

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 787

Short Title: ESC Tax Proposals.

(Public)

Sponsors: Senator Kerr.

Referred to: Manufacturing and Labor.

April 8, 1993

A BILL TO BE ENTITLED

1 AN ACT TO IMPOSE A PENALTY FOR FAILURE TO COMPLY WITH ESC TAX
2 REPORTING REQUIREMENTS, TO ALLOW FOR GARNISHMENT FOR
3 UNPAID UNEMPLOYMENT INSURANCE CONTRIBUTIONS, AND TO
4 CLARIFY THE LAW WITH RESPECT TO OVERPAYMENTS COLLECTED
5 FROM CERTAIN CLAIMANTS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 96-9(a)(7) reads as rewritten:

9 "(7) Effective with the quarter ending September 30, 1992, every employer
10 with 250 or more employees, and every person or organization that, as
11 agent, reports wages on a total of 250 or more employees on behalf of
12 one or more subject employers, shall file that portion of the
13 'Employer's Quarterly Tax and Wage Report' that contains the name,
14 social security number, and gross wages of each individual in
15 employment on magnetic tapes or diskettes in a format prescribed by
16 the Commission.

17 For failure of an employer to comply with this subsection, there
18 shall be added to the amount required to be shown as tax in the reports,
19 a penalty of five percent (5%) of the amount of such tax or twenty-five
20 dollars (\$25.00), whichever is greater. The Commission shall have the
21 power to reduce or waive this penalty pursuant to G.S. 96-10(j). For a
22 person or organization that, as agents, fails to comply, that person or
23 organization shall cease to have the right to report wages and file
24 reports for subject employees for a period of one year following the

1 calendar quarter in which that person or organization failed to
2 comply."

3 Sec. 2. G.S. 96-10(b) is amended by adding the following new subdivision to

4 read:

5 "(4) Bank deposits, rents, salaries, wages, and all other choses in action or
6 property incapable of manual levy or delivery, including property held
7 in the Escheat Fund, hereinafter called the intangible, belonging,
8 owing, or to become due to any employer subject to any of the
9 provisions of this Chapter, or which has been transferred by such
10 employer under circumstances which would permit it to be levied upon
11 if it were tangible, shall be subject to attachment or garnishment as
12 herein provided, and the person owing said intangible, matured or
13 unmatured, or having same in his possession or control, hereinafter
14 called the garnishee, shall become liable for all sums due by the
15 employer under this Chapter to the extent of the amount of the
16 intangible belonging, owing, or to become due to the employer subject
17 to the setoff of any matured or unmatured indebtedness of the
18 employer to the garnishee; provided, however, the garnishee shall not
19 become liable for any sums represented by or held pursuant to any
20 negotiable instrument issued and delivered by the garnishee to the
21 employer and negotiated by the employer to a bona fide holder in due
22 course, and whenever any sums due by the employer and subject to
23 garnishment are so held or represented, the garnishee shall hold such
24 sums for payment to the Commission upon the garnishee's receipt of
25 such negotiable instrument, unless such instrument is presented to the
26 garnishee for payment by a bona fide holder in due course in which
27 event such sums may be paid in accordance with such instrument to
28 such holder in due course. To effect such attachment or garnishment
29 the Commission shall serve or cause to be served upon the employer
30 and the garnishee a notice as hereinafter provided, which notice may
31 be served by any deputy or employee of the Commission or by any
32 officer having authority to serve summonses or may be served in any
33 manner provided in Rule 4 of the North Carolina Rules of Civil
34 Procedure. The notice shall:

35 a. Show the name of the employer, and if known the employer's
36 social security number or federal tax identification number and
37 the employer's address;

38 b. Show the nature and amount of the contributions, and the
39 interest and penalties thereon, and the quarter or quarters and
40 the year or years for which the same were levied or assessed;
41 and

42 c. Be accompanied by a copy of this subsection, and thereupon the
43 procedure shall be as follows:

1 If the garnishee has no defense to offer or no setoff against the
2 employer, he shall within 10 days after service of said notice, answer
3 the same by sending to the Commission by registered or certified mail
4 a statement to that effect, and if the amount due or belonging to the
5 employer is then due or subject to his demand, it shall be remitted to
6 the Commission with said statement, but if said amount is to mature in
7 the future, the statement shall set forth that fact and the same shall be
8 paid to the Commission upon maturity, and any payment by the
9 garnishee hereunder shall be a complete extinguishment of any
10 liability therefor on his part to the employer. If the garnishee has any
11 defense or setoff, he shall state the same in writing under oath, and,
12 within 10 days after service of said notice, shall send two copies of
13 said statement to the Commission registered or certified mail; if the
14 Commission admits such defense or setoff, it shall so advise the
15 garnishee in writing within 10 days after receipt of such statement and
16 the attachment or garnishment shall thereupon be discharged to the
17 amount required by such defense or setoff, and any amount attached or
18 garnished hereunder which is not affected by such defense or setoff
19 shall be remitted to the Commission as above provided in cases where
20 the garnishee has no defense or setoff, and with like effect. If the
21 Commission shall not admit the defense or setoff, it shall set forth in
22 writing its objections thereto and shall send a copy thereof to the
23 garnishee within 10 days after receipt of the garnishee's statement, or
24 within such further time as may be agreed on by the garnishee, and at
25 the same time the Commission shall file a copy of said notice, a copy
26 of the garnishee's statement, and a copy of its objections thereto in the
27 superior court of the county where the garnishee resides or does
28 business where the issues made shall be tried as in civil actions.

29 If judgment is entered in favor of the Commission by default or
30 after hearing, the garnishee shall become liable for the contributions,
31 interest, and penalties due by the employer to the extent of the amount
32 over and above any defense or setoff of the garnishee belonging,
33 owing, or to become due to the employer, but payments shall not be
34 required from amounts which are to become due to the employer until
35 the maturity thereof, nor shall more than ten percent (10%) of any
36 employer's salary or wages be required to be paid hereunder in any one
37 month. The garnishee may satisfy said judgment upon paying said
38 amount, and if he fails to do so, execution may issue as provided by
39 law. From any judgment or order entered upon such hearing either the
40 Commission or the garnishee may appeal as provided by law. If,
41 before or after judgment, adequate security is filed for the payment of
42 said contributions, interest, penalties, and costs, the attachment or
43 garnishment may be released or execution stayed pending appeal, but
44 the final judgment shall be paid or enforced as above provided. The

1 employer's sole remedies to question his liability for said
2 contributions, interest, and penalties shall be those provided in this
3 Chapter, as now or hereafter amended or supplemented. If any third
4 person claims any intangible attached or garnished hereunder and his
5 lawful right thereto, or to any part thereof, is shown to the
6 Commission, such person shall discharge the attachment or
7 garnishment to the extent necessary to protect such right, and if such
8 right is asserted after the filing of said copies as aforesaid, it may be
9 established by interpleader as now or hereafter provided by law in
10 cases of attachment and garnishment. In case such third party has no
11 notice of proceedings hereunder, he shall have the right to file his
12 petition under oath with the Commission at any time within 12 months
13 after said intangible is paid to him and if the Commission finds that
14 such party is lawfully entitled thereto or to any part thereof, it shall pay
15 the same to such party as provided for refunds by G.S. 96-10(e) and if
16 such payment is denied, said party may appeal from the determination
17 of the Commission under the provisions of G.S. 96-10(f); provided,
18 that in taking an appeal to the superior court, said party may appeal
19 either to the Superior Court of Wake County or to the superior court of
20 the county wherein he resides or does business. The intangibles of an
21 employer shall be paid or collected hereunder only to the extent
22 necessary to satisfy said contributions, interest, penalties, and costs.
23 Except as hereinafter set forth, the remedy provided in this section
24 shall not be resorted to unless a certificate or execution against the
25 employer has been returned unsatisfied: Provided, however, if the
26 Commission is of the opinion that the only effective remedy is that
27 herein provided, it shall not be necessary that a certificate or execution
28 shall be first returned unsatisfied, and in no case shall it be a defense to
29 the remedy herein provided that a certificate or execution has not been
30 first returned unsatisfied.

31 This subsection shall be applicable with respect to the wages,
32 salary, or other compensation of officials and employees of this State
33 and its agencies and instrumentalities, officials and employees of
34 political subdivisions of this State and their agencies and
35 instrumentalities, and also officials and employees of the United States
36 and its agencies and instrumentalities insofar as the same is permitted
37 by the Constitution and laws of the United States. In the case of State
38 or federal employees, the notice shall be served upon such employee
39 and upon the head or chief fiscal officer of the department, agency,
40 instrumentality, or institution by which the employer is employed. In
41 case the employer is an employee of a political subdivision of the
42 State, the notice shall be served upon such employee and upon the
43 chief fiscal officer, or any officer or person charged with making up
44 the payrolls, or disbursing funds, of the political subdivision by which

1 the employer is employed. Such head or chief officer or fiscal officer
2 or other person as specified above shall thereafter, subject to the
3 limitations herein provided, make deductions from the salary or wages
4 due or to become due the employer and remit same to the Commission
5 until the contribution, penalty, interest, and costs allowed by law are
6 fully paid. Such deductions and remittances shall, **pro tanto,**
7 constitute a satisfaction of the salary or wages due the employer."

8 Sec. 3. This act is effective upon ratification and applies to civil actions filed
9 on or after that date.