESENTED--

I.

Whether Section 52-04-14 of the North Dakota Century Code authorizes Job Service to refund excess contributions to employers at the end of the 1981 contribution year which were paid as a result of contribution rates incorrectly assessed by the agency higher than they should have been for the year 1981.

II.

Whether at the present time Job Service has the authority to redetermine and reassess contribution rates which were incorrectly assessed by the agency lower than they should have been for the year 1981.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that Section 52-04-14, N.D.C.C., authorizes Job Service to refund excess contributions to employers at the end of the 1981 contribution year which were paid as a result of contribution rates incorrectly assessed by the agency higher than they should have been for the year 1981.

II.

It is my further opinion that at the present time Job Service does not have the authority to redetermine and reassess contribution rates which were incorrectly assessed by the agency lower than they should have been for the year 1981.

--ANALYSIS--

I.

Section 52-04-14, N.D.C.C., provides that upon application by the employer or upon the bureau's own initiative an adjustment with respect to subsequent contributions or a refund may be made with respect to contributions or interest which the bureau determines to have been collected erroneously. The adjustment or refund may be made within three years after the contributions or interest has been paid. Contributions or interest paid as a result of the incorrect, high assessment would fall within the category of being 'collected erroneously.' Since 1981 rates are involved, the refund could be made at the end of the 1981 contribution year because it is the three year period specified in the statute.

II.

Section 52-04-10, N.D.C.C., requires the bureau to notify each employer of his contribution rate for 1981 not later than March 31, 1981. This statute does provide for redetermination of a contribution rate only if an employer appeals his rate within 15 days after notification and the appeal is successful. However, the North Dakota Unemployment Compensation Law does not address the subject of redetermination of contribution rates which have been incorrectly assessed lower than they should have been. It is significant to note that the benefits portion of the North Dakota Unemployment Compensation Law, found at Chapter 52-06, N.D.C.C., does contain a provision at Section 52-06-16, N.D.C.C., which authorizes redeterminations on claims for benefits within one year if an error in computation occurs. On the other hand, the contributions portion of the North Dakota Unemployment Compensation Law, found at Chapter 52-04, N.D.C.C., does not contain a comparable provision with respect to redetermination of contribution rates. Therefore, the bureau does not have statutory authority to redetermine 1981 contribution rates at this time which were incorrectly assessed lower than they should have been.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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