



DIRECTIVE

Subject: Expansion of Requirement to Withhold State Income Tax from Certain Non-Wage Compensation Recipients
Tax: Withholding Tax
Law: N.C. Gen. Stat. §§ 105-163.1 and 105-163.3
Issued By: Personal Taxes Division
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The law which requires North Carolina income tax to be withheld from payments made to nonresidents for personal services and to ITIN contractors has been amended to also require withholding on compensation paid to the following non-wage compensation recipients for services performed in North Carolina:

- 1) Persons who fail to provide the payer a taxpayer identification number.
- 2) Persons who fail to provide the payer a valid taxpayer identification number.
- 3) Persons who have applied for an Individual Taxpayer Identification Number (ITIN).
- 4) Persons who have an expired ITIN.

The changes were enacted as part of [Session Law 2019-169 \(Senate Bill 523\)](#), and are effective January 1, 2020.

Definitions:

Compensation - Consideration a payer pays a payee. N.C. Gen. Stat. § 105-163.1(1).

Individual Taxpayer Identification Number - A taxpayer identification number issued by the Internal Revenue Service to an individual who is required to have a U.S. taxpayer identification number but who does not have, or is not eligible to obtain, a Social Security number (SSN) from the Social Security Administration. N.C. Gen. Stat. § 105-163.1(6a).

ITIN Contractor - An ITIN holder who performs services in this State for compensation other than wages. N.C. Gen. Stat. § 105-163.1(6b).

ITIN Holder - A person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN), including applied for and expired numbers. N.C. Gen. Stat. 105-163.1(6c).

Nonresident Contractor - Either of the following:

- a) A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
- b) A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

N.C. Gen. Stat. § 105-163.1(7a).

Nonresident Entity - Any of the following:

- a) A foreign limited liability company, defined using the same definition for the term “foreign LLC” in G.S. 57D-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.
- b) A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
- c) A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.

N.C. Gen. Stat. § 105-163.1(8).

Payee - Any of the following:

- a) A nonresident contractor.
- b) An ITIN contractor.
- c) A person who performs services in this State for compensation that fails to provide the payer a taxpayer identification number.
- d) A person who performs services in this State for compensation that fails to provide the payer a valid taxpayer identification number. The Secretary must notify a payer that a taxpayer identification number is not valid.

N.C. Gen. Stat. § 105-163.1(9a).

Payer - A person who, in the course of a trade or business, pays compensation. N.C. Gen. Stat. § 105-163.1(10).

Taxpayer Identification Number (TIN) - An identification number issued by the Social Security Administration or the Internal Revenue Service excluding Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and Preparer Taxpayer Identification Number (PTIN). N.C. Gen. Stat. § 105-163.1(12a).

North Carolina Law Effective January 1, 2020

Effective January 1, 2020, a payer must deduct and withhold North Carolina income tax from the non-wage compensation paid to a payee. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the payee. A payee is any of the following:

- a) A nonresident contractor.
- b) An ITIN contractor. By definition, North Carolina income tax is required to be withheld from an ITIN contractor whose taxpayer identification number is an ITIN, including applied for and expired numbers (emphasis added). Consequently, the withholding requirement applies not only to a person whose taxpayer identification number is an ITIN, but also to a person who has applied for an ITIN number and a person whose ITIN number has expired.
- c) A person who performs services in this State for compensation that fails to provide the payer a taxpayer identification number.
- d) A person who performs services in this State for compensation that fails to provide the payer a valid taxpayer identification number ("TIN"). The Department of Revenue ("Department") must notify the payer that the TIN is invalid. Consequently, if the Department notifies a payer that a payee's TIN is not valid, the withholding requirement applies to any compensation paid to that payee on or after that date.

The requirement to withhold applies to payers who, in the course of a trade or business, expect to pay more than one thousand five hundred dollars (\$1,500) of non-wage compensation to a payee.

Withholding Threshold

Withholding is required if the payee is expected to be paid more than \$1,500 during the calendar year. Tax is not required to be withheld from a payment of compensation to a payee if the payment is \$1,500 or less and, at the time the payment is made, the payer does not believe that the total compensation to be paid to the payee during the year will exceed \$1,500. If additional compensation paid to the payee later in the year causes total compensation for the year to exceed \$1,500, the payer is not required to withhold tax from the additional compensation to make up for the compensation from which no tax was withheld.

For example, the payer pays a payee \$900 in January 2020, and does not expect to make any further payments to the payee in 2020. Because the compensation is \$1,500 or less, no tax is required to be withheld. Later in 2020, the same payee is paid an additional

\$800. The payer must withhold \$32 from the \$800 compensation (\$800 x 4%) because the total compensation paid to the payee for the year now exceeds \$1,500. In contrast, if the payer makes regular payments to the payee during the year, the total of which is expected to exceed \$1,500, tax must be withheld from each payment.

Exceptions to Withholding

Tax is not required to be withheld from compensation paid to a nonresident entity if the entity meets certain requirements. No tax is required to be withheld if the entity is a corporation or a limited liability company that has obtained a certificate of authority from the Secretary of State. The payer must obtain from the entity and retain in its records the entity's identification number issued by the Secretary of State.

No tax is required to be withheld from an entity that is exempt from North Carolina corporate income tax under G.S.105-130.11. This includes any organization that is exempt from federal income tax under the Internal Revenue Code ("Code"). The entity must provide verification of this tax exemption to the payer, such as a copy of the organization's federal determination letter of tax exemption or a copy of a letter of tax exemption from the Department of Revenue.

If an entity is a partnership, no tax is required to be withheld if the partnership has a permanent place of business in this State. The payer must obtain from the partnership and retain in its records the partnership's address and taxpayer identification number.

Tax is not required to be withheld from compensation paid to an individual who is an ordained or licensed member of the clergy.

Tax is not required to be withheld from compensation paid to an ITIN holder who is temporarily admitted to the United States to perform agricultural labor or services under an H-2A visa and who is not subject to federal income tax withholding under Section 1441 of the Code.

Reporting and Paying the Tax Withheld

A payer who withholds tax from compensation paid to a payee but is not already registered with the Department of Revenue for North Carolina withholding tax purposes must register for a N. C. Withholding Tax Identification Number. The Department's [online business registration](#) application allows a payer to electronically register for a withholding identification number instead of submitting Form NC-BR. The Department strongly encourages taxpayers to use the Department's online business registration.

For detailed information on how to obtain a withholding identification number and how to pay any tax withheld, see [Form NC-30, Income Tax Withholding Tables and Instructions for Employers](#), available on the Department's website.

Annual Statement and Report

At the end of each calendar year, a payer who withholds tax from a payee's compensation must prepare and give each payee the required form or statement that reports the total compensation paid to the payee and the North Carolina income taxes withheld during the calendar year. In addition, a payer must annually file [Form NC-3](#), Annual Withholding Reconciliation and the State's copy of any required forms or statements, with the Secretary reconciling the total North Carolina income tax withheld as listed on the statements furnished to the payees with the amount of tax reported by the payer as withheld for the tax year.

For more information on required forms or statements to payees and Form NC-3, [see Form NC-30, Income Tax Withholding Tables and Instructions for Employers](#), as well as other important information on [withholding tax](#) available on the Department's website.

Claiming Credit for Tax Withheld

A payee having tax withheld from compensation should claim credit for the tax withheld as a tax payment when the payee files its North Carolina tax return. For example, an individual having tax withheld from compensation paid to the payee during tax year 2019 should claim the amount of tax withheld on Form D-400, Line 20.

For more information on how to claim tax withheld, see the instructions for the specific income tax return the payee is required to file [available from the Department's website](#).

Refund of Tax Withheld in Error

A payer who improperly withholds tax may refund the amount withheld in error to the payee if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement of tax withheld. A payer who makes a refund should not report the amount refunded on the annual statement nor remit the amount refunded to the Department. If the amount refunded has already been remitted, the payer must reduce the next payment of tax withheld from compensation paid to the payee by the amount refunded. If no additional compensation is due to be paid to the payee, and the amount withheld in error has already been remitted, the payer may not refund the tax withheld in error. The payee must file an income tax return and claim credit for North Carolina income tax withheld.

Assistance

The Department uses its website as the primary resource for reporting law changes that affect withholding responsibilities. An explanation of legislative changes made by the 2019 General Assembly that affect withholding tax, as well as other changes that affect the schedule that were made by prior General Assemblies but that affect tax year 2019, will be summarized in the Department's annual Tax Law Changes publication. The 2019

Tax Law Changes document will be available on the Department's website in late 2019. The Department will also revise the [withholding tax forms and instructions](#) if necessary.

If you have any additional questions concerning this Directive, you may call the Contact Center at 1-877-252-3052 (8:00 am until 5:00 pm EST, Monday through Friday), or write the Department at PO Box 1168, Raleigh, NC 27602.

To the extent there is any change to a statute or regulation, or new case law subsequent to the date of this Directive, the provisions in this Directive may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding the subject of this Directive and issued prior to this Directive conflict with this Directive, the provisions contained in this Directive supersede the previous guidance.