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Opinion No. 01-093

Use of Unemployment Compensation Funds for Administrative Expenses

QUESTIONS

1(a). Does current state law give the Administrator of the Division of Employment Security control of the funds, budget and personnel provided for the employment security programs?

(b). If not, how should the statute be amended to do this so as to ensure that federal funds are used only for the purpose intended?

2(a). Can positions funded and established for the unemployment insurance program be transferred and/or utilized by other programs?

(b). If current state law does not prohibit this, how can it be amended to ensure that federal grants are used solely for the administration of this program?

OPINIONS

1(a). Yes. Under the provisions of Tenn. Code Ann. § 4-3-1408(b), the Administrator of the Division of Employment Security has the authority, to the greatest extent possible and subject to the supervision of the Commissioner of the Department of Labor and Workforce Development, for administering and implementing the employment security programs.

(b). In light of the above response, no response to this question is necessary.

2(a). No. Under the provisions of 26 U.S.C. § 3304, 42 U.S.C. § 1103(c)(2) and Tenn. Code Ann. § 50-7-705, positions funded by the unemployment insurance program may not be transferred and/or utilized by other programs.

(b). In light of the above response, no response to this question is necessary.

ANALYSIS

The Federal Unemployment Tax Act (FUTA), 26 U.S.C. §§ 3301, *et seq*., is part of a joint federal-state unemployment insurance program. The program began in 1935 with the enactment of the Social Security Act. FUTA imposes a uniform tax rate of 6.2% upon the payrolls of most employers. 26 U.S.C. § 3301. FUTA allows a credit, however, against that tax of 90% of the employer's contributions to a state unemployment compensation fund which is certified by the Secretary of Labor. 26 U.S.C. § 3302(a). An additional credit is also allowed for employers who pay a lower state unemployment tax due to favorable employment experience. 26 U.S.C. § 3302(b). In addition, conforming states are provided monies to defray the costs of administering their unemployment benefit program. 26 U.S.C. § 3304(a).

The Secretary of Labor is required to certify those states whose unemployment law complies with certain federal statutory requirements. 26 U.S.C. § 3304(c). Such certification is made only if the states' administration of its unemployment compensation fund is in compliance with the standards of 26 U.S.C. § 3304. If a state is not certified, it may lose its federal funds and its employers may lose their tax credits.

First, a question has been raised whether the Administrator of the Division of Employment Security has the authority under state law to control the funds, budget and personnel provided for the employment security program. It is our opinion that current state law gives the Administrator the authority, to the greatest extent possible and subject to the supervision of the Commissioner, for administering and implementing the employment security programs. This would include control of the funds, budget and personnel provided for the employment security programs as necessary for the proper administration of such programs in compliance with the law.

As provided in Tenn. Code Ann. § 4-3-1405, the unemployment insurance program for the State of Tennessee is administered by the Department of Labor and Workforce Development. Within that Department, there is a separate Division of Employment Security. Tenn. Code Ann. § 4-3-1408(a). Although this Division is under the supervision and charge of the Commissioner, it is a separate administrative entity for programs, personnel and budgets. *Id*. This statute also creates the Office of Administrator for this Division. Tenn. Code Ann. § 4-3-1408(b). Under the provisions of Tenn. Code Ann. § 4-3-1408(b), the Administrator of the Division of Employment Security is responsible, to the greatest extent possible, for administering, implementing and enforcing the provisions of Title 50, Chapter 7, within the purview of employment security except for WOTC Alien Certification, Veterans' Programs and the Tennessee State Employment Service. In addition, the term "administrator" as used in Title 50, Chapter 7, is defined as the "chief administrative officer of the division of employment security of the Department of Labor and Workforce Development." Tenn. Code Ann. § 50-7-203. Therefore, it is our opinion that current law gives the Administrator the authority to control funds, budget and personnel as necessary to administer the employment security programs in compliance with state law.

Second, a question was raised as to whether positions funded and established for the unemployment insurance program can be transferred and/or utilized by other programs. It is our opinion that current law precludes federal grants from being used for purposes other than the administration of this program as provided by federal requirements.

FUTA allows a state to use federal grant funds for expenses incurred for administration of its unemployment compensation law and public employment offices, subject to the conditions prescribed in Section 903(c)(2) of the Social Security Act. 26 U.S.C. § 3304(a)(4)(B). As provided in Section 903(c)(2), amounts allocated to a state may be used only to pay expenses incurred for the administration of its unemployment compensation law. 42 U.S.C. § 1103(c)(2). Current state law requires the Commissioner to take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as necessary to comply with federal law. Tenn. Code Ann. § 50-7-705. Accordingly, it is our opinion that the Department of Labor and Workforce Development is precluded by current state law from transferring or utilizing positions funded and established for the unemployment insurance program to other programs in violation of federal requirements regarding the use of federal grant funds.

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