STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

August 11, 1949

To L. C. Fortier, Chairman, M. E. S. C.
Re: Experience Rating

In your memorandum of August 8, 1949, you ask the following question:

"Section 17-IV-A of the Law states that no employer's rate shall change from 2.7% until his experience rating record has been chargeable with benefits *throughout* the 36-consecutive-calendar month period ending on the computation date.

"Does throughout mean every day in the month, or does it mean anytime in the month?

"Example: If an employing unit paid a contribution for 1948 on January 27, 1949, and is found to be liable under the Act, when would he be eligible for a computation under the above section?"

Section 17-IV-A of the Employment Security Law is the basic standard in the Maine Law laying the foundation for additional tax credits to employers under the Federal Unemployment Tax Act. Without this section, or a similar section if other factors were used, the Maine Law could not be certified to the Secretary of the Treasury as an additional credit allowance law.

The applicable Federal Law, the Internal Revenue Code, so far as pertinent reads as follows:

"Section 1602 (a). A taxpayer shall be allowed an additional credit under Section 1601 (b) with respect to any reduced rate of contributions permitted by a state law only if the Federal Security Administrator finds that under such law:

"(1) No reduced rate of contributions to a pooled fund or to a partially pooled account, is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the three consecutive years immediately preceding the computation date." (The following sections deal with other types of funds not pertinent here.)

In Maine the experience factor with respect to unemployment as contemplated by the Federal Law is "chargeability with benefits." Since the basic purpose of Section 17-IV-A of the Maine Law is to meet the Federal standard and serves no useful purpose otherwise, it follows that the section is to be construed in the light of the Federal Law above quoted.

Although the wording of the two statutes differs the result is identical. Section 17-VI fixes the computation date as December 31st of each calendar year. Section 17-IV-A sets s "36-consecutive-calendar month period ending on the computation date." The Federal Law refers to "the three consecutive years immediately preceding the computation date."

Consequently, it would appear to serve little or no purpose to answer your question as to whether the word "throughout" means every day in the month or anytime in the month since the minimum standard to entitle an employer to the benefit of a reduced contribution rate must be "not less than three years immediately preceding the computation date."

Under the provisions of Section 17-III-A of the Employment Security Law the Commission's duty to establish an experience rating account for an employer arises as of the date his status as such is ascertained, to which shall be credited all the contributions which he thereafter pays on his own behalf.

This Section (17-III-A) is important in connection with paragraph 3 of subsection II of Section 16 which reads as follows:

"The deputy shall also determine, in accordance with the provisions of paragraph A of subsection III of Section 17, the proper employer's experience rating record, if any, against which benefits of an eligible individual shall be charged, if and when paid."

Accordingly, since Section 17-III-A sets the date upon which the Commission shall establish the employer's experience rating record this fixes the date as of which it becomes within the power of the deputy in making his determination under Section 16-II, paragraph 3 as to charges against an employer's account.

While you have not asked the question, we should like to observe that Section 17-III-A also sets the date upon which, under Section 16-II, paragraph 3, the deputy shall cease to charge an individual employer's account, namely, the date of termination of his liability as such.

In answer then to the example given in your question the date upon which the employer paid his contributions is not determinative of the date upon which his account shall be charged with benefits; but on the contrary, the date upon which he was ascertained to have the status of an employer instead of an employing unit is the controlling date as to the chargeability for benefits. Therefore, if an employer is first ascertained to be liable within any calendar year that year will not serve as the first of the three consecutive years immediately preceding the computation date. His first year for that purpose will begin on January 1 following the year within which his status as an employer was first ascertained.

From the foregoing, you should be able to readily compute the date upon which the employing unit referred to in your example would become eligible for a computed experience rate.

JOHN S. S. FESSENDEN
Deputy Attorney General

August 11, 1949

To Ernest H. Johnson, State Assessor
Re: Brookhaven National Laboratory, Associated Universities, Inc., Upton, N. Y.

I received your memo of August 10th, relating to the above matter and enclosing correspondence from the Texas Company and the U. S. Atomic Energy Commission, New York Operations Office.

It is my opinion that Brookhaven National Laboratory, working under the Atomic Energy Commission, is an agency of the United States and hence has authority to sign tax exemption certificates. In other words, the Laboratory is an agency of the Atomic Energy Commission, which in turn is a part of the United States Defense set-up.