March 14, 1946

To Unemployment Compensation Commission
Re: Petroleum Producing Companies

Several of the large petroleum producing companies have paid contributions based on wages paid to workers connected with bulk plant operations since the very early days of the administration of the Unemployment Compensation Law. We who were connected with the administration of the law believed that such contributions were required by the provisions of Section 19 (e) of the law or by the provisions of Section 19 (g) (6) (A) (B) (C).

The petroleum producers believed that these sections of the law might not impose liability upon them but were not too sure of their position and consequently made the required payments in order to avoid any penalties if the issue were finally resolved in favor of the Commission.

Some of the states have attempted to hold the petroleum companies liable by virtue of provisions similar to our 19 (g) (6) (A) (B) (C) If liability does arise by virtue of this section, the bulk plant operator himself is deemed to be an employee, as well as all those persons whom he may hire. We have never seriously attempted to apply this section to the petroleum companies for the reason that many bulk plant operators are corporations. Obviously one corporation cannot be an employee of another corporation.

We have proceeded upon the assumption that the liability arises under Section 19 (e) of our law. Section 19 (e) imposes liability upon any employing unit which contracts with or has under it any contractor or sub-contractor for any work which is part of its usual trade, occupation, profession or business, unless the contractor is a subject employer in his own right. In the case of the Texas Company v. New Jersey Unemployment Compensation Commission the Supreme Court of the State of New Jersey rendered a decision which directly construes an almost identical provision in the New Jersey law. The only difference between the New Jersey provision and the Maine provision is that the New Jersey law uses the word "employment" instead of the word "work". The court said:

> "It will be noted that this statute does not include every contract within its provisions. It specifically restricts contracts with 'any contractor or sub-contractor for any employment (Maine: for any work) which is part of its usual trade, occupation, profession or business'."

Employment is defined as service just as it is in the Maine Law, and the New Jersey word "remuneration" is defined just as the word "wages" is defined in the Maine Law, that is, as "remuneration for personal services. . .". The New Jersey Court goes on to say in its decision:

> "It seems to us, therefore, that the kind of contract contemplated and meant by the statute must be one for work or services which would ordinarily be performed by an employee, but which is being farmed or contracted out." (The contract here under consideration was "for mutual advantage in the sale and distribution of petroleum products and was not intended to be nor was it in fact a contract 'for any employment' (Maine: for any work) as intended or defined by the statute. It was selling goods by a certain metjod well recognized and customary in merchandising businesses. It provided for the payment of commissions for the sale of goods but was not a contract for 'personal' services as meant by the statute."

In the concluding paragraph of the decision the Court states:

> "Identical and similar consignment agreements under federal and other state unemployment compensation acts similar to ours have been construed by the courts, and in no case has it been held that the distributors and their employees are employees within the meaning of such statutes."

Compare the Texas Company v. Higgins, 118 F 2d 636; Indian Refining Co. v. Dallman, 119 F 2d 417; The Texas Company v. Wheeless, 187 So. 880 (Miss.); Barnes v. Indian Refining Co. 280 Ky. 811, aff'd, 134 S.W. 2d 620; The Texas Company v. Bryant, 152 S. W. 2d 627, rehearing denied 163 S.W. 2d 71; American Oil Company v. Fly, 135 F 2d 491; Standard Oil Company v. Glenn, 52 Fed. Supp. 755; Orange State Oil Company v. Fahs, 52 Fed. Supp. 509, aff'd 138 Fed 2d 743.

It is a fundamental rule of law that taxing statutes are to be strictly interpreted. That the Unemployment Compensation Law is a taxing statute is no longer open to question. Although the law itself contains the provision that it shall be liberally construed, it has been held that there is an obvious difference between construing the law with liberality and extending its operation for taxing purposes to persons not within its letter, Steward Machine Co. v. Davis, U.S. 548; Helvering v. Davis, 301 U.S. 619; Texas Co. v. Wheeless, 187 So. 880; Barnes v. Indian Refining Co., 280 Ky. 811.

The reasoning of the New Jersey Court in the Texas Company case appears to be sound, follows the trend of decisions in other jurisdictions, and obviously makes a very fair distinction between the strict construction required in the case of a taxing statute and the liberal interpretation required in the case of a general welfare statute.

I therefore recommend that the Commission approve such requests for refunds as it may receive from petroleum companies, when such refund applications are founded upon contributions based upon wages paid to employees of bulk plant operators when such bulk plant operators operate as an independent business under contract with the petroleum company (in other words when bulk plant is not in fact petroleum company owned and petroleum company operated).

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