



SC Department of Employment and Workforce

Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

September 30, 2013

Senator Thomas C. Alexander
Chairman
Senate Labor, Commerce & Industry Committee
313 Gressette Building
Columbia, SC 29201

Representative William E. Sandifer III
Chairman
House Labor, Commerce & Industry Committee
407 Blatt Building
Columbia, SC 29201

Dear Chairmen:

I write to advise you that the Department of Employment and Workforce (DEW) will be using a three-year look back to calculate the benefit ratio found in S.C. Code Ann. § 41-31-5(1) for the effective January 1, 2014 tax rates that will be issued in November 2013.

DEW recognizes that the language in Section 41-31-5(1) does not clearly articulate the General Assembly's intent as to whether DEW should use three or ten years of data in the calculations DEW makes during the fall of 2013. In addition, the Attorney General in a memorandum dated September 5, 2013, acknowledged that the statute was ambiguous but that the "cardinal rule of construction is to ascertain the intent of the General Assembly."

The Statute

In 2011 Act No. 63, Section 1, the Legislature amended the definition of "Benefit Ratio" found in S.C. Code Ann. § 41-31-5(1):

SECTION 1. Section 41-31-5(1) of the 1976 Code, as added by Act 234 of 2010, is amended to read:

"(1) 'Benefit ratio' means:

(a) for the period of January 1, 2011, through December 31, 2013, the number calculated by dividing the average sum of all benefits charged to an employer during the forty calendar quarters immediately preceding the calculation date by the sum of the employer's average taxable payroll during for the same period. If fewer than forty but more than four one calendar quarters quarter of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually on July first using data for quarters filed through June thirtieth of the current year to the sixth decimal place;

(b) from January 1, 2014, the number calculated by dividing the average sum of all benefits charged to an employer during the twelve calendar quarters immediately preceding the calculation date by the sum of the employer's average taxable payroll during for the same period. If fewer than twelve but more than four one calendar quarters of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually on July first using data for quarters filed through June thirtieth of the current year to the sixth decimal place."

This legislation took effect on June 14, 2011.

Legislative Intent

Representative Kenny Bingham and retired Senator Greg Ryberg submitted a letter dated September 30, 2013 to the South Carolina Department of Employment and Workforce, stating that the legislative intent for calculating the benefit ratio for the effective January 1, 2014 tax rates was to use a three-year look back period. Representative Bingham and Senator Ryberg were heavily involved in the discussion and compromise that resulted in the DEW Reform Act and included language on the calculation of the benefit ratio.

The letter states: "We represented to our respective chambers that the bill was written to provide for a phase in of the benefit ratio. During the first three years, as provided in Section 41-31-5(1) (a), ten years of experience, or as many years as are available, must be used. At the end of three years beginning on January 1, 2014, the calculation must be based on three years of experience as provided in Section 41-31-5(1)(b). It is understood that the calculation should be made at some point prior to when it will apply. We believe the reading of the statute is clear and that the calculation for the benefit ratio effective for January 1, 2014, is for three years, regardless of when the calculation is made."

Based on this outlined legislative intent, DEW will use a three-year look back to calculate the benefit ratio for the effective January 1, 2014 tax rates that will be issued in November 2013.

Thank you for your leadership on this issue. DEW is ready to work with you and your colleagues if you believe further action is needed.

Sincerely,

A handwritten signature in black ink that reads "Cheryl Stanton" with a long horizontal flourish extending to the right.

Cheryl M. Stanton