

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-109
HOUSE BILL 57

AN ACT TO REQUIRE WITHHOLDING FROM CERTAIN PAYMENTS TO NONRESIDENTS IN ORDER TO PREVENT NONRESIDENTS FROM AVOIDING NORTH CAROLINA INCOME TAXES, TO MODIFY THE DEFINITION OF EMPLOYMENT WITH RESPECT TO AGRICULTURAL LABOR, AND TO CONFORM TO FEDERAL RULES ON WAGE WITHHOLDING BY FARMERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(15) reads as rewritten:

"(15) Wages. – The term has the same meaning as in section 3401 of the Code except it does not include ~~remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market.~~ either of the following:

- a. Remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market.
- b. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11)."

Section 2. Article 4A of Chapter 105 of the General Statutes, as amended by Section 1 of this act, reads as rewritten:

"ARTICLE 4A.

~~"Withholding of Income Taxes from Wages and Payment of Income Tax by Withholding; Estimated Income Tax for Individuals.~~

"§ 105-163.1. Definitions.

The following definitions apply in this Article:

- (1) Compensation. – Consideration a payer pays a nonresident individual or nonresident entity for personal services performed in this State.
- (2) Contractor. – Either of the following:
 - a. A nonresident individual who performs personal services in this State for compensation other than wages.
 - b. A nonresident entity that provides for the performance of the following personal services in this State for compensation:

services in connection with a performance, an entertainment, an athletic event, the creation of a film or television program, or the construction or repair of a building or highway.

- (3) Dependent. – An individual with respect to whom an income tax exemption is allowed under the Code.
- (4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
 - a. Controls the payment of wages to an individual for services performed for another.
 - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
 - c. Pays wages on behalf of a unit of government that is not located in this State.
 - d. Pays wages for any other reason.
- (6) Individual. – Defined in G.S. 105-134.1.
- (7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.
- (8) Nonresident entity. – Any of the following:
 - a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C 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.
- (9) Pass-through entity. – Defined in G.S. 105-163.010.
- (10) Payer. – A person who, in the course of a trade or business, pays a nonresident individual or a nonresident entity compensation for personal services performed in this State.
- (11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.
- (12) Taxable year. – Defined in section 441(b) of the Code.

- (13) Wages. – The term has the same meaning as in section 3401 of the Code except it does not include either of the following:
- a. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).
 - b. The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer.
- (14) Withholding agent. – An employer or a payer.
- (1) Code. – Defined in G.S. 105-228.90.
 - (2) Repealed by Session Laws 1989 (Regular Session, 1990), c. 945, s. 5.
 - (3) ~~Dependent.~~ – ~~An individual with respect to whom an income tax exemption is allowed under the Code.~~
 - (4) ~~Employee.~~ – ~~An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed clergyman who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.~~
 - (5) ~~Employer.~~ – ~~A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:~~
 - a. ~~Controls the payment of wages to an individual for services performed for another.~~
 - b. ~~Pays wages on behalf of a person who is not engaged in trade or business in this State.~~
 - c. ~~Pays wages on behalf of a unit of government that is not located in this State.~~
 - d. ~~Pays wages for any other reason.~~
 - (6),(7) ~~Repealed by Session Laws 1989 (Regular Session, 1990), c. 945, s. 5.~~
 - (8) ~~Fiduciary.~~ – ~~A guardian, a trustee, an executor, an administrator, a receiver, a conservator, or other person acting in a fiduciary capacity for another.~~
 - (9) ~~Fiscal year.~~ – ~~Defined in section 441(e) of the Code.~~
 - (10) ~~Individual.~~ – ~~A natural person.~~
 - (11) ~~Miscellaneous payroll period.~~ – ~~A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.~~
 - (12) ~~Payroll period.~~ – ~~A period for which an employer ordinarily pays wages to an employee of the employer.~~
 - (13) ~~Person.~~ – ~~Defined in G.S. 105-228.90.~~
 - (14) ~~Taxable year.~~ – ~~Defined in section 441(b) of the Code.~~
 - (14a) ~~Secretary.~~ – ~~The Secretary of Revenue.~~

- (15) ~~Wages.— The term has the same meaning as in section 3401 of the Code except it does not include either of the following:~~
- a. ~~Remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market.~~
 - b. ~~The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).~~

"§ 105-163.2. Withholding. Employers must withhold taxes.

(a) Withholding Required. – An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the exemptions, deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary.

(b) Withholding Tables. – The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding exemption allowed by these tables and rules shall, as nearly as possible, approximate the exemptions, deductions, and credits to which an employee would be entitled under Article 4 of this Chapter. ~~The Secretary shall cause to be prepared and shall~~ promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of exemptions to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year. The withholding of wages pursuant to and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article.

(c) Withholding if No Payroll Period. – If wages are paid with respect to a period ~~which that~~ is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, excluding Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid. ~~(d) In paid.~~ In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, excluding Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(d) Estimated Withholding. – The Secretary may, by rule, authorize employers to estimate the wages to be paid to an employee during a calendar quarter, calculate the amount to be withheld for each period based on the estimated wages, and, upon payment of wages to the employee, adjust the withholding so that the amount actually withheld is the amount that would be required to be withheld if the employee's payroll period were quarterly.

(e) Alternatives to Tables. – If the Secretary determines that use of the withholding tables would be impractical, would impose an unreasonable burden on an employer, or would produce substantially incorrect results, the Secretary may authorize or require an employer to use some other method of determining the amounts to be withheld under this Article. The alternative method authorized by the Secretary must reasonably approximate the predicted income tax liability of the affected employees. In addition, with the agreement of the employer and employee, the Secretary may authorize an employer to use an alternative method that results in withholding of a greater amount than otherwise required under this section.

The Secretary's authorization of an alternative method is discretionary and may be cancelled at any time without advance notice if the Secretary finds that the method is being abused or is not resulting in the withholding of an amount reasonably approximating the predicted income tax liability of the affected employees. The Secretary shall give an employer written notice of any cancellation and the findings upon which the cancellation is based. The cancellation becomes effective upon the employer's receipt of this notice or on the third day after the notice was mailed to the employer, whichever occurs first. If the employer requests a hearing on the cancellation within 30 days after the cancellation, the Secretary shall grant a hearing. After a hearing, the Secretary's findings are conclusive.

(e) The Secretary may, by regulations, authorize employers:

- (1) To estimate the wages which will be paid to any employee in any quarter of the calendar year;
- (2) To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and
- (3) To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter if the payroll period of the employee was quarterly.

(f) The Secretary is authorized in unusual circumstances wherein he finds that the use of the prescribed tables is impracticable or constitutes an unreasonable requirement of the employer to authorize such employer to use some other method of determining the amounts to be withheld under this Article, provided the amounts withheld under such other method will reasonably approximate the indicated income tax liability of his employees. Further, the Secretary may authorize an employer to use

~~another method for determining the amounts to be withheld under the provisions of this Article from the wages or salaries of groups of employees or individual employees if the circumstances are such that the use of the tables would produce substantially incorrect results. Any authorization of the use of a different method shall be subject to review and cancellation or alteration by the Secretary every twelfth month, and the Secretary may cancel such authorization or order an alteration of such method at any time upon a finding by him that such authorization is being abused or that such method is not resulting in the withholding of a sum reasonably approximating the indicated income tax liability of the employees, which finding may be made by the Secretary with or without notice or a hearing and shall be conclusive except as hereinafter provided. The Secretary shall notify the employer in writing of his finding and order thereon, and such notice shall be deemed to have been received by the employer on the third day after having been deposited in the mail and the employer shall thereafter abide by such order. Any employer feeling aggrieved by such order may thereafter apply for a hearing thereon before the Secretary, unless a hearing has been previously held, and upon such hearing the findings of the Secretary shall be deemed conclusive.~~

~~(g) The Secretary is authorized to provide by regulation, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree to such additional withholding. Such additional withholding shall for all purposes be treated as other withholding amounts required to be deducted and withheld under this Article.~~

~~(h) The act of compliance with any of the provisions of this Article by a nonresident employer shall not constitute an act in evidence of and shall not be deemed to be evidence that such nonresident is doing business in this State.~~

~~"§ 105-163.3. **Withholding in accordance with regulations. Certain payers must withhold taxes.**~~

~~(a) Requirement. – Every payer who pays a contractor more than six hundred dollars (\$600.00) during a calendar year shall deduct and withhold from compensation paid to a contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.~~

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

~~(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.~~

~~(2) Compensation paid to an ordained or licensed member of the clergy.~~

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

(d) Annual Statement; Report to Secretary. – A payer required to deduct and withhold from a contractor's compensation under this section shall furnish to the contractor duplicate copies of a written statement showing the following:

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

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

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

(e) Records. – If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer shall obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer shall obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer shall obtain the partnership's address and taxpayer identification number. The payer shall retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section must:

- (1) Not report the amount refunded on the annual statement required by subsection (d); and
- (2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person.

~~The manner of withholding and the amount to be deducted and withheld under G.S. 105-163.2 shall be determined in accordance with tables, rules, and regulations adopted by the Secretary. The withholding exemption allowed by these tables, rules, and~~

~~regulations shall, as nearly as possible, approximate the exemptions, deductions, and credits to which an employee would be entitled under Article 4 of this Chapter.~~

"§ 105-163.4. Withholding does not create nexus.

A nonresident withholding agent's act in compliance with this Article does not in itself constitute evidence that the nonresident is doing business in this State.

No withholding from reimbursement for expenses.

~~The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer is not wages and is not subject to withholding under this Article.~~

"§ 105-163.5. Exemptions-Employee exemptions allowable; certificates.

(a) ~~An employee receiving wages shall be is entitled to the exemptions for which such the employee qualifies under the provisions of Article 4 of this Chapter.~~

(b) ~~Every employee shall, on or before January 1, 1960, or at the time of commencing employment, whichever is later, furnish his or her employer with a signed withholding exemption certificate informing the employer of the exemptions the employee claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under the Code; but, in the event that Code. If the employee fails to file the exemption certificate the employer, in computing amounts to be withheld from the employee's wages, shall allow the employee the exemption accorded a single person with no dependents.~~

(c) ~~Withholding exemption certificates shall take effect as of the beginning of the first payroll period which that ends on or after the date on which such the certificate is furnished, or if payment of wages is made without regard to a payroll period, then such the certificate shall take effect as of the beginning of the miscellaneous payroll period for which the first payment of wages is made on or after the date on which such the certificate is furnished; provided, that certificates furnished before January 1, 1960, shall be deemed to have been furnished on that date. furnished.~~

(d) ~~If, on any day during the calendar year, the amount of withholding exemptions to which the employee is entitled is less than the amount of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee, the employee shall, within 10 days thereafter, furnish the employer with a new withholding exemption certificate relating to stating the amount of withholding exemptions which the employee then claims, which shall in no event exceed the amount to which he the employee is entitled on such that day. If, on any day during the calendar year, the amount of withholding exemptions to which the employee is entitled is greater than the amount of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to stating the amount of withholding exemptions which the employee then claims, which shall in no event exceed the amount to which he the employee is entitled on such that day.~~

(e) ~~Withholding exemption certificates shall be in such form and contain such information as the Secretary may prescribe, but, insofar must be in the form and contain the information required by the Secretary. As far as practicable, the Secretary shall~~

cause the form of ~~such~~ the certificates to be substantially similar to federal exemption certificates.

(f) In addition to any criminal penalty provided by law, if an individual furnishes his or her employer ~~with~~ an exemption certificate that contains information which has no reasonable basis and that results in a lesser amount of tax being withheld under this Article than would have been withheld if the individual had furnished reasonable information, the individual is subject to a penalty of fifty percent (50%) of the amount not properly withheld.

"§ 105-163.6. When employer must file returns and pay withheld taxes.

(a) General. – A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or semiweekly, as specified in this section. If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

(b) Quarterly. – An employer who withholds an average of less than five hundred dollars (\$500.00) of State income taxes from wages each month shall file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Monthly. – An employer who withholds an average of at least five hundred dollars (\$500.00) but less than two thousand dollars (\$2,000) from wages each month shall file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.

(d) Semiweekly. – An employer who withholds an average of at least two thousand dollars (\$2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal employment taxes attributable to the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal employment taxes attributable to the same wages. The date set by the Code for depositing or paying federal employment taxes shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal employment taxes attributable to wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal employment taxes attributable to wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for a shortfall in the amount due if the employer would not be subject to a failure-to-deposit penalty had the shortfall occurred in a deposit of federal employment taxes attributable to the same wages and the employer pays the shortfall by the date the employer would have to deposit a shortfall in the federal employment taxes.

(e) Category. – The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule.

"§ 105-163.7. Statement to employees; information to Secretary.

(a) Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall furnish to ~~each such~~ the employee in respect to the remuneration paid by ~~such the~~ employer to such employee during the calendar year, on or before January 31 of the succeeding year, or, if ~~his the~~ employment is terminated before the close of ~~such the~~ calendar year, within 30 days ~~from~~ after the date on which the last payment of remuneration is made, duplicate copies of a written statement showing the following:

- (1) ~~The name of such person;~~ employer's name, address, and taxpayer identification number.
- (2) ~~The name of the employee and his~~ employee's name and social security ~~account number;~~ number.
- (3) The total amount of ~~wages;~~ wages.
- (4) The total amount deducted and withheld under G.S. 105-163.2.

(b) The Secretary may require an employer to include information not listed in subsection (a) on the employer's written statement to an employee and to file the statement at a time not required by subsection (a). Every employer shall file an annual report with the Secretary that contains the information given on each of the employer's written statements to an employee and other information required by the Secretary. The annual report is due on the same date the employer's federal information return of federal income taxes withheld from wages is due under the Code. The report required by this subsection is in lieu of the report required by G.S. 105-154.

(c) An employer who is required to file an annual report under subsection (b) of this section must report to the Secretary the following information concerning compliance with Article 1 of Chapter 97 of the General Statutes, the Workers' Compensation Act:

- (1) Whether the employer is required to maintain insurance or qualify as a self-insured employer under the provisions of G.S. 97-93.
- (2) Whether the employer is insured, self-insured through a group, or individually self-insured.
- (3) The name of the employer's workers' compensation insurance carrier and the number and expiration date of the insurance policy if the employer has workers' compensation insurance.
- (4) The name of the self-insured group, the group's third-party administrator, and the group's or employer's self-insured code number used by the Department of Insurance, if the employer is a member of a self-insured group.

- (5) The name of the employer's third-party administrator and the employer's self-insured code number used by the Department of Insurance, if the employer is individually self-insured.
- (6) Whether any information reported to the Secretary on a previous return has changed.

The Secretary must compile the information concerning workers' compensation reported by employers on an annual report and must give the compiled data to the Industrial Commission.

"§ 105-163.8. Liability of ~~employer~~ withholding agents and others.

(a) ~~Employer.~~ Withholding Agents. – A withholding agent who withholds the proper amount of income taxes under ~~G.S. 105-163.2~~ this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. ~~An employer~~ A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. ~~An employer~~ A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to ~~a penalty equal to twenty five percent (25%) of the amount of taxes not withheld or not timely paid to the Secretary.~~ the penalties provided in Article 9 of this Chapter.

(b) ~~Others.~~ – A person who has a duty to deduct, account for, or pay taxes required to be withheld under ~~G.S. 105-163.2~~ this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.

"§ 105-163.9. Refund of overpayment to ~~employer~~ withholding agent.

~~An employer~~ A withholding agent who pays the Secretary more under this Article than the Article requires the ~~employer~~ agent to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the ~~employer~~ withholding agent withheld the amount of the overpayment from the ~~wages of the employer's employees.~~ wages or compensation of the agent's employees or contractors. ~~An employer~~ A withholding agent must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266.

"§ 105-163.10. Withheld amounts credited to ~~individual~~ taxpayer for calendar year.

The amount deducted and withheld under ~~G.S. 105-163.2~~ this Article during any calendar year from the ~~wages or compensation of any an~~ individual shall be allowed as a credit to that individual against the tax imposed by ~~G.S. 105-134.2~~ Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity shall be allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in ~~that calendar year~~ the calendar year during which the withholding occurred, the amount shall be allowed as a credit against the tax

for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. 105-163.3 or G.S. 105-163.7 and any other information the Secretary requires.

"§ 105-163.11 to 105-163.14. Repealed by Session Laws 1985, c. 443, s. 1, effective for taxable years beginning on or after January 1, 1986.

"§ 105-163.15. Failure by individual to pay estimated income tax; penalty.

(a) In the case of any underpayment of the estimated tax by an individual, there shall be added to the tax imposed under Article 4 for the taxable year an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment.

(b) For purposes of subsection (a), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier: (i) the fifteenth day of the fourth month following the close of the taxable year, or (ii) with respect to any portion of the underpayment, the date on which such portion is paid. A payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) For purposes of this section there shall be four required installments for each taxable year with the time for payment of the installments as follows:

- (1) First installment – April 15 of taxable year;
- (2) Second installment – June 15 of taxable year;
- (3) Third installment – September 15 of taxable year; and
- (4) Fourth installment – January 15 of following taxable year.

(d) Except as provided in subsection (e), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment. The term 'required annual payment' means the lesser of:

- (1) Ninety percent (90%) of the tax shown on the return for the taxable year, or, if no return is filed, ninety percent (90%) of the tax for that year; or
- (2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(e) In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under subsection (d), the amount of the required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subsection shall be recaptured by increasing the amount of the next required installment determined under subsection (d) by the amount of the reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured.

In the case of any required installment, the annualized income installment is the excess, if any, of (i) an amount equal to the applicable percentage of the tax for the

taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over (ii) the aggregate amount of any prior required installments for the taxable year. The taxable income shall be placed on an annualized basis under rules prescribed by the Secretary. The applicable percentages for the required installments are as follows:

- (1) First installment – twenty-two and one-half percent (22.5%);
- (2) Second installment – forty-five percent (45%);
- (3) Third installment – sixty-seven and one-half percent (67.5%); and
- (4) Fourth installment – ninety percent (90%).

(f) No addition to the tax shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under ~~Article 4A~~ this Article is less than the amount set in section 6654(e) of the Code or if the individual did not have any liability for tax under Division II of Article 4 for the preceding taxable year.

(g) For purposes of this section, the term 'tax' means the tax imposed by Division II of Article 4 minus the credits against the tax allowed by ~~Article 4~~ this Chapter other than the credit allowed by this Article. The amount of the credit allowed under ~~Article 4A~~ this Article for withheld income tax for the taxable year is considered a payment of estimated tax, and an equal part of that amount is considered to have been paid on each due date of the taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld are considered payments of estimated tax on the dates on which ~~such~~ the amounts were actually withheld.

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding the other provisions of this section, an individual who is a farmer or fisherman for a taxable year is required to make only one installment payment of tax for that year. This installment is due on or before January 15 of the following taxable year but may be paid without penalty or interest on or before March 1 of that year. The amount of the installment payment shall be the lesser of:

- (1) Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or
- (2) One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at

least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return.

(j) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto. This section shall be applied to taxable years of less than 12 months in accordance with rules prescribed by the Secretary.

(k) This section shall not apply to any estate or trust.

"§ 105-163.16. Overpayment refunded.

If the amount of wages or compensation withheld at the source under ~~G.S. 105-163.2~~ this Article exceeds the tax imposed by Article 4 of this Chapter against which the withheld tax is credited under G.S. 105-163.10, the excess is considered an overpayment by the ~~employee.~~ employee or contractor. If the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax is credited under the provisions of this Article, the excess is considered an overpayment by the taxpayer. An overpayment shall be refunded as provided in Article 9 of this Chapter.

~~"§ 105-163.17. Administration.~~

~~The provisions of Article 9 of this Chapter apply to the amount of State income taxes this Article requires an employer to withhold and pay to the Secretary.~~

~~"§ 105-163.18. Rules and regulations.~~

~~The Secretary is hereby authorized to prescribe forms and make all rules and regulations which he deems necessary in order to achieve effective and efficient enforcement of this Article.~~

"§ 105-163.19 to 105-163.21. Repealed by Session Laws 1967, c. 1110, s. 4.

"§ 105-163.22. Reciprocity.

The Secretary of Revenue may, with the approval of the Attorney General, enter into agreements with the taxing authorities of states having income tax withholding statutes with such agreements to govern the amounts to be withheld from the wages and salaries of residents of such other state or states under the provisions of this Article when such other state or states grant similar treatment to the residents of this State. Such agreements may provide for recognition of the anticipated tax credits allowed under the provisions of G.S. 105-151 in determining the amounts to be withheld.

"§ 105-163.23. Withholding from federal employees.

The Secretary of Revenue ~~is hereby~~ is designated as the proper official to make request for and enter into agreements with the Secretary of the Treasury of the United States to provide for the compliance with this Article by the head of each department or agency of the United States in withholding of State income taxes from wages of federal employees and paying the same to this State. The Secretary is ~~hereby~~ authorized, ~~empowered~~ empowered, and directed to ~~make request for request~~ and enter into such ~~these~~ these agreements.

"§ 105-163.24. Construction of Article.

This Article shall be liberally construed in pari materia with Article 4 of this Chapter to the end that taxes levied by Article 4 shall be collected with respect to wages and compensation by withholding ~~from wages by employers~~ agents' withholding of the

appropriate amounts ~~herein provided for and by individuals'~~ payments in installments by ~~individuals~~ of income tax with respect to income ~~other than wages.~~ not subject to withholding."

Section 3. G.S. 105-236(4) reads as rewritten:

"(4) Failure to Withhold or Pay Tax When Due. – In the case of failure to withhold or pay any tax when due, without intent to evade the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax; provided, that such penalty shall in no event be less than five dollars (\$5.00). This penalty does not apply in any of the following circumstances:

- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
- b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax."

Section 4. G.S. 105-163.1(2), as amended by this act, reads as rewritten:

"(2) Contractor. – Either of the following:

- a. A nonresident individual who performs personal services in this State for compensation other than wages.
- b. A nonresident entity that provides for the performance of ~~the following~~ personal services in this State for ~~compensation:~~ ~~services in connection with a performance, an entertainment, an athletic event, the creation of a film or television program, or the construction or repair of a building or highway.~~ compensation."

Section 5. G.S. 96-8(6)g. reads as rewritten:

- "g. On and after January 1, 1978, the term 'employment' includes services performed in agricultural labor when a person or employing unit (a) during any calendar quarter in the current calendar year or the preceding calendar year pays wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employs at least 10 individuals in employment in agricultural labor for some portion of the day. For purposes of this Chapter, the term 'agricultural labor' includes all services performed: (1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife; (2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and

its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of crude gum (oleoresin) from a living tree, and the following products if processed by the original producer of crude gum from which derived; gum spirits of turpentine and gum resin, or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; or (4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with respect to which such service is performed; (B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in performance of service described in subparagraph (A), but only if such operators produced more than one half of the commodity with respect to which such service is performed. (C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; (D) on a farm operated for profit if such service is not in the course of the employer's trade or business. As used in this subsection, the term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. Provided, such labor is not agricultural labor performed ~~before January 1, 1995,~~ by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act."

Section 6. Any refunds of contributions, interest, or penalties made to employers because of the amendment in Section 5 of this act shall be made from the Special Employment Security Administration Fund provided for in G.S. 96-5(c).

Section 7. Sections 1, 5, and 6 of this act are effective when this act becomes law. Section 4 of this act becomes effective January 1, 1999. The remainder of this act becomes effective January 1, 1998.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:30 p.m. this 29th day of May, 1997