

LETTER OPINION
94-L-107

April 15, 1994

Scott Delmore
Workers Compensation Bureau
500 East Front Avenue
Bismarck, ND 58504-5685

Dear Mr. Delmore:

Thank you for your letter concerning the calculation of interest and penalties assessed under N.D.C.C. ? 65-04-23. Specifically, you ask whether the Workers Compensation Bureau (Bureau) may compound the interest and penalty provisions assessed under N.D.C.C. ? 65-04-23 and, secondly, whether the Bureau may apply a partial payment to first discharge penalties and interest due with any surplus applied to discharge the premium.

N.D.C.C. ? 65-04-23 provides that "[w]henver any employer defaults in the payment of any premium, . . . the employer at the time of default is subject to a penalty of twenty-five dollars plus two percent of the amount in default, and beginning one month after default, a penalty of two percent of the amount in default for each month or fraction of a month the obligation remains unpaid."

"In interpreting a statute, words must be given their plain, ordinary and commonly understood meaning, and consideration should be given to the ordinary sense of statutory words, the context in which they are used, and the purpose which prompted their enactment." Coldwell Banker - First Realty, Inc. v. Meide & Son, Inc., 422 N.W.2d 375, 379 (N.D. 1988).

"The general rule is that in the absence of contract or a statute, compensation in the form of compound interest is not allowed to be computed on a debt." Cherokee Nation v. United States, 270 U.S. 476 (1926). Thus, the issue is whether N.D.C.C. ? 65-04-23 provides for the compounding of interest and

Scott Delmore
April 15, 1994
Page 2

penalties. The ordinary sense of the words used in N.D.C.C. ? 65-04-23, specifically the statement that the two percent penalty is imposed on the "amount in default" indicates that the two percent penalty assessed under that statute should be calculated on the basis of simple interest. It would be incongruous to assign different meanings to the term "amount in default" when that term is repeated in the same sentence of the statute. This interpretation is consistent with the legislative history of N.D.C.C. ? 65-04-23. See Hearings on H. 1479 Before the Senate Industry, Business, and Labor Senate Comm., March 1, 1983 (Statement of Rep. Sanstead) ("If [an] employer defaults in the payment of any premium, or any installment of the premium he is subject to a penalty of twenty-five dollars plus two percent of the amount in default and plus two percent simple interest, on the amount in default, per month or fraction of a month.") This interpretation is also consistent with the prohibition of compounding interest in contracts under N.D.C.C. ? 47-14-09 and the calculation of interest provided under N.D.C.C. ?? 28-20-34 (simple interest on judgments), 52-04-11 (simple interest on unpaid unemployment compensation contributions), 26.1-03-17 (delinquent premium taxes), 26.1-20.1-07 (finance charges of insurance premium finance companies), and 26.1-22-15 (late premiums or assessments under the State Fire and Tornado Fund).

The second part to your inquiry is whether the Bureau may first apply a partial payment to discharge interest and penalty due and then apply the surplus, if any, to discharge the premium.

The general rule concerning partial payments, commonly "known as the 'United States Rule,' is to apply the payments in the first place to the discharge of the interest then due; if a payment exceeds the interest then due, the surplus goes toward discharging the principal, and interest is to be computed thereafter on the balance of the principal; if the payment is less than the interest, the surplus of interest must not be taken to augment the principal, but interest

Scott Delmore
April 15, 1994
Page 3

continues on the former principal until the payments, taken together, exceed the interest due, and then the surplus is to be applied toward discharging the principal, and interest is to be computed on the balance of the principal as before." 47 C.J.S. Interest & Usury, ? 74. A number of jurisdictions use the United States Rule in the absence of agreement or statute to the contrary. See State ex rel. Beck v. Associates Discount Corp., 96 N.W.2d 55, 60 (Neb. 1959), modified, rehearing denied, 97 N.W.2d 583 (Neb. 1959) ("In the absence of any statute or provision in a contract providing for the method of applying payments, the rule is that interest on a judgment or a debt due is computed up to the time of first payment, and the payment so made is first applied to discharge the interest and, afterwards, if there be a surplus, such surplus is applied to sink the principal."); Estreen v. Bluhm, 255 N.W.2d 473, 483 (Wis. 1977) ("Such a partial payment is first applied to discharge the interest then due, and any surplus goes to discharge principal; interest thereafter is computed on the remaining balance."); Southern Natural Gas Co. v. Pursue Energy, 781 F.2d 1079, 1088 (5th Cir. 1986) ("[P]artial payments, if any, should be applied first to the interest accrued . . . to the date the partial payment was received and then to the principal amount owing on the debt.")

Consistent with the United States Rule, it is my opinion that the Bureau may, upon receipt of a partial payment on a delinquent account, apply the payment to discharge penalties and interest due and then apply any surplus to discharge the amount of the delinquent premium.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

dec\jfl