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Opinion No. 64-13-L  
R-49  
March 4, 1964

REQUESTED BY: BRUCE PARKINSON  
Employment Security Commission of Arizona

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

- QUESTIONS:
1. Does the fact that a corporation did not conduct a business during the calendar year 1962 terminate its coverage at the end of the year ?
  2. If the coverage is terminated at the end of 1962, can the reserve of the corporation, accumulated prior to June 20, 1962, be credited to the corporation after reactivation, and be used in computing the contribution rate applicable to its operations in 1963 or 1964 ?

- ANSWER:
1. Yes.
  2. No.

Arizona Revised Statutes, § 23-725 (B) states in part:

" . . . an employing unit shall cease to be an employer subject to this chapter:

"1. As of the first day of January of any calendar year, if the commission finds such employing unit ceased all operations for a period of thirty-five weeks in the preceding calendar year, . . . " (Emphasis added)

The question as stated is answered by that portion of § 23-725 (B), set forth above. Each case, however, must be decided on its own facts, and it is for the commission to decide on the facts in each case whether or not an employing unit ceased all operations. Our Supreme Court has said in

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Beaman v. Bench, 75 Ariz. 345, 256 P.2d 721, "(1) The Court, in reviewing a decision of the Employment Security Commission, may disturb such decision on factual questions only when the same are unsupported by competent, material, and substantial evidence." This is merely the Court's interpretation of what is now § 23-681 of the Arizona Revised Statutes.

Nothing in the Employment Security Act provides that the reserve of a corporation accumulated prior to termination of coverage can be credited to the corporation upon reactivation and used in computing its contribution rate. On the contrary, the intent of the law seems to be to prevent this. § 23-727 (B), for example, provides: "Nothing in this chapter shall be construed to grant to any employer or individuals in his service prior claims or rights to the amounts paid by the employer into the fund." Regulation No. 40-11 appears to be a correct interpretation of the law in stating in paragraph 1: "When an employing unit shall cease to be an employer subject to this chapter under Section 23-725 and thereafter again becomes an employer subject to this chapter, the employing unit shall be treated in all respects as a new employer entering business for the first time."

  
ROBERT W. PICKRELL  
The Attorney General

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