

Date Issued: June 3, 1981 (AGO 81-53)

Requested by: Executive Director of Job Service North Dakota
(Originally requested by Therman Kaldahl, but issued to Shirley Peterson, his successor)

- QUESTION PRESENTED -

Whether the method of benefit financing set forth in subdivision b of subsections 1 and 2 of section 52-04-19.1 of the North Dakota Century Code as amended in 1981 is a reimbursable method of financing which would allow for a refund to employers of excess contributions over benefit costs.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the provisions of subdivision b of subsections 1 and 2 of section 52-04-19.1, N.D.C.C., as amended in 1981, set forth a reimbursable method of financing which allow for a refund to employers of excess contributions over benefit costs.

- ANALYSIS -

The provisions of subdivision b of subsections 1 and 2 of section 52-04-19.1, N.D.C.C., set forth a method of unemployment benefit financing available to the State of North Dakota and to political subdivisions. This method of benefit financing provides for payment by the employer of quarterly contributions in the amount of one percent of total quarterly payroll for 1978 and 1979. For each two-year period after 1979 the contribution rate is determined by Job Service North Dakota based upon the actual claim experience of the employer, with Job Service having the authority to modify the rate in order to minimize excess or insufficient payments made in prior periods.

There are two methods of employer payments. One is the "contribution" or "tax-rated" method. The other is the "reimbursable" method. Subdivision b of subsections 1 and 2 of section 52-04-19.1, N.D.C.C., makes reference to "payment in lieu of contributions." Prior to the 1981 amendments it would appear that the method of financing set forth is a "contribution" or "tax-rated" method. However, the 1981 amendments adding the words "in lieu" clearly make this a reimbursable method.

Employers covered under section 52-04-19.1(4), N.D.C.C., can make the elections and changes in the method of financing provided for in section 52-04-18, N.D.C.C. One of the elections in the method of financing provides an alternative method of reimbursement payments which is similar to the "payment in lieu of contributions" method available to North Dakota governmental employers.

Under section 52-04-18(2)(b)(2)(c), N.D.C.C., Job Service is authorized to bill nonprofit organizations on a quarterly basis for such percentage of its total payroll as Job Service determines. If Job Service were to fix the initial billing at one percent under this

subparagraph, then the result would be exactly the same as that obtained under subdivision b of subsections 1 and 2 of section 52-04-19.1, N.D.C.C. In addition, Job Service is authorized to subsequently modify the quarterly percentage in order to minimize excess or insufficient payments.

Section 52-04-18(2)(b)(4), N.D.C.C., authorizes Job Service to refund to nonprofit organizations any excess payments over benefit costs at the end of each taxable year. Consequently, refund of excess payments over benefit costs may also be made to employers under section 52-04-19.1, N.D.C.C., since subsection 4 of that section specifically provides that changes in the method of financing provided for in section 52-04-18, N.D.C.C., shall be applicable to employers under section 52-04-19.1, N.D.C.C.

- 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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