



THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 29, 1948

Hon. Harry Bengé Crozier, Chairman
Texas Employment Commission
Austin, Texas

Opinion No. V-620

Re: The authority of the Texas Employment Commission to grant a refund of taxes voluntarily paid, upon a finding that an incorrect rate of tax was paid.

Dear Mr. Crozier:

We refer to your letter wherein you request the opinion of this office concerning whether the Texas Employment Commission has the power, right or authority to grant under Article 5221b-12(j), V. C. S., (now Article 5221b-12(j) (1), V. C. S.) a refund of unemployment compensation taxes as applied for by Consolidated Steel Corporation.

As to the circumstances surrounding this application for a refund, we quote from your letter as follows:

"The Consolidated Steel Corporation was assessed by this Commission unemployment compensation taxes for the year of 1944 at a rate of 2.7%. The Corporation voluntarily paid the taxes for the first quarter of this year at the rate of 2.7%. At a later date and during the second quarter of 1944, the Corporation decided that its rate for 1944 should be 0.5% instead of 2.7% and paid its taxes for the second quarter of 1944 at the rate of 2.7%, but under protest, claiming the correct rate at which it should pay its taxes for 1944 was 0.5%. Such was likewise

the procedure it followed for the taxes that accrued during the third and fourth quarters of 1944.

"Suit was instituted under Article 7057b for the recovery of the taxes paid under protest for the second, third and fourth quarters of 1944. . . . "

"Consolidated Steel Corporation prevailed in the suit brought for the recovery of the taxes paid under protest for the second, third and fourth quarters of 1944. Now the Corporation comes before this Commission and seeks a refund under Article 5221b-12(j) of the taxes voluntarily paid for the first quarter of 1944 in excess of a computation at the rate of 0.5% "

The Texas Employment Commission is given the authority to make refunds by Article 5221b-12 (j) (1), which reads:

"Where any employing unit has made a payment to the Commission of contributions alleged to be due, and it is later determined that such contributions were not due, in whole or in part, the employing unit making such payment may make application to the Commission for an adjustment thereof in connection with contribution payments then due, or for a refund thereof, because such adjustment cannot be made, and if the Commission shall determine that such contributions or penalty, or any portion thereof were erroneously collected, the Commission shall allow such employing unit to make an adjustment thereof without interest in connection with contribution payments then due by such employing unit, or, if such adjustment cannot be made, the Commission shall refund said amount without interest from the Fund, provided that no application for adjustment or refund shall ever be considered by the Commission unless the same shall have been filed within four (4) years from the date

on which such contributions or penalties would have become due, had such contributions been legally collectible by the Commission from such employing unit. For like cause, and within the same period, adjustment or refund may be so made on the Commission's own initiative."

Unquestionably this article gives the Commission the authority to make adjustments or grant refunds of taxes where it has been determined that such taxes have been erroneously collected. As to the application of this statute, this Court in the case of James v. Consolidated Steel Corporation, 195 S. W. (2d) 955, refused, N. R. E., held that it "relates to errors made either by the contributor or by the Commission in the calculation or collection of such taxes which have been paid voluntarily."

It has been determined that the taxes for which refund is here sought have been erroneously collected under the provisions of the Texas Unemployment Compensation Act. Rates at which taxes are paid are computed upon a calendar year basis. Since the Court in the case of James v. Consolidated Steel Corporation held that the rate at which Consolidated should have paid its taxes for the last three quarters of 1944 was .5%, it necessarily follows that the rate at which it should have paid its taxes for the first quarter of 1944 was .5% instead of 2.7%, the rate at which it paid the taxes for this quarter.

It is apparent from your request that Consolidated's application for a refund relates to taxes voluntarily paid through errors of the contributor or the Commission in the calculation or collection thereof.

Based upon the foregoing, it is our opinion that the Texas Employment Commission has the power, right and authority to grant the refund as applied for by Consolidated Steel Corporation.

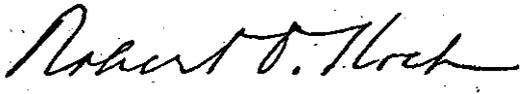
The delay in replying to this request has been occasioned by careful study and briefing and the holding of numerous conferences with reference to every phase of this question. As requested we are returning the application attached to your letter.

SUMMARY

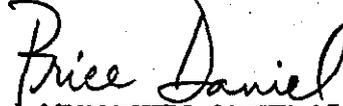
The Texas Employment Commission has the power, right and authority under Art. 5221b-12(j) (1), V. C. S., to grant a refund of unemployment compensation taxes erroneously paid.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By 
Robert O. Koch
Assistant

APPROVED


PRICE DANIEL
ATTORNEY GENERAL

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