

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 463
SENATE BILL 180

AN ACT TO MODIFY THE PAYMENT AND REPORTING REQUIREMENTS AND
THE COLLECTION PROCEDURES FOR UNEMPLOYMENT
CONTRIBUTIONS AND TO PROVIDE FOR A REDUCTION IN THESE
CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

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

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

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

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

An employer who is granted permission to file annual reports must comply with 20 C.F.R. § 603.21 so that reporting of wages and employment status are as effective and timely as the quarterly wage reporting system. This compliance includes the reporting of all changes in employment status and in wages of an employee to the Commission within 14 days of the occurrence and responding to all inquiries from the Commission as to wages paid to an employee in a year in which the employer is reporting on an annual basis within 14

days of the postmark of the inquiry. If an employer does not report or respond to an inquiry within 14 days, then the Commission will estimate wages paid to an employee based on the last report the employer filed with the Commission, and the employer will be liable for any charge based on the Commission's estimation of the wages paid to the employee.

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

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

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1995, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) 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.~~ 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	I
0.0%	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%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%

1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%	4.2%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%
4.2%	4.4%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%
4.4%	4.6%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%
4.6%	4.8%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	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%
5.0%&OVER	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 shall be collected by civil action in the name of the Commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Commission, under the hand of its chairman, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Commission has reason to believe ~~such the delinquent has property located; such certificate and/or copies thereof so located.~~ If the amount of a delinquency is less than fifty dollars (\$50.00), the Commission may not certify the amount to the clerk of court until a field tax auditor or another representative of the Commission personally contacts, or unsuccessfully attempts to

personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of ~~judgment,~~ judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Commission shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission, and when so forwarded and in the hands of such sheriff or agent of the Commission, shall have all the force and effect of an execution issued to such sheriff or agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Commission may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Commission for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Commission is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Commission in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Commission, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Commission by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Commission, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Commission shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Commission, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Commission for service the said agent of the Commission shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Commission to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Commission for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of

the Commission who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Commission and within the time provided by law, the official bond of such sheriff or of such agent of the Commission shall be liable for the contributions, penalty, interest, and costs due by the employer."

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

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

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

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

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

- (1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;
- (2) Destruction of the employer's place of business or business records by fire or other casualty;
- (3) Failure of the Commission to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;

- (4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Commission upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;
- (5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
- (6) Other circumstances where, in the opinion of the Chairman, the Assistant Administrator, or their designees, the imposition of penalties would be inequitable.

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

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives