

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 1006  
Finance Committee Substitute Adopted 5/6/09

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 ~~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.  
35 b. Pays wages on behalf of a person who is not engaged in trade or  
36 business in this State.



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- 1 c. Pays wages on behalf of a unit of government that is not located in  
2 this State.
- 3 d. Pays wages for any other reason.
- 4 (6) Individual. – Defined in G.S. 105-134.1.
- 5 (6a) ITIN contractor. – An ITIN holder who performs services in this State for  
6 compensation other than wages.
- 7 (6b) ITIN holder. – A person whose taxpayer identification number is an  
8 Individual Taxpayer Identification Number (ITIN).
- 9 (7) Miscellaneous payroll period. – A payroll period other than a daily, weekly,  
10 biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll  
11 period.
- 12 (7a) Nonresident contractor. – Either of the following:
- 13 a. A nonresident individual who performs in this State for  
14 compensation other than wages any personal services in connection  
15 with a performance, an entertainment, an athletic event, a speech, or  
16 the creation of a film, radio, or television program.
- 17 b. A nonresident entity that provides for the performance in this State  
18 for compensation of any personal services in connection with a  
19 performance, an entertainment, an athletic event, a speech, or the  
20 creation of a film, radio, or television program.
- 21 (8) Nonresident entity. – Any of the following:
- 22 a. A foreign limited liability company, as defined in G.S. 57C-1-03,  
23 that has not obtained a certificate of authority from the Secretary of  
24 State pursuant to Article 7 of Chapter 57C of the General Statutes.
- 25 b. A foreign limited partnership as defined in G.S. 59-102 or a general  
26 partnership formed under the laws of any jurisdiction other than this  
27 State, unless the partnership maintains a permanent place of business  
28 in this State.
- 29 c. A foreign corporation, as defined in G.S. 55-1-40, that has not  
30 obtained a certificate of authority from the Secretary of State  
31 pursuant to Article 15 of Chapter 55 of the General Statutes.
- 32 (9) Pass-through entity. – Defined in G.S. 105-228.90.
- 33 (10) Payer. – A person who, in the course of a trade or business, pays a  
34 compensation to any of the following:
- 35 a. A nonresident individual or a nonresident entity compensation for  
36 personal services performed in this State.
- 37 b. An ITIN holder who is a contractor and not an employee for services  
38 performed in this State.
- 39 (11) Payroll period. – A period for which an employer ordinarily pays wages to  
40 an employee of the employer.
- 41 (11a) Pension payer. – A payor or a plan administrator with respect to a pension  
42 payment under section 3405 of the Code.
- 43 (11b) Pension payment. – A periodic payment or a nonperiodic distribution as  
44 those terms are defined in section 3405 of the Code.
- 45 (12) Taxable year. – Defined in section 441(b) of the Code.
- 46 (13) Wages. – The term has the same meaning as in section 3401 of the Code  
47 except it does not include either of the following:
- 48 a. The amount of severance wages paid to an employee during the  
49 taxable year that is exempt from State income tax for that taxable  
50 year under G.S. 105-134.6(b)(11).

1                   b.       The amount an employer pays an employee as reimbursement for  
2                   ordinary and necessary expenses incurred by the employee on behalf  
3                   of the employer and in the furtherance of the business of the  
4                   employer.

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

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

7                   "**§ 105-163.3. Certain payers must withhold taxes.**

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

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

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

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

19                   (3)       Compensation paid to an entity exempt from tax under G.S. 105-130.11.

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

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

32                   (1)       The payer's name, address, and taxpayer identification number.

33                   (2)       The contractor's name, address, and taxpayer identification number.

34                   (3)       The total amount of compensation paid during the calendar year.

35                   (4)       The total amount deducted and withheld under this section during the  
36                   calendar year.

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

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

47                  (e)       Records. – This subsection applies to a payer who pays compensation for personal  
48                  services performed in connection with a performance, an entertainment, an athletic event, a  
49                  speech, or the creation of a film, radio, or television program. If a payer does not withhold from  
50                  payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11,  
51                  the payer ~~shall~~ must obtain from the entity documentation proving its exemption from tax. If a

1 payer does not withhold from payments to a nonresident corporation or a nonresident limited  
2 liability company because the entity has obtained a certificate of authority from the Secretary of  
3 State, the payer ~~shall~~must obtain from the entity its corporate identification number issued by  
4 the Secretary of State. If a payer does not withhold from payments to an individual because the  
5 individual is a resident, the payer ~~shall~~must obtain the individual's address and social security  
6 number. If a payer does not withhold from a partnership because the partnership has a  
7 permanent place of business in this State, the payer ~~shall~~must obtain the partnership's address  
8 and taxpayer identification number. The payer ~~shall~~must retain this information with its  
9 records.

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

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

24 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,  
25 2010.