

17 NCAC 06B .3905 NONRESIDENT MEMBERS OF PROFESSIONAL ATHLETIC TEAMS

(a) Determination of North Carolina source income.

- (1) To determine the portion of his or her total compensation for services rendered as a member of a professional athletic team during the taxable year that shall be considered North Carolina source income and shall be included in the numerator of the fraction determined under G.S. 105-153.4(b), the nonresident member of a professional athletic team shall multiply his or her total compensation for services rendered as a member of a professional athletic team during the taxable year by a fraction, the numerator of which is the number of duty days spent in North Carolina rendering services for the team in any manner during the taxable year. The denominator shall be the total number of duty days spent both within and outside North Carolina during the taxable year.
- (2) Travel days that do not involve any of the activities set forth in Subparagraph (b)(3) of this Rule, or other similar team activity, are not considered duty days spent in North Carolina and compensation for those days shall not be included in the numerator of the fraction determined under G.S. 105-153.4(b). However, the travel days shall be considered duty days spent within and outside North Carolina and compensation for those days is included in the denominator of the fraction determined under G.S. 105-153.4(b).
- (3) Where the method of apportioning and allocating the compensation provided in this Rule produces substantially incorrect results, the Secretary of Revenue may require the member of a professional athletic team to apportion and allocate the compensation under another method prescribed by the Secretary as long as the prescribed method better reflects the compensation received for services rendered in North Carolina. A nonresident member of a professional athletic team may request an alternative method to apportion and allocate the compensation, demonstrating that the method provided under this Rule produces substantially incorrect results. If the Secretary approves the alternative method, a copy of the Secretary's written approval shall be included with the North Carolina income tax return filed by the nonresident member.

(b) Definitions. For purposes of this Rule:

- (1) The term "professional athletic team" includes any professional baseball, basketball, football, soccer, hockey, or other team.
- (2) The term "member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers and trainers.
- (3) The term "duty days" shall mean all days during the taxable year from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete. Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete. The services include participation in instructional leagues, the "Pro Bowl," or promotional caravans. This includes days during the member's off-season where the member conducts training activities at the facilities of the team. Duty days include game days, practice days, days spent at team meetings, promotional caravans and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete. Duty days for any person who joins a team during the season shall begin on the day the person joins the team, and for any person who leaves a team shall end on the day the person leaves the team. Where a person switches teams during the taxable year, a separate duty day calculation shall be made for the period the person was with each team. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days. Days for which a player is on the disabled list shall be considered duty days and shall be included in the denominator of the fraction described in Subparagraph (a)(1) of the Rule, but shall not be considered duty days spent in North Carolina and shall not be included in the numerator of the fraction.
- (4) The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

- (A) from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during that taxable year; and
- (B) for an event during the taxable year that occurs on a date that does not fall within the period from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete, such as participation in instructional leagues, the "Pro Bowl," or promotional caravans.

The compensation shall include salaries, wages, bonuses, and any other type of compensation identified in Internal Revenue Code Section 61 and its regulations and paid during the taxable year to a member of a professional athletic team for services performed in that year. The compensation shall not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

- (5) For purposes of Subparagraph (b)(4) of this Rule, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in Paragraph (a) of this Rule are:

- (A) bonuses earned as a result of play, such as performance bonuses, during the season, including bonuses paid for championship, play-off, or "bowl" games played by a team, or for selection to all-star league or other honorary positions; and
- (B) bonuses paid for signing a contract, unless all of the following conditions are met:
 - (I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;
 - (II) the signing bonus is payable separately from the salary and any other compensation; and
 - (III) the signing bonus is nonrefundable.

(c) Withholding requirements.

- (1) A professional athletic team shall withhold income tax from the North Carolina source income of a nonresident member of the team at the rate for individuals with no withholding allowances as provided in G.S. 105-163.5. Taxes shall be withheld from the income of a resident member of the team as provided in G.S. 105-163.2.
- (2) A professional athletic team that is not domiciled in this State shall be classified as a quarterly employer and shall file a return reporting the amount of taxes withheld and pay the amounts withheld as provided in G.S. 105-163.6. A professional athletic team that is domiciled in this State shall determine its filing and paying requirements based on its average monthly withholding as provided in G.S. 105-163.6.

(d) Income tax return filing requirements.

- (1) A nonresident member of a professional athletic team is not required to file a North Carolina individual income tax return when the only income from North Carolina sources is the compensation received for services rendered as a member of the team and the team has withheld taxes from the North Carolina source income as set forth in Paragraph (c) of this Rule. The individual may file an individual income tax return and claim credit for the tax withheld.
- (2) The professional athletic team, as well as the individual, shall be personally and individually liable for any additional tax due if the professional athletic team does not properly determine the North Carolina source income of a member of the professional athletic team or properly withhold tax from the income.

History Note: Authority G.S. 105-153.4; 105-163.2; 105-163.3; 105-163.5; 105-163.6; 105-163.7; 105-163.8; 105-262; Eff. November 1, 1995; Amended Eff. August 1, 2002; Readopted Eff. May 1, 2016.