



August 25, 2021

## Frequently Asked Questions for Important Notice: Updates to North Carolina Withholding Tax

### 1. What does filing in the format prescribed by the Secretary mean?

For purposes of Form NC-3, the format prescribed by the Secretary requires a taxpayer to file one Form NC-3, along with the State's copy of each required W-2 and 1099 statement, in an electronic format via the Department's [eNC3 Application](#).

### 2. Is there a penalty for not filing Form NC-3 in the format prescribed by the Secretary?

Yes. There is a penalty of \$200 for failure to file Form NC-3 in the format prescribed by the Secretary. This penalty is assessed if the form is not filed electronically as required by law. In addition, the penalty will also be assessed if the required W-2 and 1099 statements are not filed electronically. The forms must be filed using the Department's [eNC3 portal](#).

**Note:** If the taxpayer files in the format prescribed by the Secretary, but the NC-3 is late, the taxpayer is subject to the failure to file by the due date penalty (\$50 a day (maximum \$1000)). If the taxpayer files on time, but not in the format prescribed by the Secretary, the taxpayer is subject to the \$200 penalty. If the taxpayer files late AND not in the format prescribed by the Secretary, the taxpayer is subject to both penalties.

### 3. Is this a new penalty?

No. In a prior session, the North Carolina General Assembly enacted legislation which changed the State's withholding tax laws to increase tax compliance and help the Department combat tax refund fraud. As part of that legislation, [G.S. 105-163.7\(b\)](#) was amended to require employers, pension payers, and other persons that withhold North Carolina income tax to file Form NC-3, "Annual Withholding Reconciliation," and the Department's copies of W-2s, 1099s and other withholding statements on or before January 31 of the succeeding year in an electronic format as prescribed by the Secretary of Revenue.

#### **4. If the penalty is not new, why did DOR not impose the penalty earlier?**

The Secretary used his administrative discretion to automatically waive the penalty because certain software providers were unable to provide taxpayers with the support they needed to file the required documents with the Department in an electronic format.

#### **5. When will the penalty be assessed?**

The Department will begin assessing the penalty after the January 31 filing deadline for the 2021 returns.

#### **6. I've never filed electronically. How do I do that?**

The eNC3 webpage has a New to eNC3? section to help you get started. The Department offers simple, secure, efficient options for electronic filing of NC-3s, W-2s and 1099s. To further assist you with electronic filing, step by step instructions and tutorial videos are available on the Department's website.

#### **7. What forms must be filed electronically?**

The following forms must be submitted electronically:

- Form NC-3, Annual Withholding Reconciliation, and
- Form W-2,
- Form W-2G,
- Form NC-1099M,
- Federal Form 1099-MISC,
- Federal Form 1099-NEC,
- Federal Form 1099-R, and
- Federal Form 1042-S

#### **8. Is this penalty eligible for a penalty waiver?**

Yes. The penalty for failure to file Form NC-3 in the format prescribed by the Secretary is eligible for waiver pursuant to the [Department's penalty policy](#). The taxpayer may request a waiver via phone or by submitting the [Form NC-5501, Request for Waiver of an Informational Return Penalty](#).

A tax preparer cannot request a waiver via phone or sign Form NC-5501 for the taxpayer unless a power of attorney, [Form GEN-58](#), has been properly executed.

For more information, see the Department's penalty policy and the instructions for Form NC-5501 on our website.

**9. Can I obtain a second identification number to report State income tax withheld from compensation paid?**

Yes. Although you are not required to have a second withholding account, you can obtain a second withholding account to submit income tax withholding for a “payee”. The term “payee” is defined in G.S. 105-163.1 and the [Department’s Directive dated October 18, 2019](#).

To apply for an additional withholding account, visit the [online registration](#) application or fill out Form NC-BR.

**10. Where can I find more information about North Carolina income tax withholding requirements?**

Check out the NC-30 for more information on income tax withholding requirements.

**11. Do I need to submit federal Form 1099-MISC/Form 1099-NEC with my NC-3 if the 1099 does not report North Carolina income tax withholding?**

No. The Secretary has elected to waive the administrative requirement to file federal Form 1099-MISC/Form 1099-NEC with Form NC-3 if the 1099 form does not reflect State income tax withholdings.

However, for ease of filing, beginning January 1, 2022, the Department will allow a payer to obtain a second withholding identification number in order to report State income tax withheld from compensation paid to payees during the year.

To apply for an additional withholding account, visit the [online registration](#) application or fill out Form NC-BR.