1973. No. 119 **[C]**

INDUSTRIAL TRAINING

Industrial Training Levy (Distributive Industry)

ORDER, DATED 16TH APRIL 1973, MADE BY THE MINISTRY OF HEALTH AND SOCIAL SERVICES UNDER THE INDUSTRIAL TRAINING ACT (NORTHERN IRELAND) 1964.

The Ministry of Health and Social Services, on behalf of the Secretary of State, after approving proposals submitted by the Distributive Industry Training Board for the imposition of a further levy on employers in the distributive industry and in exercise of the powers conferred by section 4 of the Industrial Training Act (Northern Ireland) 1964(a) and of all other powers enabling it in that behalf, hereby makes the following Order:—

Citation and interpretation

1.—(1) This Order may be cited as the Industrial Training Levy (Distributive Industry) Order (Northern Ireland) 1973.

(2) In this Order—

"an appeal tribunal" means an industrial tribunal established under section 13 of the Industrial Training Act (Northern Ireland) 1964;

"assessment" means an assessment of an employer to the levy;

"the Board" means the Distributive Industry Training Board;

"business" means any activities of industry or commerce;

"distributive establishment" means an establishment in Northern Ireland engaged wholly or mainly in the distributive industry for a total of twenty-seven or more weeks in the third base period, or, being an establishment that commenced to carry on business in the third base period, for a total number of weeks exceeding one half of the number of weeks in the part of the said period commencing with the day on which business was commenced and ending on the last day thereof, or, where an election is made, in any part of the alternative third base period;

"the distributive industry" means any one or more of the activities which, subject to the provisions of paragraph 2 of Schedule 1 to the industrial training order, are specified in paragraph 1 of that Schedule as the activities of the distributive industry;

"dock worker" has the same meaning as in section 6(8) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(b);

"election" means an election, under the provisions of Article 2(3)(*a*)(ii), by an employer to pay the levy in respect of the emoluments of the persons employed in the relevant establishment during the alternative third base period;

(a) 1964. c. 18 (N.I.). (b) 1965. c. 19 (N.I.).

"emoluments" means all emoluments assessable to income tax under Schedule E (other than pensions), being emoluments from which tax under that Schedule is deductible, whether or not tax in fact falls to be deducted from any particular payment thereof;

"employer" means a person who is an employer in the distributive industry at any time in the third levy period, but does not include a person in whose case the sum of the emoluments paid or payable to all persons in, or deemed under the provisions of paragraph (3) to have been in, his employment in the third base period or, where an election is made, the alternative third base period, is less than £10,000 or in the case of two or more distributive establishments where the sum of the emoluments of all the persons employed in all of such establishments is less than £10,000;

"the industrial training order" means the Industrial Training (Distributive Board) Order (Northern Ireland) 1969(c);

"the levy" means the levy imposed by the Board in respect of the third levy period;

"the Ministry" means the Ministry of Health and Social Services;

"notice" means a notice in writing;

"the third base period" means the year that commenced on 6th April 1971 and "the alternative third base period" means the year that commenced on 6th April 1972;

"the third levy period" means the period commencing with the date upon which this Order comes into operation and ending on 31st March 1974.

(3) In the case where a distributive establishment is taken over (whether directly or indirectly) by an employer in succession to, or jointly with, another person, a person employed at or from the establishment at any time in the third base period or, in any case where an election is made, at any time in the alternative third base period, shall be deemed, for the purposes of this Order, to have been so employed by the employer carrying on the said establishment on the day upon which this Order comes into operation.

(4) Any reference in this Order to an establishment that commences to carry on business or that ceases to carry on business shall not be taken to apply where the location of the establishment is changed but its business is continued wholly or mainly at or from the new location, or where the suspension of activities is of a temporary or seasonal nature.

Imposition and assessment of the levy for the third levy period

2.—(1) The levy to be imposed on employers shall be assessed in accordance with the provisions of this Article.

(2) The levy shall be assessed by the Board separately in respect of each distributive establishment of an employer, but in agreement with the employer one assessment may be made in respect of any number of such establishments, in which case those establishments shall be deemed for the purposes of that assessment to constitute one establishment.

(3) Subject to the provisions of this Article, the amount of the levy imposed on an employer in respect of a distributive establishment shall be equal to 0·75 per centum of the emoluments of—

(*a*) all persons employed by the employer at or from that establishment—

(i) in the third base period; or

(c) S.R. & O. (N.I.) 1969, No. 126, as amended by S.R. & O. (N.I.) 1972, No. 130.

(ii) where an election is made in accordance with the provisions of paragraph (4) in the alternative third base period;

(*b*) all persons deemed to have been so employed under the provisions of Article 1(3).

(4) An election shall be made in writing and shall be in such form and made within such period as the Board may, with the approval of the Ministry, determine.

(5) The amount of the levy imposed in respect of a distributive establishment that ceases to carry on business in the third levy period shall be in the same proportion to the amount that would otherwise be due under paragraph (3) as the number of days between the commencement of the said levy period and the date of cessation of business (both dates inclusive) bears to the number of days in the said levy period.

(6) In reckoning the amount of the emoluments for the purposes of this Article no regard shall be had to the emoluments of:—

(*a*) any person, who being a registered pharmacist or a registered optician, is employed wholly or mainly in activities undertaken by him personally in the exercise of his profession;

(*b*) any person employed as a member of the crew of an aircraft or as the master or a member of the crew of a ship or any person ordinarily employed as a seaman who is employed in or about a ship in port by the owner or charterer thereof on work of a kind ordinarily done by a seaman on a ship while it is in port;

(*c*) a dock worker employed on dock work;

(*d*) any person employed wholly in the supply of food or drink to persons being a supply:—

(i) for immediate consumption;

(ii) of hot fried fish or hot chipped potatoes; or

(iii) by means of an automatic vending machine at or in connection with an hotel, restaurant, café, snack bar, canteen, mess room or similar place of refreshment; or

(*e*) any person engaged wholly or mainly in the work of a consultant or valuer in connection with antiques.

Assessment notices

3.—(1) The Board shall serve an assessment notice on every employer assessed to the levy, but one notice may comprise two or more assessments.

(2) Where an election has been made, the Board may serve two or more assessment notices in respect of any establishment.

(3) The amount of any assessment payable under an assessment notice shall be rounded down to the nearest £1.

(4) An assessment notice shall state the Board's address for the service of a notice of appeal or of an application for an extension of time for appealing.

(5) An assessment notice may be served on the person assessed to the levy either by delivering it to him personally or by leaving it, or sending it to him by post, at his last known address or place of business in the United Kingdom or, if that person is a corporation, by leaving it, or sending it by post to the corporation, at such address or place of business or at its registered or principal office.

Payment of the levy

4.—(1) Subject to the provisions of this Article and of Articles 5 and 6 the amount of the levy payable under an assessment notice served by the Board shall be payable to the Board in two instalments the first of which equal to 40 per centum of the total amount shall be due on 1st June 1973 and the second equal to 60 per centum of the total amount shall be due on 1st December 1973.

(2) In any case where an election has been made the levy payable under an assessment notice served by the Board shall be payable to the Board in two instalments the first of which equal to 40 per centum of the total amount shall be due on 1st August 1973 and the second equal to 60 per centum of the total shall be due on 1st December 1973.

(3) An instalment of an assessment shall not be recoverable by the Board until there has expired the time allowed for appealing against the assessment by Article 6(1) and any further period or periods of time that the Board or an appeal tribunal may have allowed for appealing under Article 6(2) or (3) or, where an appeal is brought, until the appeal is decided or withdrawn.

Withdrawal of assessment

5.—(1) The Board may, by a notice served on the person assessed to the levy in the same manner as an assessment notice, withdraw an assessment if that person has appealed against that assessment under the provisions of Article 6 and the appeal has not been entered in the Register of Appeals kept under the regulations specified in Article 6(5).

(2) The withdrawal of an assessment shall be without prejudice to the power of the Board to serve a further assessment notice in respect of any establishment to which that assessment related and where the withdrawal is made by reason of the fact that an establishment has ceased to carry on business in the third levy period, the said notice may provide that the whole amount payable thereunder shall be due one month after the date of the notice.

Appeals

6.—(1) A person assessed to the levy may appeal to an appeal tribunal against the assessment within one month from the date of the service of the assessment notice or within any further period or periods of time that may be allowed by the Board or an appeal tribunal under the following provisions of this Article.

(2) The Board for good cause may, by notice, extend the time within which an appeal may be made by such further period or periods as the Board may allow in any case where an application for such extension is made within the period of four months from the date of the service of the relevant notice of assessment or, where an extension has already been granted, before the period of such extension has expired.

(3) If the Board shall not allow an application for extension of time for appealing, an appeal tribunal shall upon application to the tribunal by the person assessed to the levy within the period of fourteen days from the date of receipt of the decision of the Board refusing such an application have the like powers as the Board under paragraph (2).

(4) In the case of an establishment that ceases to carry on business in the third levy period on any day after the date of the service of the relevant assessment notice the foregoing provisions of this Article shall have effect as if for the period of four months from the date of the service of the assessment notice mentioned in paragraph (2) there were substituted the period of six months from the date of the cessation of business.

(5) An appeal or an application to an appeal tribunal under this Article shall be made in accordance with the Industrial Tribunals Regulations (Northern Ireland) 1965(d).

(6) The powers of an appeal tribunal under paragraph (3) may be exercised by the President of the Industrial Tribunals.

Evidence

7.—(1) Upon the discharge by a person assessed to the levy of his liability under an assessment the Board shall if so requested issue to him a certificate to that effect.

(2) The production in any proceedings of a document purporting to be certified by the Secretary of the Board or any other person, being a member or officer of the Board authorised to act in that behalf, to be a true copy of an assessment or other notice issued by the Board or purporting to be a certificate such as is mentioned in paragraph (1) shall, unless the contrary is proved, be sufficient evidence of the document and of the facts stated therein.

Sealed with the Official Seal of the Ministry of Health and Social Services for Northern Ireland this 16th day of April 1973.

(L.S.)

W. N. Drummond,
Assistant Secretary.

EXPLANATORY NOTE

(This note is not part of the Order, but is intended to indicate its general purport.)

This Order gives effect to proposals submitted by the Distributive Industry Training Board to the Ministry of Health and Social Services for the imposition of a further levy upon employers in the distributive industry for the purpose of raising money towards the expenses of the Board.

The levy is to be imposed in respect of the third levy period commencing with the date upon which this Order comes into operation and ending on 31st March 1974. The levy will be assessed by the Board and there will be a right of appeal against an assessment to an industrial tribunal.

(d) S.R. & O. (N.I.) 1965, No. 112, as amended by S.R. & O. (N.I.) 1966, No. 261 and S.R. & O. (N.I.) 1967, No. 109.