

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1006
PROPOSED COMMITTEE SUBSTITUTE S1006-PCS55363-RBx-14

Short Title: Withholding on Contractors Identified by ITIN.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE WITHHOLDING ON CONTRACTORS IDENTIFIED BY AN
3 INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN).

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-163.1 reads as rewritten:

6 "**§ 105-163.1. Definitions.**

7 The following definitions apply in this Article:

8 (1) Compensation. – Consideration a payer pays ~~a~~to any of the following:

9 a. A nonresident individual or nonresident entity for personal services
10 performed in this State.

11 b. An ITIN holder who is a contractor and not an employee for services
12 performed in this State.

13 (2) Contractor. – ~~Either of the following:~~

14 a. ~~A nonresident individual who performs in this State for~~
15 ~~compensation other than wages any personal services in connection~~
16 ~~with a performance, an entertainment, an athletic event, a speech, or~~
17 ~~the creation of a film, radio, or television program.~~

18 b. ~~A nonresident entity that provides for the performance in this State~~
19 ~~for compensation of any personal services in connection with a~~
20 ~~performance, an entertainment, an athletic event, a speech, or the~~
21 ~~creation of a film, radio, or television program.~~

22 (3) Dependent. – An individual with respect to whom an income tax exemption
23 is allowed under the Code.

24 (4) Employee. – An individual, whether a resident or a nonresident of this State,
25 who performs services in this State for wages or an individual who is a
26 resident of this State and performs services outside this State for wages. The
27 term includes an ordained or licensed member of the clergy who elects to be
28 considered an employee under G.S. 105-163.1A, an officer of a corporation,
29 and an elected public official.

30 (5) Employer. – A person for whom an individual performs services for wages.
31 In applying the requirements to withhold income taxes from wages and pay
32 the withheld taxes, the term includes a person who:

33 a. Controls the payment of wages to an individual for services
34 performed for another.



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- 1 b. Pays wages on behalf of a person who is not engaged in trade or
2 business in this State.
- 3 c. Pays wages on behalf of a unit of government that is not located in
4 this State.
- 5 d. Pays wages for any other reason.
- 6 (6) Individual. – Defined in G.S. 105-134.1.
- 7 (6a) ITIN contractor. – An ITIN holder who performs services in this State for
8 compensation other than wages.
- 9 (6b) ITIN holder. – A person whose taxpayer identification number is an
10 Individual Taxpayer Identification Number (ITIN).
- 11 (7) Miscellaneous payroll period. – A payroll period other than a daily, weekly,
12 biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll
13 period.
- 14 (7a) Nonresident contractor. – Either of the following:
- 15 a. A nonresident individual who performs in this State for
16 compensation other than wages any personal services in connection
17 with a performance, an entertainment, an athletic event, a speech, or
18 the creation of a film, radio, or television program.
- 19 b. A nonresident entity that provides for the performance in this State
20 for compensation of any personal services in connection with a
21 performance, an entertainment, an athletic event, a speech, or the
22 creation of a film, radio, or television program.
- 23 (8) Nonresident entity. – Any of the following:
- 24 a. A foreign limited liability company, as defined in G.S. 57C-1-03,
25 that has not obtained a certificate of authority from the Secretary of
26 State pursuant to Article 7 of Chapter 57C of the General Statutes.
- 27 b. A foreign limited partnership as defined in G.S. 59-102 or a general
28 partnership formed under the laws of any jurisdiction other than this
29 State, unless the partnership maintains a permanent place of business
30 in this State.
- 31 c. A foreign corporation, as defined in G.S. 55-1-40, that has not
32 obtained a certificate of authority from the Secretary of State
33 pursuant to Article 15 of Chapter 55 of the General Statutes.
- 34 (9) Pass-through entity. – Defined in G.S. 105-228.90.
- 35 (10) Payer. – A person who, in the course of a trade or business, pays a
36 compensation to any of the following:
- 37 a. A nonresident individual or a nonresident entity compensation for
38 personal services performed in this State.
- 39 b. An ITIN holder who is a contractor and not an employee for services
40 performed in this State.
- 41 (11) Payroll period. – A period for which an employer ordinarily pays wages to
42 an employee of the employer.
- 43 (11a) Pension payer. – A payor or a plan administrator with respect to a pension
44 payment under section 3405 of the Code.
- 45 (11b) Pension payment. – A periodic payment or a nonperiodic distribution as
46 those terms are defined in section 3405 of the Code.
- 47 (12) Taxable year. – Defined in section 441(b) of the Code.
- 48 (13) Wages. – The term has the same meaning as in section 3401 of the Code
49 except it does not include either of the following:

- 1 a. The amount of severance wages paid to an employee during the
2 taxable year that is exempt from State income tax for that taxable
3 year under G.S. 105-134.6(b)(11).
4 b. The amount an employer pays an employee as reimbursement for
5 ordinary and necessary expenses incurred by the employee on behalf
6 of the employer and in the furtherance of the business of the
7 employer.

8 (14) Withholding agent. – An employer, a pension payer, or a payer."

9 **SECTION 2.** G.S. 105-163.3 reads as rewritten:

10 **"§ 105-163.3. Certain payers must withhold taxes.**

11 (a) Requirement. – Every payer who pays a nonresident contractor more than one
12 thousand five hundred dollars (\$1,500) during a calendar year ~~shall or pays any amount to an~~
13 ITIN contractor during a calendar year must deduct and withhold from compensation paid to
14 the contractor the State income taxes payable by the contractor on the compensation as
15 provided in this section. The amount of taxes to be withheld is four percent (4%) of the
16 compensation paid to the contractor. The taxes a payer withholds are held in trust for the
17 Secretary.

18 (b) Exemptions. – The withholding requirement does not apply to the following:

- 19 (1) Compensation that is subject to the withholding requirement of
20 G.S. 105-163.2.
21 (2) Compensation paid to an ordained or licensed member of the clergy.
22 (3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.

23 (c) ~~Returns; Due Date; Returns.~~ Returns. – A payer ~~shall must~~ file a return with the Secretary ~~on~~
24 ~~a form prepared by the Secretary and shall provide any information required by the Secretary.~~
25 The return is due and the withheld taxes are payable by the last day of the first month after the
26 end of each calendar quarter during which the payer pays compensation to a contractor. The
27 Secretary may extend the time for filing the return or paying the tax as provided in
28 G.S. 105-263 and pay the withheld taxes to the Secretary in accordance with the requirements
29 in G.S. 105-163.6.

30 (d) ~~Annual Statement; Report to Secretary.~~ Statement and Report. – A payer required to
31 deduct and withhold from a contractor's compensation under this section ~~shall furnish to the~~
32 ~~contractor duplicate copies of~~ must give the contractor a written statement ~~showing the~~
33 ~~following that sets out the following information and any other information required by the~~
34 Secretary:

- 35 (1) The payer's name, address, and taxpayer identification number.
36 (2) The contractor's name, address, and taxpayer identification number.
37 (3) The total amount of compensation paid during the calendar year.
38 (4) The total amount deducted and withheld under this section during the
39 calendar year.

40 This statement is due by January 31 following the end of the calendar year. ~~If year, unless the~~
41 ~~personal services for which the payer is paying are completed before the end of the calendar~~
42 ~~year and the contractor requests the statement, statement when the services are completed. In~~
43 this circumstance, the statement is due within 45 days after the payer's last payment of
44 compensation to the contractor. ~~The Secretary may require the payer to include additional~~
45 ~~information on the statement.~~

46 Each payer ~~shall must~~ file with the Secretary an annual report that compiles the information
47 contained in each of the payer's statements to contractors and any other information required by
48 the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the
49 information report required by G.S. 105-154.

50 (e) Records. – This subsection applies to a payer who pays compensation for personal
51 services performed in connection with a performance, an entertainment, an athletic event, a

1 speech, or the creation of a film, radio, or television program. If a payer does not withhold from
2 payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11,
3 the payer ~~shall~~must obtain from the entity documentation proving its exemption from tax. If a
4 payer does not withhold from payments to a nonresident corporation or a nonresident limited
5 liability company because the entity has obtained a certificate of authority from the Secretary of
6 State, the payer ~~shall~~must obtain from the entity its corporate identification number issued by
7 the Secretary of State. If a payer does not withhold from payments to an individual because the
8 individual is a resident, the payer ~~shall~~must obtain the individual's address and social security
9 number. If a payer does not withhold from a partnership because the partnership has a
10 permanent place of business in this State, the payer ~~shall~~must obtain the partnership's address
11 and taxpayer identification number. The payer ~~shall~~must retain this information with its
12 records.

13 (f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person
14 any amount the payer withheld improperly from the person under this section, if the refund is
15 made before the end of the calendar year and before the payer furnishes the person the annual
16 statement required by subsection (d) of this section. An amount is withheld improperly if it is
17 withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor,
18 if it is withheld from a payment that is not compensation, or if it is in excess of the amount
19 required to be withheld under this section. A payer who makes a refund under this section
20 ~~must~~must take the following actions:

- 21 (1) Not report the amount refunded on the annual statement required by
22 subsection ~~(d)~~and(d) of this section.
- 23 (2) Either not pay to the Secretary the amount refunded or, if the amount
24 refunded has already been paid to the Secretary, reduce by the amount
25 refunded the next payments to the Secretary of taxes withheld from the
26 person."

27 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,
28 2010.