STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Charles J. Fogarty, in his capacity as Director of the Department of Labor and Training	:	
v.	:	**A.A. No. 12 - 136**
Department of Labor & Training,Board of Review: (Richard Faucher)	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the deci sion of the Board of Review is AFFIRMED.

Entered as an Order of this Court at Providence on this 11TH day of February, 2013.

By Order:

/S/
Stephen C. Waluk
Chief Clerk

Enter:

/S/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT

Charles J. Fogarty, *in his capacity as the*	:	
Director of the Rhode Island	:	
Department of Labor and Training	:	
	:	
v.	:	**A.A. No. 12 – 136**
	:	
Department of Labor and Training	:	
Board of Review	:	
(Richard Faucher)	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. In this case the District Court is called upon to resolve a legal disagreement that has arisen between the Rhode Island Department of Labor and Training and the Department's adjudicatory arm, the Board of Review. This dispute centers on a provision of the Rhode Island Employment Security Act[1] — Gen. Laws 1956 § 28-44-3 —

[1] **28-44-3. Wages considered in computing benefits. —** Notwithstanding any provisions of chapters 42-44 of this title to the contrary, "wages" as used in the phrase "wages for employment from employers" means, with reference to the benefit provisions of those

which, taken together with related statutes, excludes monies earned while self-employed from its definition of "wages," which has the effect of excluding the self-employed from partaking in the unemployment benefit system. Historically, this rule has been applied to bar benefits when the claimant was doing business as a sole proprietorship or when the claimant was employed by a partnership of which he or she was a member,[2] but not when the claimant was employed by a corporation in which he had an ownership interest.

The current controversy arose when the Department applied the self-employment exclusion to a new business form — the limited liability

---

chapters, only those wages which are paid subsequent to the date upon which the employing unit, by whom those wages were paid, has satisfied the conditions of § 28-42-3(15) with respect to becoming an employer subject to those chapters.

For the convenience of the reader, subdivision 28-42-3(15)'s definition of "employer" has been quoted in full in the Appendix to the opinion, at 23, infra.

[2] The parties agree that the Employment Security Act — taken together as a cohesive whole — the self-employed are excluded from participation in the unemployment system. We shall assume this is true arguendo even though this is not clearly stated in the Act and despite the fact that the term "self-employment" is nowhere defined in the Act. Gesualdi v. Board of Review of the Department of Employment Security, 118 R.I. 399, 403, 374 A.2d 102, 104 (1977).

company (LLC). Specifically, the Department disqualified Mr. Richard Faucher, who had worked for a limited liability company (LLC)[3] in which the claimant had a minority ownership interest. But when it considered an appeal in the case, the Board of Review rejected the Department's position and determined self-employment exclusion to be inapplicable; the Board held that Mr. Faucher's ownership interest in the LLC to be equivalent to an ownership interest in a corporation. And so, the Board decided that Mr. Faucher — who was admittedly otherwise eligible — should be permitted to collect benefits.

In response, the Department's Director, Mr. Charles J. Fogarty, brought the instant complaint for judicial review; jurisdiction for appeals from the decision of the Department of Employment and Training Board of Review being vested in the District Court by Gen. Laws 1956 § 28-44-52. The parties agree, in a reversion to their customary comity,

---

[3] Limited liability companies were created as a Rhode Island business form in 1992. See P.L. 1992, ch. 280, § 1.

A dictionary definition of a limited liability company is "A company — statutorily authorized in certain states — that is characterized by limited liability, management by members or managers, and limitations on ownership transfer." Black's Law Dictionary, Ninth Edition (Garner ed. 1990) at 319.

that a judicial resolution of this question is necessary because, as the LLC business form is increasingly adopted, similar cases are likely to arise. And while I must concede that there are cogent arguments to be made on both sides of the question, I have concluded, after a full consideration of the issue, that I am inclined toward the Board of Review's view of the matter. I shall therefore recommend that the Decision of the Board of Review be affirmed.

I. FACTS AND TRAVEL OF THE CASE

The facts and travel of the case are these: Mr. Richard T. Faucher worked for Lincoln Liquors, LLC — a limited liability company in which he was a minority member — until early January 29, 2011. He filed a claim for employment security benefits but the Director, in a decision dated March 23, 2011, determined that Mr. Faucher was ineligible for benefits pursuant to Gen. Laws 1956 § 28-44-3 because he was a partner in Lincoln Liquors. See Director's Decision, March 23, 2011, at 1.

Claimant appealed and a hearing was set before Referee Sean Feeney on May 24, 2011. Mr. Faucher appeared without counsel and testified briefly, stating that he considered himself an employee of Lincoln Liquors. See Referee Hearing Transcript, at 6-9. A

representative of the Department also appeared.

In his decision, issued on June 24, 2011, Referee Feeney made a Finding of Fact that Lincoln Liquors was not a partnership but an LLC; he also found Mr. Faucher was involuntarily separated. Based on these findings, the Referee found claimant was not ineligible to receive benefits by section 28-44-3; he therefore reversed the decision of the Director.

The Director filed a second appeal and the Board of Review held a further hearing on September 22, 2011. Mr. Jaime Matos, the majority member of the LLC appeared, as did two department representatives. Mr. Matos testified only momentarily, indicating that Lincoln Liquors always made unemployment contributions for all employees, including Mr. Faucher. Board of Review Transcript, at 12. The Department's representatives presented its position — that because the LLC chose to be treated as a partnership for federal tax purposes, it ought to be treated as a partnership for purposes of the Employment Security Act. Board of Review Transcript, at 7-11.

In support of its position the DLT representatives cited the definitions of "wages" and "employment" contained in Gen. Laws 1956

§ 28-42-3. Id., at 7-8.[4] They urged that, since the Claimant was, in their view, a self-employed partner, his service was exempt[5] under federal law — because, under federal law, his wages were not qualifying wages and his employment was not qualifying. Id., at 8. As one DLT employee put it — "Payments made to partners under federal law are not considered wages." Board of Review Transcript, at 11. On this basis they urged he was ineligible to participate in the unemployment benefit system.

But, in a decision issued on June 8, 2012, the Board of Review unanimously affirmed the decision of the Referee.

The Board of Review made the following Findings of Fact:

The claimant had listed his employer as a company called

---

[4] For the convenience of the reader, subdivision 28-42-3(17)'s definition of "employment" and subdivision 28-42-3(28)'s definition of "wages" have been quoted in full in the Appendix to this opinion, at 23, infra.

[5] We employ the term "exempt" in this context because the service, if it is not-qualifying, is exempt from the federal taxes which support the unemployment system. So, if you are exempt from the taxes you are not eligible to participate in the system. And, if you are unable to participate in the system you cannot collect benefits, even if otherwise eligible.

It may be noted that the employers do not actually pay unemployment taxes to the federal government because they receive a credit for the "contributions" they make to the state system.

> Lincoln Liquors, which is a Rhode Island Limited Liability Company. The Department noted that Lincoln Liquors, LLC had chosen, for Federal tax purposes, to be treated as a partnership for federal income tax purposes. No election was offered to the LLC with respect to its payment of Unemployment taxes.

Decision of Board of Review, at 1. Based on these findings, the Board concluded:

> Basically, the Director argues that because the LLC chose a partnership income tax status as allowed under Federal income tax law, that the LLC should not be considered a corporation under the laws of the State of Rhode Island for the purposes of Unemployment Tax. However, there is no precedent for the Director's argument. The very purpose of the Statute allowing the creation of Limited Liability Corporations in Rhode Island was to offer the protection of corporate status.

Decision of Board of Review, at 1. Thus, the Board rejected the Department's position — i.e., that the LLC's tax election should govern its treatment under the Employment Security Act. To the contrary, it found an LLC was the equivalent of a corporation for these purposes — i.e., having a separate identity from its owners — and it should be treated in a like manner. Accordingly, the Board affirmed the decision of the Referee. Decision of Board of Review, at 2.

Thereafter, on July 5, 2012, Director Fogarty filed the instant

complaint for judicial review in the Sixth Division District Court. A conference was conducted by the undersigned and a briefing schedule set. Learned memoranda have been received from counsel for the Department and counsel for the Board of Review.

II. STANDARD OF REVIEW

The standard of review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

> **42-35-15. Judicial review of contested cases.**
>
> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the

agency unless its findings are 'clearly erroneous.' "[6] The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[7] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.[8]

The Supreme Court of Rhode Island recognized in Harraka v. Board of Review of the Department of Employment Security, 98 R.I. 197, 200, 200 A.2d 595, 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

> * * * eligibility for benefits is to be determined in the light of the expressed legislative policy that "Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family." G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the

---

6 Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

7 Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

8 Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

> legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

III. ANALYSIS

Customarily, we begin the "Analysis" section of an unemployment appeal with a review of the facts of record, to see if they support the findings made by the Board of Review. But, in this case the operative facts are few and not in dispute. To recap — Mr. Faucher worked for Lincoln Liquors, LLC, a firm in which he was a minority owner; he was laid off and applied for unemployment benefits.

On the other hand, the parties do disagree on the legal implications of these circumstances. And not only is this a case of first impression in Rhode Island, it is one for which there appears to be a dearth of precedents nationally. And so, a resolution of this case will require substantial analysis.

A. Review of Positions of the Parties.

Let us first begin the analytic process with a review of the positions of the parties.

1. The Director's Position.

The Director's position is somewhat complicated. Because the Director's Decision was brief (as such decisions invariably are), we must look to the Director's Memorandum of Law to provide the particulars of his position.

The Director begins his analysis by noting that LLC's are taxed for unemployment purposes according to their Internal Revenue Service (IRS) filing status and that Lincoln Liquors never filed the necessary form to be taxed as a corporation. Director's Memorandum of Law, at 3. In fact, the Article of Corporation showed the LLC had chosen to be treated as a partnership for federal income tax purposes.[9] Id. And so, the Director argues that Lincoln Liquors should be treated as a sole proprietorship for unemployment issues as well. Id. He asserts that any other construction would be contrary to the purpose and intent of the Employment Security Act. Id.

Finally, the Director related this argument to section 28-42-8(7), which provides:

---

[9] He also noted that Claimant, at the hearing, referred to Mr. Matos as his "partner." Id.

"Employment" does not include:

> (7) Services performed by an individual in any calendar quarter on and after January 1, 1972 in the employ of any organization exempt from income tax under 26 U.S.C. § 501(a)(other than services performed for an organization defined in 28-42-3(24)[10] or for any performed for an organization described in 26 U.S.C. § 401(a) or under 26 U.S.C. § 521) if the remuneration for that service is less than fifty dollars ($50.00)."

(Footnote added). The Director advises us that the provision of federal law cited (26 U.S.C. § 501) exempts partnerships from federal taxation.[11] Director's Memorandum of Law, at 4. The Director begins by noting that — under subdivision 28-42-8(7) — services provided to a partnership of which one is a member is not considered "employment." Director's Memorandum of Law, at 1-2.

2. The Board of Review's Position.

The Board of Review's position is well and concisely presented in its Decision. The Board's analysis is straightforward. Mr. Faucher did not work for a partnership he partly owned but for a separate entity —

---

[10] Subdivision 28-42-3(24) defined the term "non-profit organization."

[11] To my reading, 26 U.S.C. § 501 relates to not-for-profit organizations and 26 U.S.C. § 701 makes partnerships exempt from income tax.

Lincoln Liquors — an LLC. The Board treated Lincoln Liquors, LLC as a corporation would have been. Mr. Faucher was, therefore, not excluded from participation in the employment security system. Board of Review Decision, at 1.

The Board's Memorandum of Law is helpful and expands upon the four corners of the Decision in an explanatory way. From a reading of the section itself and the federal statutes referenced therein, the Board urges that the Director's reliance on section 28-42-8(7) was completely misplaced. It submits that the Director's position is entirely without supporting authority.

B. Evaluating the Board's Position.

Thus, we can now see the opposing legal arguments with some clarity. We shall now begin the daunting task of examining the legal merits of the two positions. I believe we should commence with the position of the Board, since it stands as the decision in the case unless set aside.

1. Effect of the LLC Form on the Result in this Case.

In my view the Board of Review's decision rests on two underlying assumptions: (1) a corporation has a separate legal identity

and so a corporation owner working for a corporation may be a participant in the employment security system and (2) an LLC also has a separate identity from its owners and it should be treated alike. Can these predicate assumptions be validated? I believe they can.

Both the Board and the Department agree that a corporation must be treated as a separate entity for all purposes under the Employment Security Act. Specifically, they agree that a worker for a corporation who is also an owner may be deemed to be employed within the meaning of the Act. Nevertheless, it is only proper that we should validate the truth vel non of their joint understanding.

a. The Corporate Form.

This validation is easily accomplished by citing a case decided by our Supreme Court, Rector v. Director of Department of Employment Security, 120 R.I. 802, 390 A.2d 370 (1978). Mr. John Rector was denied unemployment benefits because he was working for a corporation of which he was a 50% owner; in light of this circumstance, the Department regarded him as being self-employed. The Supreme Court stated:

> The defendant director alternatively argues that because plaintiff owned a 50 percent interest in the corporation he was self-employed and therefore per se ineligible for benefits. Self-employment describes that work situation in which in which one carries on a trade or business as an individual or as a member of a partnership. A corporation, however, is a legal being separate and apart from its stockholders and officers. Therefore, the concept of self-employment is inappropriately raised in the case at bar. See G.L. 1956 (1969 Reenactment) § 7-1.1-4; Olney v. Conanicut Land Co., 16 R.I. 597, 18 A. 181 (1889). For the foregoing reasons, we conclude that plaintiff totally unemployed within the meaning of § 28-42-3(15).[12]

Rector, 120 R.I. at 808; 390 A.2d at 374. Thus, we may conclude that a corporation's owner who is employed by the firm is a participant in the unemployment system and may collect benefits if terminated.

b. The Limited Liability Company.

What is a limited liability company — or LLC, as it is commonly known? The Rhode Island Limited Liability Company (LLC) Act — Chapter 16 of Title 7 of the General Laws — does not provide a short definition of this relatively new business form,[13] but defines it in many

---

[12] The definition of "total unemployment" is now codified as § 28-42-3(27); this is not a reference to the subdivision (15) presented in the Appendix, infra.

[13] Gen. Laws 1956 § 7-16-2(15), in circular fashion, defines a limited liability company to be "… an entity that is organized and existing

sections which establish the characteristics of an LLC. For instance, the Act declares that a limited liability company "… has the purpose of engaging in any lawful business;"[14] it possesses various powers, including the power to sue and be sued, to transact business, to make contracts, to sell and purchase property;[15] it is formed by delivering articles of organization for filing with the secretary of state;[16] its members and managers enjoy limited liability;[17] the company must file an annual return with the tax administrator.[18]

i. Construction of the LLC Act — Generally.

Having discerned the nature and essence of the LLC form, we must now determine whether it should be treated as corporation or as sole proprietorship or partnership in this case. The Employment Security

---

under the laws of this state pursuant to this chapter."

14 Gen. Laws 1956 § 7-16-3.

15 Gen. Laws 1956 § 7-16-4.

16 Gen. Laws 1956 § 7-16-5. The necessary particulars of the articles of organization are enumerated in § 7-16-6.

17 Gen. Laws 1956 § 7-16-23.

18 Gen. Laws 1956 § 7-16-67.

Act offers no direct assistance. Does the Rhode Island Limited Liability Act? Yes, it does.

A provision of the Act, section 7-16-73 — entitled "Construction With Other Laws," furnishes us with strong guidance. It provides:

> (a) Unless the provisions of this chapter or the context indicates otherwise, each reference in the general laws to a "person" is deemed to include a limited liability company, and each reference to a "corporation," except for references in the Rhode Island Business and Nonprofit Corporation Acts, and except with regard to taxation, is deemed to include a limited liability company.

Thus, subsection (a) directs us to regard LLC's as corporations, unless the context indicates otherwise. If applied, this interpretive command disposes of the case. But before declaring the instant controversy at an end, let us focus on the penultimate clause of subsection (a), which reads — "and except with regard to taxation."

ii. Special Rule — Construction in Tax Cases.

Subsection (b) thus makes very clear that taxation issues will be treated differently. And subsection (b) explains how LLC's will be treated on taxation issues:

> (b) As to taxation, a domestic or foreign limited liability company shall be treated in the same manner as it is treated under federal income tax law.

As can be clearly seen, subsection (b) mandates that, in tax issues, LLC's will be treated in the manner they are treated for federal income tax purposes. Of course, this is the same election that the Department has asserted to be determinative since the outset of this controversy — though without citation to this provision. Thus, it would seem, the ultimate question to be answered is — Is the unemployment law a tax law?

I believe it is not. I believe the Employment Security Act, although it requires employers to make "contributions" — which they may fairly view to be taxes — is, at its essence, a social welfare program whose purpose is "to lighten the burden which now falls upon the unemployed worker and his family. G.L. 1956, § 28-44-73." Harraka, 98 R.I. at 197, 200 A.2d at 595, quoted supra at 8.[19]

---

[19] See also Gen. Laws 1956 § 28-42-2, titled Declaration of Policy, which pronounces "Economic insecurity, due to unemployment, being a serious menace to the health, morale, and general welfare of the people of this state, is, therefore, a subject of interest and concern to the community as a whole, warranting appropriate action by the general assembly to prevent its spread and to lighten the burden which

I therefore find the exception found subsection 7-16-73(b) to be immaterial to the issue at bar and the general rule announced in subsection 7-16-73(a) to govern the resolution of the issue before us. As a result, I must conclude that the Board's ruling that Lincoln Liquors, LLC should be treated as a separate entity (as a corporation would be) to have firm support in Rhode Island law.

C. Evaluating the Director's Position.

In light of my previous finding — that the Board's ruling has a firm basis in Rhode Island law — one may fairly ask: Why proceed further to evaluate the Director's position? I believe we should do so, out of general deference to the Director's authority as administrator of the unemployment system, but, in particular, because the Director expressly relies on federal law to a great extent. This places on us a duty to make sure that these federal laws do not require a contrary result based on the invocation of supremacy clause.

> now falls on the unemployed worker and his or her family …. Chapters 42 — 44 of this title are designed to meet in some measure this situation by providing for the accumulation of a fund to assist in protecting the public against the ill effects of unemployment which may arise in future years."

After a close inspection of the Director's position, I have concluded that I cannot validate its legal underpinnings. Instead, I believe it relies on bootstrapping. It cites federal law to determine that wages earned by partners are exempt from unemployment taxes. And it assumes that federal law requires us to treat LLC owners as partners.

In fact, the definitions in the statutes cited refer to wages and employment subject to federal taxation, they do not themselves establish the point of demarcation between taxable and non-taxable wages. See subdivisions 28-42(3)(17)(ii) and 28-42(3)(27). As we have seen, the inclusion vel non of a particular work relationship in the unemployment system depends on the particular nature of that relationship — which is, without question, a state law issue.

And, as noted above, the Director's reliance before this Court on subsection 28-42-8(7) is infelicitous. A reading of that section shows that it has little to do with partnerships. The cross-reference include therein to 26 U.S.C. § 501 confirms this, since § 501 is concerned with non-profit organizations, of whatever form.[20]

[20] A review of the Federal Unemployment Tax Act (FUTA) seems to confirm this. Many of the provisions of section 28-42-8 defining

No statute cited by the Department requires us to treat an LLC as a partnership. And it is clear that the parameters of the LLC business form is a state law issue. To the contrary, federal law honors state law pronouncements on this issue.

D. Resolution.

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board must be upheld unless it was, inter alia, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. When applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.[21] Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary

---

employment have correlatives in 26 U.S.C. § 3306(c). Subdivision 26 U.S.C. § 3306(c)(10)(A) seem to be the analog of 28-42-8(7). In context and by examining cross references, I see nothing relating to partnerships.

[21] Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968).

result.[22] Accordingly, the Board's decision that claimant was eligible for benefits because he was involuntarily terminated his employment at Lincoln Liquors LLC is well-supported by the applicable law and the evidence of record.[23]

V. CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). Further, it was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious. Gen. Laws 1956 § 42-35-15(g)(5),(6).

---

[22] Cahoone, supra n. 21, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws 1956 § 42-35-15(g), supra at 8 and Guarino, supra at 9, fn.6.

[23] My recommendation in this case should not be construed as a rejection of the Director's fundamental argument — that it is simply unfair for an LLC to file income taxes as an individual but participate as a corporation in the unemployment system. As the Department has noted, the LLC is therefore allowed to "have it both ways." But I have concluded that this equitable argument cannot supersede proper deference to the statutory language quoted above. The Director's equitable argument is one which may well be received favorably by the policy-making body of our state government, the General Assembly.

I therefore recommend that the decision of the Board of Review in this case be AFFIRMED.

/S/
Joseph P. Ippolito
MAGISTRATE

FEBRUARY 11, 2013

APPENDIX

28-42-3 Definitions. — The following words and phrases, as used in chapters 42 — 44 of this title, have the following meanings unless the context clearly requires otherwise:

…

(15) "Employer" means:

(i) Any employing unit that was an employer as of December 31, 1955;

(ii) Any employing unit which for some portion of a day on and after January 1, 1956, has or had in employment within any calendar year one or more individuals; except, however, for "domestic service employment", as defined in subdivision (13) of this section;

(iii) For the effective period of its election pursuant to § 28-42-12, any other employing unit which has elected to become subject to chapters 42 — 44 of this title;

(iv) Any employing unit not an employer by reason of any other paragraph of this subdivision for which, within either the current or preceding calendar year, service is or was performed with respect to which that employing unit is liable for any deferral tax against which credit may be taken for contributions required to be paid into this state's employment security fund; or which, as a condition for approval of chapters 42 — 44 of this title for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq. is required, pursuant to that act, to be an employer under chapters 42 — 44 of this title;

…

(17)(i) "Employment," subject to §§ 28-42-4 — 28-42-10, means service, including service in interstate commerce, performed for waged or under any contract for hire, written or oral, express or implied; provided, that service performed shall also be deemed to constitute employment for all the purposes of chapters 42—44 of this title, if performed by an individual in the employ of a nonprofit organization as described in subdivision (24) of this section except as provided in § 28-42-8(7). **(ii)** Notwithstanding any other provisions of this section, "Employment" also means service with respect to which a tax is required to be paid under any federal law imposing a

tax against which credit may be taken for contributions required to be paid into this state's employment security fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under chapters 42—44 of this title;

…

(28) "Wages" means all remuneration paid for personal services on or after January 1, 1940, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash, and all other remuneration which is subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state employment fund. …