

## SUBCHAPTER 6C - WITHHOLDING

### SECTION .0100 - WITHHOLDING INCOME TAXES

#### 17 NCAC 06C .0101 GENERAL

*History Note:* Authority G.S. 105-163.1 through 105-163.10; 105-163.17 to 105-163.24; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. June 1, 1982.

#### 17 NCAC 06C .0102 WITHHOLDING FROM WAGES

*History Note:* Authority G.S. 105-163.1; 105-163.1(3); 105-163.1(4); 105-163.1(13); 105-163.2; 105-163.3; 105-163.6;  
105-163.18; 105-262;  
Eff. February 1, 1976;  
Amended Eff. June 1, 1990; December 1, 1988; April 1, 1987;  
Repealed Eff. June 1, 1993.

#### 17 NCAC 06C .0103 INCOME NOT SUBJECT TO WITHHOLDING

*History Note:* Authority G.S. 105-154; 105-163.1(6); 105-163.11; 105-163.14; 105-163.18; 105-262;  
Eff. February 1, 1976;  
Amended Eff. June 1, 1990;  
Repealed Eff. October 1, 1991.

#### 17 NCAC 06C .0104 EXEMPTION CERTIFICATES

*History Note:* Filed as a Temporary Amendment [(d) and (f)] Eff. November 16, 1981, for a period of 46 days to expire  
on January 1, 1982;  
Authority G.S. 105-163.3; 105-163.5; 105-163.18; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1989; June 1, 1982; January 1, 1982; April 12, 1981;  
Repealed Eff. June 1, 1990.

#### 17 NCAC 06C .0105 WAGES

#### 17 NCAC 06C .0106 EMPLOYERS

*History Note:* Authority G.S. 105-163.1(4); 105-163.1(13); 105-163.2; 105-163.2(h); 105-163.18; 105-262;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1991; June 1, 1990;  
Repealed Eff. June 1, 1993.

#### 17 NCAC 06C .0107 EMPLOYEES

To prevent double withholding and to anticipate any tax credits allowable to a North Carolina resident, withholding of North Carolina tax is not required from wages paid to a resident for services performed in another state if that state requires withholding. This relief from double withholding does not relieve the resident of his obligation to file a North Carolina individual income tax return and pay any balance due after tax credit.

All wages received by a nonresident for services performed in this State are subject to withholding of North Carolina income tax. Any relief from double withholding must be granted by his state of residence.

*History Note:* Authority G.S. 105-153.8(a); 105-163.1(4); 105-262;  
Eff. February 1, 1976;  
Amended Eff. June 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

### **17 NCAC 06C .0108 EMPLOYEE-EMPLOYER RELATIONSHIP**

Everyone who performs services subject to the will and control of an employer, both as to what shall be done and how it shall be done, is an employee. An employer-employee relationship exists when the person for whom the services are performed has the right to control and direct the individual performing the services. Managers and other supervisory personnel, officers of corporations, and elected public officials are employees. Whether the employer actually controls and directs the manner in which the services are performed does not matter if he has the right to do so, and it does not matter that the employee is called by some other name such as partner, agent, or independent contractor; nor whether the individual works full or part time; nor how the payments are measured, paid, or what they are called.

Lawyers, physicians, contractors, and others who follow an independent trade, business, or profession in which they offer their services to the public, generally are not employees. If an individual is subject to the control and direction of another only as to the results of his work and not as to the methods of accomplishing the results, he is an independent contractor and not an employee.

*History Note:* Authority G.S. 105-163.1(4); 105-163.1(5); 105-262;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

### **17 NCAC 06C .0109 MINISTERS**

*History Note:* Authority G.S. 105-163.1A; 105-163.2; 105-163.18; 105-262;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1991; August 1, 1986; February 21, 1979;  
Repealed Eff. June 1, 1993.

### **17 NCAC 06C .0110 COMMON CARRIERS**

*History Note:* Authority G.S. 105-163.2; 105-262; 49 U.S.C. Sec. 26; Sec. 301A; Sec. 923; Sec. 1512;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1999; November 1, 1994; December 1, 1990; November 1, 1988;  
Repealed Eff. May 1, 2016.

### **17 NCAC 06C .0111 FEDERAL EMPLOYEES**

*History Note:* Authority G.S. 105-163.2; 105-163.18; 105-163.23; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 21, 1979;  
Repealed Eff. June 1, 1993.

### **17 NCAC 06C .0112 SEAMEN**

(a) The Vessel Worker Tax Fairness Act, 46 U.S.C. 11108 prohibits withholding of state income tax from the wages of a seaman on a vessel engaged in foreign, coastwide, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel. Vessels engaged in other activity do not come under the restriction; however, any seaman who is employed in coastwide trade between ports in this State may have tax withheld if such withholding is pursuant to a voluntary agreement between such seaman and his employer.

(b) With respect to income obtained while:

- (1) engaged as a pilot (licensed under section 7101 of Title 46 of the Code or under the laws of a state) on a vessel performing duties in more than one state; or
- (2) performing regularly assigned duties as a master, officer or crewman on a vessel operating on the navigable waters of more than one state; an individual is subject to income tax only in the state and political subdivision in which the individual resides.

(c) Seamen and fishing boat crewmen exempt from withholding as specified above, shall determine whether they meet the requirements for paying estimated income tax.

*History Note:* Authority G.S. 105-262; 46 U.S.C. Sec. 11108;  
Eff. February 1, 1976;

*Amended Eff. February 1, 2005; June 1, 1993; May 1, 1984; February 21, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

**17 NCAC 06C .0113      BONUS PAYMENTS**  
**17 NCAC 06C .0114      TRAVEL ALLOWANCES**  
**17 NCAC 06C .0115      MOVING EXPENSE REIMBURSEMENT**  
**17 NCAC 06C .0116      WITHHOLDING FROM TIPS**

*History Note:      Authority G.S. 105-163.1(6); 105-163.2; 105-163.4; 105-163.18; 105-262;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1984; February 21, 1979;  
Repealed Eff. June 1, 1990.*

**17 NCAC 06C .0117      SUPPLEMENTAL WAGE PAYMENTS**

(a) If an employer pays supplemental wages separately (or combines them with regular wages in a single payment and specifies the amount of each), the income tax withholding method depends on whether the employer withholds income tax from the employee's regular wages and whether the wages and supplemental wages are paid in a single payment.

(b) If tax has been withheld on the regular wages and the supplemental amount is not paid in a single payment together with regular wages, the employer may treat the supplemental wages as wholly separate from the regular wages and apply the income tax rate for that tax year pursuant to G.S. 105-153.7(a) plus one-tenth of one percent to the supplemental wage payment without consideration for allowances claimed on the employee's withholding allowance certificate. Otherwise, the supplemental wages shall be added to the regular wages for the most recent payroll period. The income tax shall be figured as if the regular wages and supplemental wages constitute a single payment. The tax already withheld from the regular wages is subtracted from this amount.

(c) The remaining tax determined under Paragraph (b) shall be withheld from the supplemental wages. If the employer did not withhold income tax from the employee's regular wages, the employer shall add the supplemental wages to the employee's regular wages paid for the current or last preceding payroll period and withhold tax as though the supplemental wages and regular wages were one payment.

(d) Tips shall be treated as supplemental wages. The employer shall withhold the income tax on tips from wages or collect the tax from funds the employee provides. If an employee receives regular wages and reports tips, the employer shall figure income tax as if the tips were supplemental wages. If the employer has not withheld income tax from the regular wages, the employer shall add the tips to the regular wages and withhold income tax on the total. If the employer withheld income tax from the regular wages, the employer shall withhold on the tips as explained in Paragraphs (b) and (c).

*History Note:      Authority G.S. 105-153.7; 105-163.1(13); 105-163.2; 105-262;  
Eff. February 1, 1976;  
Amended Eff. June 1, 1990;  
Readopted Eff. May 1, 2016;  
Amended Eff. August 1, 2016.*

**17 NCAC 06C .0118      SICK PAY**

*History Note:      Authority G.S. 105-163.1(4); 105-163.1(5); 105-163.1(6); 105-163.2; 105-163.18;  
105-262;  
Eff. February 1, 1976;  
Repealed Eff. June 1, 1990.*

**17 NCAC 06C .0119      WAGE AND TAX STATEMENTS**

To meet the requirements of G.S. 105-163.7, an employer shall use the six-part Federal Form W-2 or any other alternate forms which have been designed for his payroll equipment if they provide the same information and the same number of copies as the official form. When completed, the state copies must show the employer's North Carolina withholding identification number; must designate the state tax as North Carolina tax; and the North Carolina gross wages must be separately stated if they are different from federal gross wages. Statements which do not meet the above requirements shall not be accepted and employees shall not be given credit for the tax withheld.

*History Note:* Authority G.S. 105-163.7; 105-254; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 2005; May 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

#### **17 NCAC 06C .0120 RECIPROCITY OF TAX CREDITS**

North Carolina does not allow tax credit to nonresidents for income tax paid to another state or country; therefore, any relief from double taxation must be granted by the state of residence. North Carolina provides such relief to its residents as explained in 17 NCAC 06C .0107.

*History Note:* Authority G.S. 105-153.9(a); 105-163.22; 105-262;  
Eff. February 1, 1976;  
Amended Eff. June 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

#### **17 NCAC 06C .0121 CREDIT FOR INCOME TAX WITHHELD**

*History Note:* Authority G.S. 105-163.10; 105-163.18; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. June 1, 1982.

#### **17 NCAC 06C .0122 FRINGE BENEFITS**

*History Note:* Authority G.S. 105-163.1(6); 105-163.2; 105-163.18; 105-262;  
Eff. July 1, 1986;  
Repealed Eff. June 1, 1990.

#### **17 NCAC 06C .0123 EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE**

(a) Requirement. -- Each new employee, before beginning employment, shall furnish his or her employer with a signed North Carolina Employee's Withholding Allowance Certificate, Form NC-4, Form NC-4 EZ, or Form NC-4 NRA. A federal exemption certificate shall not be acceptable. A certificate filed by a new employee shall be effective upon the first payment of wages after it is filed and remains in effect until the employee furnishes a new one. G.S. 105-153.3 defines the terms married individual, head of household, and surviving spouse (qualifying widow(er)) by reference to the Internal Revenue Code; however, the number of allowances to which an individual is entitled may differ under federal and state law. If an employee fails to furnish an allowance certificate, Form NC-4, Form NC-4 EZ, or Form NC-4 NRA, the employer shall withhold tax as if the employee is single with no allowances.

(b) Notice. -- The employer is not required to ascertain whether or not the total amount of allowances claimed is greater than the total number to which the employee is entitled. If, however, the employer has reason to believe that the number of allowances claimed by an employee is greater than the number to which the employee is entitled, the employer shall notify the Department of Revenue at the time for filing the quarterly report for the quarter during which the certificate is received, if the employer files quarterly withholding reports. If the employer files monthly withholding reports, the employer shall notify the Department of Revenue of certificates received during the quarter at the time for filing the monthly report for the third month of the quarter.

(c) Military spouse. -- A military spouse exempt from withholding under the Military Spouse Residency Relief Act shall furnish an employer a Form NC-4 EZ certifying the spouse meets the requirements of the Military Spouse Residency Relief Act and the state in which the spouse is domiciled, a copy of the spouse's spousal military identification card, and a copy of the servicemember's most recent leave and earnings statement. A new Form NC-4 EZ shall be submitted each calendar year, along with the supplemental information set forth in this Paragraph.

*History Note:* Authority G.S. 105-163.2; 105-163.5; 105-262; 50 U.S.C. 571;  
Eff. June 1, 1990;  
Amended Eff. August 1, 2002; June 1, 1993; October 1, 1991;  
Readopted Eff. May 1, 2016.

#### **17 NCAC 06C .0124 ADDITIONAL WITHHOLDING ALLOWANCES**

(a) Deductions. -- Additional withholding allowances may be claimed by taxpayers expecting to have allowable itemized deductions exceeding the standard deduction or allowable adjustments to income. For most taxpayers, one additional allowance may be claimed for each two thousand five hundred dollars (\$2,500) that the itemized deductions allowed under G.S. 105-153.5(a)(2) are expected to exceed the standard deduction allowed under G.S. 105-153.5(a)(1) and for each two thousand five hundred dollars (\$2,500) of net adjustments reducing income.

(b) Tax Credits. -- A taxpayer expecting to have allowable tax credits may claim additional withholding allowances. The number of additional allowances shall be determined by dividing the amount of the tax credit by the product determined by multiplying the withholding tax rate by two thousand five hundred dollars (\$2,500) and then rounding that number down to the nearest whole number. The withholding tax rate is the individual income tax rate plus one tenth of one percent (0.1%).

*History Note:* Authority G.S. 105-163.2(b); 105-163.2A; 105-163.5; 105-262;  
Eff. June 1, 1990;  
Amended Eff. April 1, 2001; July 1, 1999;  
Readopted Eff. May 1, 2016;  
Amended Eff. May 1, 2018.

### **17 NCAC 06C .0125 PENALTY**

*History Note:* Authority G.S. 105-163.5; 105-262;  
Eff. June 1, 1990;  
Repealed Eff. June 1, 1993.

### **17 NCAC 06C .0126 SUBMISSION OF CERTAIN WITHHOLDING ALLOWANCE CERTIFICATES**

(a) An employer is required to submit a copy of any withholding allowance certificate on which the employee claims more than 10 withholding allowances or claims exemption from withholding and the employee's wages would normally exceed two hundred dollars (\$200.00) per week.

(b) An employer filing quarterly withholding reports shall submit copies of the certificates received during the quarter when filing the quarterly report. An employer filing monthly withholding reports shall submit copies of the certificates received during the quarter when filing the monthly report for the third month of the calendar quarter. Copies may be submitted earlier and for shorter reporting periods.

(c) Copies of the certificates, along with a letter showing the employer's name, address, withholding identification number, and the number of certificates submitted, shall be mailed to: North Carolina Department of Revenue, Tax Compliance - Withholding Tax, P.O. Box 25000, Raleigh, North Carolina 27640.

(d) The employer shall withhold on the basis of the certificate until written notice is received from the Department that the certificate is defective. As part of that written notice, the Department shall advise the employer to ignore the allowance certificate filed and to withhold using the number of allowances specified.

(e) The employer shall furnish the employee a copy of the written notice upon receipt.

(f) If the employee files a new certificate, the employer shall honor that certificate only if the employee does not claim exempt and claims a number smaller than the number allowed in the Department's written notice. If the new certificate claims a number larger than the employee has been allowed and the employee specifies, in writing, any circumstances as justification to support the claims, the employer shall, upon receipt, forward a copy of the certificate and the employee's written statement to the Department for review. The employer shall continue to withhold as specified in the Department's written notice until written notice is received from the Department advising the employer to withhold on the basis of the new certificate.

(g) To increase withholding, an employee or a recipient of a pension payment may claim less than his or her allowable allowances or may enter into an agreement with his or her withholding agent and request that an additional amount be withheld by entering the desired amount on Form NC-4, NC-4 EZ, NC-4 NRA, or NC-4P.

(h) An employee working for two or more employers or a recipient receiving pension payments from two or more pension payers shall claim his or her allowable allowances with only one withholding agent and claim zero allowances with the other withholding agents.

(i) If an employee claims total exemption from withholding, the employee's wages shall be exempt from withholding of North Carolina income tax for the remainder of the calendar year, and through February 15 of the succeeding year unless the employee withdraws the statement during the year. An employee claiming exemption from withholding shall complete a new certificate by February 15. If the employee does not complete a new certificate, the employer shall withhold on the basis of a single individual with no allowances.

*History Note:* Authority G.S. 105.163.2; 105-163.2A; 105-163.5; 105-262;  
Eff. June 1, 1990;  
Amended Eff. April 1, 2001; June 1, 1993;  
Readopted Eff. May 1, 2016.

## **SECTION .0200 - REPORTING AND PAYING TAX WITHHELD**

### **17 NCAC 06C .0201 NEW WITHHOLDING AGENTS**

North Carolina does not use a deposit system for income tax withheld. Each new withholding agent who is required to withhold North Carolina income tax must complete and file with the Department an application for a withholding identification number, Form NC-BR, Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Machinery, Equipment, and Manufacturing Fuel Tax, which can be obtained from any office of the Department or on the Department's website at [www.dorncc.com](http://www.dorncc.com). A withholding identification number will be assigned. The number must be used on all reports and correspondence concerning withholding.

*History Note:* Authority G.S. 105-262;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2008; April 1, 2001; August 1, 1998; June 1, 1993; June 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

### **17 NCAC 06C .0202 REPORTS AND PAYMENTS**

*History Note:* Authority G.S. 105-163.6; 105-163.18; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 3, 1992; February 1, 1991; February 1, 1988; February 21, 1979;  
Repealed Eff. June 1, 1993.

### **17 NCAC 06C .0203 ANNUAL REPORTS**

(a) At the end of each calendar year, employers shall furnish wage and tax statements, Form W-2, to employees and Form NC-1099PS or NC-1099 ITIN to contractors from whom tax was withheld. Federal Form 1099-MISC may be filed in lieu of Form NC-1099 PS or NC-1099 ITIN if it reflects the amount or North Carolina income tax withheld. Two copies shall be furnished to the employee or contractor and one copy shall be furnished to the Department. Pension payers shall report pension income and State tax withheld on federal Form 1099-R.

(b) Form NC-1099 PS, NC-1099 ITIN, NC-1099 NRS, and any federal report of Form 1099-MISC or 1099-R shall be filed with North Carolina; however, other reports of 1099 information (interest, rents, premiums, dividends) shall not be filed with North Carolina unless the payments have not been reported to the Internal Revenue Service.

(c) Notwithstanding Paragraph (b) of this Rule, any person required to file Form NC-1099 NRS under the provisions of 17 NCAC 06B .3906 shall do so regardless of any requirement to report the sale to the Internal Revenue Service.

*History Note:* Authority G.S. 105-154; 105-163.2; 105-163.2A; 105-163.3; 105-163.7; 105-262;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2008; February 1, 2005; April 1, 2001; August 1, 1998; June 1, 1993;  
February 3, 1992; October 1, 1991; February 1, 1991;  
Readopted Eff. May 1, 2016.

### **17 NCAC 06C .0204 AMOUNTS WITHHELD ARE HELD IN TRUST FOR SECRETARY OF REVENUE**

(a) A withholding agent who fails to withhold or pay the amount required to be withheld is personally and individually liable for the tax, including any penalties and interest due. If a withholding agent has failed to withhold or to pay over income tax withheld or required to have been withheld, the unpaid principal amount of tax may be asserted against the responsible persons of the withholding agent when the taxes that have become collectible under G.S. 105-241.22 are not paid by the withholding agent. More than one person may be liable as a responsible person; however, the amount of the income tax withheld or required to have been withheld shall be collected only once, whether from the withholding agent or one or more responsible persons. The term "responsible person" is defined in G.S. 105-242.2(a)(2). Any responsible person who fails to pay the tax withheld or required to be withheld by the Secretary of Revenue shall be personally and individually liable for this failure, regardless of the person's reasons or knowledge of the failure. A finding of willfulness shall not be required.

(b) When the Department of Revenue determines that collection of the tax from an employer is in jeopardy, the employer may be required to report and pay the tax at any time after payment of the wages, compensation, or pension payments.

*History Note:* Authority G.S. 105-163.8; 105-241.23; 105-242.2; 105-262;  
Eff. June 1, 1990;  
Amended Eff. September 1, 2008; April 1, 2001; June 1, 1993; February 1, 1991;  
Readopted Eff. May 1, 2016.

#### **SECTION .0300 - PAYMENT OF INCOME TAX WITHHELD**

<b>17 NCAC 06C .0301</b>	<b>GENERAL</b>
<b>17 NCAC 06C .0302</b>	<b>PENALTY</b>
<b>17 NCAC 06C .0303</b>	<b>PERSONAL LIABILITY</b>
<b>17 NCAC 06C .0304</b>	<b>JEOPARDY REPORTING AND PAYMENT</b>

*History Note:* Authority G.S. 105-163.6(a); 105-163.6(b); 105-163.6(f); 105-163.17; 105-241.1(g);  
105-262;  
Eff. July 1, 1986;  
Repealed Eff. October 1, 1991.