

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-162
HOUSE BILL 1318

AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS, TO INCREASE THE THRESHOLD REQUIREMENT FOR NONRESIDENT WITHHOLDING, AND TO PROVIDE A MECHANISM TO ENHANCE COLLECTION OF TAXES FROM NONRESIDENTS ENGAGED IN CONSTRUCTION-RELATED BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(2) reads as rewritten:

"(2) Contractor. – Either of the following:

- a. A nonresident individual who performs ~~personal services in this State for compensation other than wages.~~ wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
- b. A nonresident entity that provides for the performance ~~of the following personal services in this State for compensation:~~ services—compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film—film, radio, or television program, or the construction or repair of a building or highway program."

Section 2. Section 4 of S.L. 1997-109 is repealed.

Section 3. G.S. 105-163.3(a), as amended by S.L. 1998-98, reads as rewritten:

"(a) Requirement. – Every payer who pays a contractor more than ~~six hundred dollars (\$600.00)~~ one thousand five hundred dollars (\$1,500) during a calendar year shall deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor 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 contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 4. Article 1 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-10.1. Licensing of nonresidents.

- (a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. – Defined in G.S. 55-1-40.
- (3) Reserved.
- (4) Foreign limited liability company. – Defined in G.S. 57C-1-03.

(b) Licensing. – The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their certificates of license. The Board shall not renew the certificate of license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 5. Article 2 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-22.2. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. – Defined in G.S. 55-1-40.
- (3) Reserved.
- (4) Foreign limited liability company. – Defined in G.S. 57C-1-03.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every

nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 6. Article 4 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-44.2. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. – Defined in G.S. 55-1-40.
- (3) Reserved.
- (4) Foreign limited liability company. – Defined in G.S. 57C-1-03.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 7. Chapter 89C of the General Statutes is amended by adding a new section to read:

"§ 89C-18.1. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of

Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Reserved.

(4) Foreign limited liability company. – Defined in G.S. 57C-1-03.

(b) Licensing. – The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their certificates of licensure. The Board shall not renew the certificate of licensure of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 8. G.S. 150B-3(d) reads as rewritten:

"(d) This section does not apply to ~~revocations~~ the following:

(1) Revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, or 110-142.2.

(2) Refusal to renew an occupational license pursuant to G.S. 87-10.1, 87-22.2, 87-44.2, or 89C-18.1, based solely on a Department of Revenue determination that the licensee owes a delinquent income tax debt."

Section 9. G.S. 93B-14 reads as rewritten:

"§ 93B-14. Information on applicants for licensure.

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only ~~to~~ as follows:

(1) To the State Child Support Enforcement Program of the Department of Health and Human Services upon its request and for the purpose of enforcing a child support order.

(2) To the Department of Revenue for the purpose of administering the State's tax laws."

Section 10. G.S. 87-10.1, as enacted by this act, reads as rewritten:

"§ 87-10.1. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. – Defined in G.S. 55-1-40.
- (3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company. – Defined in G.S. 57C-1-03.
- (5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign corporation licensed by the board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their certificates of license. The Board shall not renew the certificate of license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 11. G.S. 87-22.2, as enacted by this act, reads as rewritten:

"§ 87-22.2. Licensing of nonresidents.

- (a) Definitions. – The following definitions apply in this section:
 - (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
 - (2) Foreign corporation. – Defined in G.S. 55-1-40.
 - (3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
 - (4) Foreign limited liability company. – Defined in G.S. 57C-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, ~~licensed by the Board~~ owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 12. G.S. 87-44.2, as enacted by this act, reads as rewritten:

"§ 87-44.2. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – Defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – Defined in G.S. 57C-1-03.

(5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a

certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and every foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual ~~licensed by the Board~~ or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 13. G.S. 89C-18.1, as enacted by this act, reads as rewritten:

"§ 89C-18.1. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. – Defined in G.S. 55-1-40.
- (3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company. – Defined in G.S. 57C-1-03.
- (5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. – Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. – If the Secretary of Revenue determines that any nonresident individual ~~licensed by the Board~~ or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in

any foreign partnership licensed by the Board, owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their certificates of licensure. The Board shall not renew the certificate of licensure of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 14. Sections 1 through 3 of this act are effective retroactively as of January 1, 1998. Notwithstanding Sections 1, 2, and 3 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from whom the tax was withheld only as provided in G.S. 105-163.3(f). Sections 10 through 13 of this act become effective July 1, 2000. The remainder of this act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 18th day of September, 1998.

Approved 5:31 p.m. this 28th day of September, 1998