

August 23, 2021

## **Important Notice: Updates to North Carolina Withholding Tax**

The following important information is addressed in this notice:

- Secretary Announces Expiration of the Automatic Waiver of the Penalty for Failure to File Form NC-3 and Required W-2 and 1099 Statements in the Format Prescribed by the Secretary
- Secretary Waives Administrative Requirement to File Federal Forms 1099-MISC and 1099-NEC if Statements Do Not Report NC Income Tax Withheld
- Secretary Announces New Filing Option for Reporting North Carolina Income Tax Withheld from Non-Wage Compensation Paid to Payees

### **Secretary Announces Expiration of the Automatic Waiver of the Penalty for Failure to File Form NC-3 and Required Statements Electronically**

[N.C. Gen. Stat. § 105-163.7](#) requires every employer to annually file an informational return with the Secretary of Revenue (“Secretary”) that reconciles the total North Carolina income tax withheld as listed on W-2 and 1099 statements with the amount of tax reported to the Department as withheld for the year.<sup>1</sup>

By statute, the informational return, Form NC-3, Annual Withholding Reconciliation, must be filed in the format prescribed by the Secretary. 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 and Information Reporting Application, (“eNC3 Application”). Form NC-3 is due to be filed on or before January 31 of the succeeding year.

[N.C. Gen. Stat. § 105-236\(a\)\(10\)d](#) requires the Secretary to assess a \$200 penalty against a taxpayer that fails to file an informational return in the format prescribed by the Secretary, i.e. an “Informational Return Penalty.”

[N.C. Gen. Stat. § 105-237](#) allows the Secretary administrative discretion to reduce or waive any penalty provided under N.C. Gen. Stat. § 105-236(a), including the Informational Return Penalty.

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<sup>1</sup> N.C. Gen. Stat. §§ [105-163.2A\(b\)](#), [105-163.2B](#), and [105-163.3\(d\)](#) requires pension payers, the North Carolina Lottery Commission, and certain other payers to annually file Form NC-3.

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## North Carolina Department of Revenue

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Previously, the Secretary automatically waived the Informational Return Penalty because certain software providers failed to provide taxpayers with the support they needed to file the required documents with the Department in an electronic format.<sup>2</sup> On October 2, 2020, the Secretary issued an [important notice](#) announcing an indefinite waiver of the Informational Return Penalty as it applies to Form NC-3. Specifically, the important notice provided that the “waiver [of the Informational Return Penalty] will continue until further notice.”

By way of this announcement, the Secretary provides notice to all employers, pension payers, or other persons who withheld North Carolina income tax for tax year 2021 that Form NC-3 must be filed with the Secretary on or before January 31, 2022, in the format prescribed by the Secretary. If Form NC-3 is not filed in the format prescribed by the Secretary, the Department will assess the \$200 Informational Return Penalty against a taxpayer who fails to file Form NC-3 correctly. Furthermore, the Secretary **will not automatically waive** the Informational Return Penalty on Form NC-3 returns due on or after January 1, 2022. Additional information about the eNC3 Application is available at <https://www.ncdor.gov/enc3>.

A taxpayer may request a waiver of the Informational Return Penalty by submitting Form [NC-5501](#), *Request for Waiver of an Informational Return Penalty*. **Do not submit Form NC-5500, Request to Waive Penalties.** A request to waive an Informational Return Penalty **will be considered** under the “General Waiver Criteria” category as described in the [Department’s Penalty Waiver Policy](#).

### **Secretary Waives Administrative Requirement to File Federal Forms 1099-MISC and 1099-NEC if Statements Do Not Report NC Income Tax Withheld**

[N.C. Gen. Stat. § 105-163.7\(b\)](#) permits the Secretary to require additional information to be included on an informational return. For purposes of [Form NC-3](#), [Administrative Rule 17 NCAC 06C .0203\(b\)](#) provides a specific list of required forms that must be submitted to the Department when the taxpayer annually files its informational return.

Notwithstanding the provisions of the Administrative Rule, the Secretary will not require taxpayers to submit a copy of a federal Form 1099-MISC or federal Form 1099-NEC (collectively “Federal Statements”) when the taxpayer files Form NC-3 if the Federal Statements do not report North Carolina income tax withheld. This waiver will continue until further notice.

**Important:** Federal Statements that report North Carolina income tax withheld must be filed with the Department as a part of the taxpayer’s annual Form NC-3 filing requirement.

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<sup>2</sup> See the Department’s Important Notice dated [August 5, 2019](#).

**Secretary Announces New Filing Option for Reporting North Carolina Income Tax Withheld from Non-Wage Compensation Paid to Payees**

[N.C. Gen. Stat. § 105-163.3](#) requires payers who, in the course of a trade or business, expect to pay more than one thousand five hundred dollars (\$1,500) of compensation to a payee to withhold State income taxes at the rate of four percent (4%) from the payee's non-wage compensation.<sup>3</sup> The 2021 [Publication NC-30](#) states that if a payer (1) withholds State income taxes from wages paid to employees and (2) withholds State income tax from compensation paid to payees, the payer must use **one** North Carolina withholding identification number to report the State income tax withheld from both categories.

For ease of filing, beginning January 1, 2022, the Department will allow a payer to obtain a second North Carolina withholding identification number to report State income tax withheld from compensation paid to payees during the tax year. A payer who wishes to obtain a second withholding identification number must submit a completed business registration application, [Form NC-BR](#), *Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Other Taxes and Service Charge*. Form NC-BR can be obtained [electronically](#) or by mail.

**Assistance**

If you have any questions about this notice, or if you would like to request Form NC-5501, you may call the North Carolina Department of Revenue Customer Service line at 1-877-252-3052 (8:00 am until 4:30 pm EST, Monday through Friday), or write to Customer Service, PO Box 1168, Raleigh, NC 27602.

*To the extent there is any change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding the subject of this notice and issued prior to this notice conflict with this important notice, the provisions contained in this important notice supersede the previous guidance.*

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<sup>3</sup> The terms "payer," "payee," and "compensation" are defined in [N.C. Gen. Stat. § 105-163.1](#) and the [Department's Directive](#) dated October 18, 2019.