



October 17, 2018

## **IMPORTANT TAX LAW CHANGES FOR EMPLOYERS, PENSION PAYERS, AND OTHERS THAT WITHHOLD NORTH CAROLINA INCOME TAX**

The important changes addressed in this notice include:

- A lower individual income tax rate and an increase to the North Carolina standard deduction
- A change to the definition of wages
- A new requirement to file a State amended return when a taxpayer voluntarily files an amended return with the Internal Revenue Service
- A change to the due date of Form NC-3 for certain taxpayers
- New penalties applicable to certain informational returns

### **Lower Individual Income Tax Rate and an Increase to the North Carolina Standard Deduction**

During the 2017 session, the North Carolina General Assembly enacted [Session Law \("S.L."\) 2017-57](#), which included a provision to lower the income tax imposed on individuals from 5.499% to 5.25%. This legislation also increased the amount of the North Carolina standard deduction available to taxpayers based on their individual filing status. Both changes are effective for taxable years beginning on or after January 1, 2019.

To incorporate the changes made by S.L. 2017-57, the Department will revise the North Carolina income tax withholding tables. G.S. 105-163.2(b)(1) requires the withholding rate on wages to equal the income tax rate plus one-tenth of one percent (0.1%). Therefore, the withholding rate on wages for tax year 2019 will be 5.35%. The revised withholding tables for wages paid in 2019 will be included in [Form NC-30, 2019 Income Tax Withholding Tables and Instructions for Employers](#). The updated form will be available later this year on the Department's website, [www.ncdor.gov](http://www.ncdor.gov).

### **Definition of Wages for Withholding Purposes**

The 2018 session of the North Carolina General Assembly enacted [S.L. 2018-5](#). As part of this legislation, the definition of "wages" as defined under G.S. 105-163.1(13) was rewritten.

Effective June 12, 2018, "wages" has the same meaning as defined under Internal Revenue Code section 3401. Before this change, reimbursements made by an employer to an employee for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer were excluded from the definition of wages and therefore not subject to North Carolina income tax withholding. With

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the change, such reimbursements are included in the definition of wages and are subject to North Carolina income tax withholding.

### **New Filing Requirement if an Amended Return is Voluntarily Filed with the Internal Revenue Service**

As part of provisions enacted under [S.L. 2018-5](#), the 2018 General Assembly rewrote G.S. 105-163.6A, the federal corrections provision of Article 4A, “withholding tax”. As rewritten, if the amount of taxes an employer is required to withhold and pay under the Code is changed or corrected, the federal determination and amended return provisions applicable to Article 4, “individual income tax,” applies to employers, pension payers, and every other payer required to withhold North Carolina tax.

Under the new provisions, when a taxpayer voluntarily files an amended federal return with the Internal Revenue Service that contains adjustments that increase the amount of the taxpayer’s North Carolina tax liability, the taxpayer must file a State amended return with the Department within six months of filing the federal amended return. If an adjustment decreases the amount of a taxpayer’s North Carolina income tax liability, the taxpayer may file a State amended return within the statute of limitations for refunds. The changes to G.S. 105-163.6A are effective June 12, 2018, and apply to federal amended returns filed on or after that date.

Importantly, if a taxpayer voluntarily amends or corrects federal employment tax returns and the adjustments increase the amount of the North Carolina income tax withholding, the taxpayer must file the applicable North Carolina Form NC-5X, Form NC-5Q, or Form NC-3X including the corrected federal forms W-2, W-2C, or 1099 statement with the Department. For more information, see the [Department’s website](#).

### **Due Date of Form NC-3 for Certain Taxpayers**

Effective June 12, 2018, [S.L. 2018-5](#) amended G.S. 105-163.7 to change the due date for filing [Form NC-3](#) when an employer goes out of business or stops paying wages. As rewritten, if the employer terminates its business or stops paying wages during the taxable year, the taxpayer must file Form NC-3 within thirty days of the last payment of remuneration.

In 2015, the General Assembly changed the due date for filing Form NC-3 from “the same date the employer’s federal information return of federal income taxes withheld from wages is due under the Code” to “January 31.” An unintended consequence of the 2015 change was the loss of the Department’s long-standing policy that required employers that ceased operations to file Form NC-3 within thirty days of going out of business. The 2018 amendment restores this provision.

### **New Informational Return Penalties**

Effective June 12, 2018, [S.L. 2018-5](#) modified G.S. 105-236(a)(10) to subject a taxpayer to a penalty of \$50 per day, up to a maximum of \$1,000, for failure to file certain informational returns with the Secretary by the date the informational returns are due. In addition, the General Assembly created a new \$200 penalty for failure to file informational returns in the format prescribed by the Secretary.

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Unless an employer goes out of business, Form NC-3 must be filed annually on or before January 31 and must be filed in an electronic format using the Department's eNC3 Application. In addition, a taxpayer must electronically file all required statements, including federal Form W-2 and 1099 statements. For more information on filing Form NC-3, see the [Department's eNC3 Application](#) on the Department's website.

Importantly, in prior years, the Secretary has elected to automatically waive the failure to file penalty on NC-3 forms filed after the due date. The waiver was an automatic waiver – no action from the business was required. However, beginning with NC-3 forms due to be filed on January 31, 2019, the Department will impose the failure to timely file penalty on returns not filed by the due date. The Department will also impose a penalty for failure to file in the format prescribed by the Secretary on any form that is not filed electronically or does not include all required statements with the electronic submission.

A taxpayer may request a waiver of an informational return penalty by submitting Form NC-5501, *Request for Waiver of an Informational Return Penalty*. Form NC-5501 is a new form developed by the Department. **Do not submit Form NC-5500, Request to Waive Penalties.** Form NC-5501 will be available on the Department's website in early 2019. A request to waive an informational return penalty **will not be considered** a penalty waiver for purposes of good compliance as described in the [Department's Penalty Waiver Policy](#).

### **Taxpayer Resources for Future Law Changes Regarding Withholding Tax**

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 2018 General Assembly that affect withholding tax, as well as other changes that affect the schedule that were made by prior General Assemblies but take effect in tax year 2018, are summarized in the Department's annual Tax Law Changes publication. The 2018 Tax Law Changes document will be available on the Department's website later this year. The Department will also revise the [withholding tax forms and instructions](#) if necessary.

The Department also periodically publishes information such as directives or important notices that provides additional guidance to taxpayers on the taxes imposed by North Carolina. The information is available by email by subscribing to the Department's Tax Updates Email List. For more information on how to subscribe to "E-Alerts", see the [Department's website](#).

If you have any questions about the law changes explained in this document, please call the Department at 1-877-252-3052 (toll-free).