

§ 105-163.3. Certain payers must withhold taxes.

(a) Requirement. – Every payer who pays more than one thousand five hundred dollars (\$1,500) during a calendar year to a payee must deduct and withhold from compensation paid to the payee the State income taxes payable by the payee 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 payee. 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.
- (3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.
- (4) Compensation paid to an alien, as described by 8 U.S.C. § 1101(a)(15)(H)(ii)(a), that is not subject to federal income tax withholding under section 1441 of the Code.
- (5) Compensation paid by a nonresident business or a critical infrastructure company to an ITIN contractor who is a nonresident individual for a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision.

(c) Repealed by Session Laws 2015-259, s. 7.1(e), effective for taxable years beginning on or after January 1, 2015.

(d) Returns, Annual Statement, and Report. – A payer required to deduct and withhold from a payee's compensation under this section must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the compensation were wages.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer must obtain from the entity documentation proving its exemption from tax. 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 must 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 must 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 must obtain the partnership's address and taxpayer identification number. The payer must 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 payee, 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 take the following actions:

- (1) Not report the amount refunded on the annual statement required by subsection (d) of this section.
- (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. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989, c. 728, s. 1.42; 1989 (Reg. Sess., 1990), c. 945, s. 8; 1997-109, s. 2; 1998-98, ss. 11-13; 1998-162, s. 3; 2009-476, s. 2; 2013-414, s. 39(a); 2015-259, s. 7.1(e); 2015-263, s. 2(a); 2019-169, s. 6.4(b); 2019-187, s. 1(m).)