

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 443  
HOUSE BILL 1005

AN ACT TO CONFORM PAYMENTS OF NORTH CAROLINA ESTIMATED TAX  
PENALTIES FOR INDIVIDUALS TO FEDERAL ESTIMATED TAX PAYMENT  
PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.11 through G.S. 105-163.14 are repealed.

Sec. 2. G.S. 105-163.15 is rewritten to read:

**"§ 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) Eighty percent (80%) of the tax shown on the return for the taxable year, or, if no return is filed, eighty percent (80%) 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 percent (20%);
- (2) Second installment - forty percent (40%);
- (3) Third installment - sixty percent (60%); and
- (4) Fourth installment - eighty percent (80%).

(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 is less than forty dollars (\$40.00) 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. The amount of the credit allowed under Article 4A 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 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."

Sec. 3. G.S. 105-163.16(b) is rewritten to read:

"(b) 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 so paid may be credited under the provisions of this Article, the excess shall be considered an overpayment by the taxpayer, and, notwithstanding the provisions of G.S. 105-266 and G.S. 105-266.1, this overpayment by the taxpayer shall be refunded by the Secretary under the provisions of this section unless the taxpayer elects to apply the overpayment to his estimated income tax liability for the following year pursuant to G.S. 105-269.4."

Sec. 4. This act shall become effective for taxable years beginning on or after January 1, 1986.

In the General Assembly read three times and ratified, this the 21st day of June, 1985.