



State of North Carolina

Office of the State Controller

DAVID T. MCCOY
STATE CONTROLLER

December 17, 2009

MEMORANDUM

TO: Chief Fiscal Officers/Vice Chancellors

FROM: David T. McCoy *David McCoy*

SUBJECT: NC 4% Withholding Tax on Contractors with Individual Taxpayer Identification Number (ITIN)

General Statute 105-163 was amended by the 2009 General Assembly to require the withholding of four percent (4%) State income tax on payments made to contractors identified by individual taxpayer identification numbers (ITINs).

For several years payers have been required to withhold North Carolina income tax from payments made to nonresident individuals and entities in excess of \$1,500 per calendar year. The services subject to this withholding and reporting requirement were in connection with a performance, an entertainment or athletic event, a speech, or the creation of a film, radio, or television program. This withholding requirement applied to both nonresident individuals and nonresident entities. The term "nonresident" referred to the contractor being a nonresident of North Carolina, such as being a resident of Virginia or Georgia.

The definition of contractors subject to the North Carolina 4% withholding tax has now been expanded to include individuals possessing ITIN numbers, rather than social security numbers (SSNs) or employer identification numbers (EINs). The payer can identify an ITIN from SSNs or EINs by the first digit in the nine digit number sequence. An ITIN **always** begins with a **9**, such as (9xx-xx-xxxx). An SSN or EIN will never begin with 9 as the first digit.

All services performed by ITIN individuals in excess of \$1,500 cumulatively will be subject to the 4% withholding provisions, not just services in connection with performances, entertainments or athletic events, speeches, or the creation of film, radio and television programs. However, these same limitations continue to apply to NC nonresident individuals and entities, since changes were not made to those tax withholding provisions.

Agencies or institutions that currently possess NC Department of Revenue withholding numbers **will not** need to apply for an additional number. Should your agency not have a NC tax withholding number you will need to apply for one using Department of Revenue Form AS/RPI, Registration Application for Sales and Used Tax and/or Income tax Withholding. Once completed, this form should be returned to the Business Registration Unit at PO Box 25000, Raleigh, NC 27640. Agencies that remit sales and use tax will

need a separate number for the remission of withheld income tax since DOR procedure does not allow for both sales tax and income tax to be remitted using the same withholding number.

NC income tax withheld under the provisions of GS-105-163 should be remitted to the Department of Revenue on a quarterly (unless notified to submit monthly) basis using Form NC-5. After the end of the calendar year, but before January 31st of the following, you should remit 1099-MISC forms showing the NC tax withheld attached to Form NC-3, Annual Reconciliation to the Department of Revenue. A copy should also be furnished to the contractor. The Department of Revenue will furnish coupon booklets to payers to be used for the remission of the withheld NC income tax.

Please note, the IRS does not share 1099-MISC data with the Department of Revenue. The 1099 Forms used to comply with the NC nonresident contractor withholding requirements must be separately generated and separately submitted to Revenue. Further instructions concerning processing ITIN contractor payments through NCAS will follow. Agencies and institutions processing payments through other accounting systems must take action to ensure full compliance with this new State tax withholding requirement.

Should you have questions, please call Randy Thomas at (919) 981-5488 or the Withholding Tax Division of the Department of Revenue at (919) 733-3565.

Thank you for your prompt attention to this matter.