

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1242

Short Title: Withholding Exemption Documentation. (Public)

Sponsors: Senators Foxx; Allran, Berger, Brock, Carpenter, Forrester, Moore, Pittenger, Shubert, and Sloan.

Referred to: Finance.

May 24, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DOCUMENTATION WHEN AN EMPLOYEE CLAIMS MORE THAN FOUR WITHHOLDING EXEMPTIONS AND TO MODIFY THE PENALTY FOR CLAIMING EXCESSIVE WITHHOLDING EXEMPTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.5 reads as rewritten:

"§ 105-163.5. Employee exemptions allowable; certificates.

(a) Exemptions. – An employee receiving wages is entitled to the exemptions for which the employee qualifies under Article 4 of this Chapter.

(b) Certificate. – Every employee shall, at the time of commencing employment, furnish his or her employer with a signed withholding exemption certificate informing the employer of the exemptions the employee claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under the Code. If the employee fails to file the exemption certificate the employer, in computing amounts to be withheld from the employee's wages, shall allow the employee the exemption accorded a single person with no dependents.

If the employee claims more than four exemptions, the employer shall require the employee to provide written documentation of the basis for each exemption claimed. A copy of the employee's return under Article 4 of this Chapter for the previous year may serve as sufficient documentation. The employer shall retain the documentation for at least three years after the employee is no longer employed. If the employee fails to provide the required documentation, the employer shall report the employee's withholding exemption certificate to the Secretary and, in computing amounts to be withheld from the employee's wages, shall allow the employee the exemption accorded a single person with no dependents.

(c) Timing. – Withholding exemption certificates shall take effect as of the beginning of the first payroll period that ends on or after the date on which the certificate is furnished, or if payment of wages is made without regard to a payroll

1 period, then the certificate shall take effect as of the beginning of the miscellaneous
2 payroll period for which the first payment of wages is made on or after the date on
3 which the certificate is furnished.

4 (d) Changes. – If, on any day during the calendar year, the amount of
5 withholding exemptions to which the employee is entitled is less than the amount of
6 withholding exemptions claimed by the employee on the withholding exemption
7 certificate then in effect with respect to the employee, the employee shall, within 10
8 days thereafter, furnish the employer with a new withholding exemption certificate
9 stating the amount of withholding exemptions which the employee then claims, which
10 shall in no event exceed the amount to which the employee is entitled on that day. If, on
11 any day during the calendar year, the amount of withholding exemptions to which the
12 employee is entitled is greater than the amount of withholding exemptions claimed, the
13 employee may furnish the employer with a new withholding exemption certificate
14 stating the amount of withholding exemptions which the employee then claims, which
15 shall in no event exceed the amount to which the employee is entitled on that day.

16 (e) Form. – Withholding exemption certificates must be in the form and contain
17 the information required by the Secretary. As far as practicable, the Secretary shall
18 cause the form of the certificates to be substantially similar to federal exemption
19 certificates.

20 (f) Penalty. – In addition to any criminal penalty provided by law, if an
21 individual furnishes his or her employer an exemption certificate that contains
22 information which has no reasonable basis and that results in a lesser amount of tax
23 being withheld under this Article than would have been withheld if the individual had
24 furnished reasonable information, the individual is subject to a penalty of ~~fifty percent~~
25 (50%)seventy-five percent (75%) of the amount not properly withheld.
26 hundred fifty dollars (\$250.00), whichever is greater."

27 **SECTION 2.** This act becomes effective January 1, 2005.