

## **Withholding on Personal Service Payments to Nonresident Contractors**

If East Carolina University pays compensation of more than \$1,500 during the calendar year to a nonresident contractor for **personal services** performed in North Carolina or to an ITIN contractor for **any services** performed in North Carolina, then North Carolina General Statute (NCGS) 105-163.3 requires that the University withhold North Carolina income tax at the rate of 4 percent from the compensation paid.

The information below relates solely to nonresident contractors (defined below). Please see (*Insert Link to ITIN Contractor Payments Page Here*) for information (including definitions) relating to ITIN contractors.

### **Nonresident Contractor**

Tax must be withheld from any nonresident individual and from any nonresident entity receiving personal services income of more than \$1,500 in connection with a performance, an entertainment or athletic event, a speech or the creation of a film, radio, or television program.

The North Carolina Department of Revenue (NCDOR) has offered the following definitions related to nonresident contractor withholding:

- Compensation - Consideration a payer pays a nonresident individual or nonresident entity for personal services performed in North Carolina.
- Nonresident contractor - A nonresident individual who performs, or a nonresident entity that provides for the performance, in North Carolina for compensation other than wages any personal services in connection with a performance, an entertainment or athletic event, a speech, or the creation of a film, radio, or television program.
- Nonresident entity - Any of the following:
  - (1) A foreign limited liability company that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.
  - (2) A foreign limited partnership or a general partnership formed under the laws of any jurisdiction other than North Carolina, unless the partnership maintains a permanent place of business in North Carolina.
  - (3) A foreign corporation that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.
- Payer - A person who, in the course of a trade or business, pays a nonresident individual or a nonresident entity compensation for personal services performed in North Carolina.
- Personal services income - Non-wage compensation.

- Withholding agent - An employer or a payer.

Tax is not required to be withheld from:

- A corporation or limited liability company that has obtained a certificate of authority from the Secretary of State or from a partnership that has a permanent place of business in North Carolina. A certificate of authority can be obtained using the link below:

[https://www.sosnc.gov/Guides/register\\_a\\_foreign\\_business](https://www.sosnc.gov/Guides/register_a_foreign_business)

- An entity that is exempt from North Carolina corporate income tax under NCGS 105-130.11. This includes any organization that is exempt from federal income tax under the Internal Revenue Code. The entity must provide documentation of its tax exemption, such as a copy of the organization's federal determination letter of tax exemption or a copy of a letter of tax exemption from the Department of Revenue.
- Personal services income paid to an individual who is an ordained or licensed member of the clergy or who is a resident of North Carolina.

Withholding is only required if the nonresident contractor is paid more than \$1,500 during the calendar year. No tax is required to be withheld if a payment is \$1,500 or less and, at the time the payment is made, the University does not believe that the total compensation to be paid to the personal services provider during the year will exceed \$1,500. If additional compensation paid later in the year causes total compensation for the year to exceed \$1,500, the University is not required to withhold tax from the additional compensation to make up for the compensation from which no tax was withheld. If the University expects to pay a nonresident contractor more than \$1,500 during the year, tax is required to be withheld from each payment even if the first payment does not exceed \$1,500.

Additionally, the NCDOR has offered the following FAQ's for commonly asked questions related to withholding for personal services performed in North Carolina by nonresidents:

- What are "personal services?" ○ The term "personal services" is not defined. However, income is generally derived in two ways: selling a product or providing a service. "Personal services" compensation is any compensation paid for providing a service. For purposes of the 4% withholding, the personal services subject to withholding are limited to personal services in connection with a performance, an entertainment or athletic event, a speech, or the creation of a film, radio, or television program.
- What constitutes a "speech" for purposes of the 4% withholding?
  - Any speech that amuses, entertains, or informs is subject to the withholding requirement. This includes instructors at seminars that are open to the public for an admission fee or are for continuing education.

- The definition of a nonresident entity refers to foreign limited liability companies, partnerships, and corporations. What does the term "foreign" mean?
  - The term "foreign" means a limited liability company, partnership, or corporation formed under the laws of any jurisdiction other than North Carolina.