

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

Short Title: Unemployment Tax Changes.

(Public)

Sponsors:

Referred to:

February 13, 1995

A BILL TO BE ENTITLED

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)."

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 will be automatically revoked
10 if the employer is found liable to the Commission for quarterly
11 contributions under subdivision (6) of this subsection or if the
12 information on the last report concerning an employee's identity,
13 address, or wage changes.

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

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

34 Sec. 3. Effective for quarters beginning on or after March 31, 1996, G.S. 96-
35 9(b)(3)d3., as enacted by Chapter 4 of the 1995 Session Laws, reads as rewritten:

36 "d3. The standard contribution rate set by subdivision (b)(1) of this
37 section applies to an employer unless the employer's account has
38 a credit balance. Beginning January 1, 1995, the contribution
39 rate of an employer whose account has a credit balance is
40 determined in accordance with the rate set in the following
41 Experience Rating Formula table for the applicable rate schedule.
42 The contribution rate of an employer whose contribution rate is
43 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 | | | |
| | 10.0% | 0.2% | 2.70% | 2.70% | 2.70% | 2.70% | 2.50% | 2.30% | | | |
| | | 2.10% | 1.90% | 1.70% | | | | | | | |
| 19 | 0.2% | 0.4% | 2.70% | 2.70% | 2.70% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% |
| 20 | 0.4% | 0.6% | 2.70% | 2.70% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% |
| 21 | 0.6% | 0.8% | 2.70% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% |
| 22 | 0.8% | 1.0% | 2.50% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% |
| 23 | 1.0% | 1.2% | 2.30% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% |
| 24 | 1.2% | 1.4% | 2.10% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% |
| 25 | 1.4% | 1.6% | 1.90% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% |
| 26 | 1.6% | 1.8% | 1.70% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% |
| 27 | 1.8% | 2.0% | 1.50% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% |
| 28 | 2.0% | 2.2% | 1.30% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% |
| 29 | 2.2% | 2.4% | 1.10% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% |
| 30 | 2.4% | 2.6% | 0.90% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% |
| 31 | 2.6% | 2.8% | 0.80% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% |
| 32 | 2.8% | 3.0% | 0.70% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% |
| 33 | 3.0% | 3.2% | 0.60% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% |
| 34 | 3.2% | 3.4% | 0.50% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% |
| 35 | 3.4% | 3.6% | 0.40% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% |
| 36 | 3.6% | 3.8% | 0.30% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% | 0.05% |
| 37 | 3.8% | 4.0% | 0.20% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% | 0.05% | 0.04% |
| 38 | 4.0% | 4.2% | 0.15% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% | 0.05% | 0.04% | 0.03% |
| 39 | 4.2% | 4.4% | 0.10% | 0.09% | 0.08% | 0.07% | 0.06% | 0.05% | 0.04% | 0.03% | 0.02% |
| 40 | 4.4% | 4.6% | 0.09% | 0.08% | 0.07% | 0.06% | 0.05% | 0.04% | 0.03% | 0.02% | 0.01% |
| 41 | 4.6% | 4.8% | 0.08% | 0.07% | 0.06% | 0.05% | 0.04% | 0.03% | 0.02% | 0.01% | 0.01% |
| 42 | 4.8% | 5.0% | 0.07% | 0.06% | 0.05% | 0.04% | 0.03% | 0.02% | 0.01% | 0.01% | 0.01% |

1 5.0%&OVER 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00% 0.00%
2 0.00%". Sec. 4. G.S. 96-10(b)(1) reads as rewritten:" (1) If, after due notice, any
3 employer defaults in any payment of contributions or interest thereon, the amount due
4 shall be collected by civil action in the name of the Commission, and the employer
5 adjudged in default shall pay the costs of such action. Civil actions brought under this
6 section to collect contributions or interest thereon from an employer shall be heard by the
7 court at the earliest possible date, and shall be entitled to preference upon the calendar of
8 the court over all other civil actions, except petitions for judicial review under this
9 Chapter and cases arising under the Workers' Compensation Law of this State; or, if any
10 contribution imposed by this Chapter, or any portion thereof, and/or penalties duly
11 provided for the nonpayment thereof shall not be paid within 30 days after the same
12 become due and payable, and after due notice and reasonable opportunity for hearing, the
13 Commission, under the hand of its chairman, may certify the same to the clerk of the
14 superior court of the county in which the delinquent resides or has property, and
15 additional copies of said certificate for each county in which the Commission has reason
16 to believe ~~such the~~ delinquent has property located; ~~such certificate and/or copies thereof~~
17 ~~so-located~~. If the amount of a delinquency is less than fifty dollars (\$50.00), the
18 Commission may not certify the amount to the clerk of court until a field tax auditor or
19 another representative of the Commission personally contacts, or unsuccessfully attempts
20 to personally contact, the delinquent and collect the amount due. A certificate or a copy
21 of a certificate forwarded to the clerk of the superior court shall immediately be docketed
22 and indexed on the cross index of judgment, judgments, and from the date of such
23 docketing shall constitute a preferred lien upon any property which said delinquent may
24 own in said county, with the same force and effect as a judgment rendered by the superior
25 court. The Commission shall forward a copy of said certificate to the sheriff or sheriffs
26 of such county or counties, or to a duly authorized agent of the Commission, and when so
27 forwarded and in the hands of such sheriff or agent of the Commission, shall have all the
28 force and effect of an execution issued to such sheriff or agent of the Commission by the
29 clerk of the superior court upon a judgment of the superior court duly docketed in said
30 county. Provided, however, the Commission may in its discretion withhold the issuance
31 of said certificate or execution to the sheriff or agent of the Commission for a period not
32 exceeding 180 days from the date upon which the original certificate is certified to the
33 clerk of superior court. The Commission is further authorized and empowered to issue
34 alias copies of said certificate or execution to the sheriff or sheriffs of such county or
35 counties, or to a duly authorized agent of the Commission in all cases in which the sheriff
36 or duly authorized agent has returned an execution or certificate unsatisfied; when so
37 issued and in the hands of the sheriff or duly authorized agent of the Commission, such
38 alias shall have all the force and effect of an alias execution issued to such sheriff or duly
39 authorized agent of the Commission by the clerk of the superior court upon a judgment of
40 the superior court duly docketed in said county. Provided, however, that notwithstanding
41 any provision of this subsection, upon filing one written notice with the Commission, the
42 sheriff of any county shall have the sole and exclusive right to serve all executions and
43 make all collections mentioned in this subsection and in such case no agent of the

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

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

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

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

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

38 "(j) The Commission shall have the power to reduce or waive any penalty provided
39 in G.S. 96-10(a) or 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived
40 when the mailed report bears a postmark that discloses that it was mailed by midnight of
41 the due date but was addressed or delivered to the wrong State or federal agency. The
42 late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-
43 10(g) shall be waived where the delay was caused by any of the following:

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

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

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