

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 180

Finance Committee Substitute Adopted 5/2/95  
House Committee Substitute Favorable 5/25/95  
Fourth Edition Engrossed 5/31/95

Short Title: Unemployment Tax Changes.

(Public)

Sponsors:

Referred to:

February 13, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE PAYMENT AND REPORTING REQUIREMENTS AND  
3 THE COLLECTION PROCEDURES FOR UNEMPLOYMENT CONTRIBUTIONS  
4 AND TO PROVIDE FOR A REDUCTION IN THESE CONTRIBUTIONS IN  
5 CERTAIN CIRCUMSTANCES.

6 The General Assembly of North Carolina enacts:

7 Section 1. Effective September 30, 1995, G.S. 96-9(a)(6) reads as rewritten:

8 "(6) If the amount of the contributions shown to be due after all credits is  
9 less than ~~one dollar (\$1.00)~~, five dollars (\$5.00), no payment need be  
10 made. If an employer has paid contributions, penalties, and/or interest  
11 in excess of the amount due, this shall be considered an overpayment  
12 and refunded provided no other debts are owed to the Commission by  
13 the employer. Overpayments of less than ~~one dollar (\$1.00)~~ five dollars  
14 (\$5.00) shall be refunded only upon receipt by the Chairman of a written  
15 demand for such refund from the employer. Nothing herein shall be  
16 construed to change or extend the limitation set forth in G.S. 96-10(e),  
17 (f), and (i)."

1           Sec. 2. Effective September 30, 1995, G.S. 96-9(a) is amended by adding the  
2 following two new subdivisions to read:

3           "(8) An employer who has filed reports with the Commission for at least  
4 three consecutive years and has not been liable for quarterly  
5 contributions under subdivision (6) of this subsection during the  
6 preceding calendar year may be given permission by the Chair of the  
7 Commission to file reports once a year on or before the last day of the  
8 month following the close of the calendar year in which the wages are  
9 paid. Permission to file a report annually may be revoked if the  
10 employer is found liable to the Commission for quarterly contributions  
11 under subdivision (6) of this subsection.

12           An employer who is granted permission to file annual reports must  
13 comply with 20 C.F.R. § 603.21 so that reporting of wages and  
14 employment status are as effective and timely as the quarterly wage  
15 reporting system. This compliance includes the reporting of all changes  
16 in employment status and in wages of an employee to the Commission  
17 within 14 days of the occurrence and responding to all inquiries from  
18 the Commission as to wages paid to an employee in a year in which the  
19 employer is reporting on an annual basis within 14 days of the postmark  
20 of the inquiry. If an employer does not report or respond to an inquiry  
21 within 14 days, then the Commission will estimate wages paid to an  
22 employee based on the last report the employer filed with the  
23 Commission, and the employer will be liable for any charge based on  
24 the Commission's estimation of the wages paid to the employee.

25           (9) Employers who are granted permission under subdivision (8) of this  
26 subsection to file annual reports may be given permission to file reports  
27 by telephone. Employers who report by telephone must contact either  
28 the Field Tax Auditor who is assigned to the employer's account or the  
29 Unemployment Insurance Division in Raleigh and report the required  
30 information to that Auditor or to the Division by the date the report is  
31 due under subdivision (8) of this subsection."

32           Sec. 3. Effective for quarters beginning on or after March 31, 1996, G.S. 96-  
33 9(b)(3)d3., as enacted by Chapter 4 of the 1995 Session Laws, reads as rewritten:

34           "d3. The standard contribution rate set by subdivision (b)(1) of this  
35 section applies to an employer unless the employer's account has  
36 a credit balance. Beginning January 1, 1995, the contribution  
37 rate of an employer whose account has a credit balance is  
38 determined in accordance with the rate set in the following  
39 Experience Rating Formula table for the applicable rate schedule.  
40 The contribution rate of an employer whose contribution rate is  
41 determined by this Experience Rating Formula table shall be  
42 reduced by fifty percent (50%) for any year in which the balance  
43 in the Unemployment Insurance Fund equals or exceeds eight

hundred million dollars (\$800,000,000) on the computation date. date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

**EXPERIENCE RATING FORMULA**

When The Credit Ratio Is:

As But  
Much Less

		As		Than		Rate Schedules (%)					
		A	B	C	D	E	F	G	H		
		10.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%		
		2.10%	1.90%	1.70%							
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%
4.0%	4.2%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%
4.2%	4.4%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%
4.4%	4.6%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%
4.6%	4.8%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%	0.01%
4.8%	5.0%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%	0.01%	0.01%
5.0%&OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

0.00%". Sec. 4. G.S. 96-10(b)(1) reads as rewritten: (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due

1 shall be collected by civil action in the name of the Commission, and the employer  
2 adjudged in default shall pay the costs of such action. Civil actions brought under this  
3 section to collect contributions or interest thereon from an employer shall be heard by the  
4 court at the earliest possible date, and shall be entitled to preference upon the calendar of  
5 the court over all other civil actions, except petitions for judicial review under this  
6 Chapter and cases arising under the Workers' Compensation Law of this State; or, if any  
7 contribution imposed by this Chapter, or any portion thereof, and/or penalties duly  
8 provided for the nonpayment thereof shall not be paid within 30 days after the same  
9 become due and payable, and after due notice and reasonable opportunity for hearing, the  
10 Commission, under the hand of its chairman, may certify the same to the clerk of the  
11 superior court of the county in which the delinquent resides or has property, and  
12 additional copies of said certificate for each county in which the Commission has reason  
13 to believe ~~such the~~ delinquent has property located; ~~such certificate and/or copies thereof~~  
14 ~~so located~~. If the amount of a delinquency is less than fifty dollars (\$50.00), the  
15 Commission may not certify the amount to the clerk of court until a field tax auditor or  
16 another representative of the Commission personally contacts, or unsuccessfully attempts  
17 to personally contact, the delinquent and collect the amount due. A certificate or a copy  
18 of a certificate forwarded to the clerk of the superior court shall immediately be docketed  
19 and indexed on the cross index of judgment, judgments, and from the date of such  
20 docketing shall constitute a preferred lien upon any property which said delinquent may  
21 own in said county, with the same force and effect as a judgment rendered by the superior  
22 court. The Commission shall forward a copy of said certificate to the sheriff or sheriffs  
23 of such county or counties, or to a duly authorized agent of the Commission, and when so  
24 forwarded and in the hands of such sheriff or agent of the Commission, shall have all the  
25 force and effect of an execution issued to such sheriff or agent of the Commission by the  
26 clerk of the superior court upon a judgment of the superior court duly docketed in said  
27 county. Provided, however, the Commission may in its discretion withhold the issuance  
28 of said certificate or execution to the sheriff or agent of the Commission for a period not  
29 exceeding 180 days from the date upon which the original certificate is certified to the  
30 clerk of superior court. The Commission is further authorized and empowered to issue  
31 alias copies of said certificate or execution to the sheriff or sheriffs of such county or  
32 counties, or to a duly authorized agent of the Commission in all cases in which the sheriff  
33 or duly authorized agent has returned an execution or certificate unsatisfied; when so  
34 issued and in the hands of the sheriff or duly authorized agent of the Commission, such  
35 alias shall have all the force and effect of an alias execution issued to such sheriff or duly  
36 authorized agent of the Commission by the clerk of the superior court upon a judgment of  
37 the superior court duly docketed in said county. Provided, however, that notwithstanding  
38 any provision of this subsection, upon filing one written notice with the Commission, the  
39 sheriff of any county shall have the sole and exclusive right to serve all executions and  
40 make all collections mentioned in this subsection and in such case no agent of the  
41 Commission shall have the authority to serve any executions or make any collections  
42 therein in such county. A return of such execution, or alias execution, shall be made to  
43 the Commission, together with all moneys collected thereunder, and when such order,

1 execution, or alias is referred to the agent of the Commission for service the said agent of  
2 the Commission shall be vested with all the powers of the sheriff to the extent of serving  
3 such order, execution or alias and levying or collecting thereunder. The agent of the  
4 Commission to whom such order or execution is referred shall give a bond not to exceed  
5 three thousand dollars (\$3,000) approved by the Commission for the faithful performance  
6 of such duties. The liability of said agent shall be in the same manner and to the same  
7 extent as is now imposed on sheriffs in the service of executions. If any sheriff of this  
8 State or any agent of the Commission who is charged with the duty of serving executions  
9 shall willfully fail, refuse, or neglect to execute any order directed to him by the said  
10 Commission and within the time provided by law, the official bond of such sheriff or of  
11 such agent of the Commission shall be liable for the contributions, penalty, interest, and  
12 costs due by the employer."

13 Sec. 5. G.S. 96-10(g) reads as rewritten:

14 "(g) Upon the motion of the Commission, any employer refusing to submit any  
15 report required under this Chapter, after 10 days' written notice sent by the Commission  
16 by registered or certified mail to the employer's last known address, may be enjoined by  
17 any court of competent jurisdiction from hiring and continuing in employment any  
18 employees until such report is properly submitted. When an execution has been returned  
19 to the Commission unsatisfied, and the employer, after 10 days' written notice sent by the  
20 Commission by registered mail to the employer's last known address, refuses to pay the  
21 contributions covered by the execution, such employer shall upon the motion of the  
22 Commission be enjoined by any court of competent jurisdiction from hiring and  
23 continuing in employment any employees until such contributions have been paid.

24 ~~There shall be added to the amount required to be shown as tax in the reports—An~~  
25 ~~employer who fails to file a report within the required time shall be assessed a late filing~~  
26 ~~penalty of five percent (5%) of the amount of such tax if the failure is not contributions~~  
27 ~~due with the report for more than one each month with an additional five percent (5%) for~~  
28 ~~each additional month or fraction thereof during which such of a month the failure~~  
29 ~~continues, continues. The penalty may not exceeding exceed twenty-five percent (25%)~~  
30 ~~of the aggregate amount of contributions due or five dollars (\$5.00), whichever is greater.~~  
31 An employer who fails to file a report within the required time but owes no contributions  
32 shall not be assessed a penalty unless the employer's failure to file continues for more  
33 than 30 days."

34 Sec. 6. G.S. 96-10(j) reads as rewritten:

35 "(j) The Commission shall have the power to reduce or waive any penalty provided  
36 in G.S. 96-10(a) or 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived  
37 when the mailed report bears a postmark that discloses that it was mailed by midnight of  
38 the due date but was addressed or delivered to the wrong State or federal agency. The  
39 late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-  
40 10(g) shall be waived where the delay was caused by any of the following:

- 41 (1) The death or serious illness of the employer or a member of his  
42 immediate family, or by the death or serious illness of the person in the

- 1 employer's organization responsible for the preparation and filing of the  
2 report;
- 3 (2) Destruction of the employer's place of business or business records by  
4 fire or other casualty;
- 5 (3) Failure of the Commission to furnish proper forms upon timely  
6 application by the employer, by reason of which failure the employer  
7 was unable to execute and file the report on or before the due date;
- 8 (4) The inability of the employer or the person in the employer's  
9 organization responsible for the preparation and filing of reports to  
10 obtain an interview with a representative of the Commission upon a  
11 personal visit to the central office or any local office for the purpose of  
12 securing information or aid in the proper preparation of the report,  
13 which personal interview was attempted to be had within the time  
14 during which the report could have been executed and filed as required  
15 by law had the information at the time been obtained;
- 16 (5) The entrance of one or more of the owners, officers, partners, or the  
17 majority stockholder into the Armed Forces of the United States, or any  
18 of its allies, or the United Nations, provided that the entrance was  
19 unexpected and is not the annual two weeks training for reserves; and
- 20 (6) Other circumstances where, in the opinion of the Chairman, the  
21 Assistant Administrator, or their designees, the imposition of penalties  
22 would be inequitable.

23 In the waiver of any penalty, the burden shall be upon the employer to establish to the  
24 satisfaction of the Chairman, the Assistant Administrator, or their designees, that the  
25 delinquency for which the penalty was imposed was due to any of the foregoing facts or  
26 circumstances. Such waiver shall be valid and binding upon the Commission. ~~No~~  
27 ~~employer shall receive a penalty waiver within 24 months succeeding its last penalty~~  
28 ~~waiver.~~ The reason for any such reduction or waiver shall be made a part of the  
29 permanent records of the employing unit to which it applies."

30 Sec. 7. This act is effective upon ratification.