

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**SENATE BILL 1388\***

Short Title: 2004 ESC Omnibus Act.

(Public)

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Sponsors: Senator Nesbitt.

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Referred to: Finance.

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May 28, 2004

A BILL TO BE ENTITLED  
AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY  
LAWS OF NORTH CAROLINA AND APPROPRIATING REED ACT FUNDS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 2 of S.L. 2003-405 reads as rewritten:

**"SECTION 2.** This act is effective when it becomes law. This act is repealed for taxes imposed in the ~~2005-2006~~ and subsequent calendar years."

**SECTION 2.** A tax is imposed for the 2005 calendar year upon contributions under Chapter 96 of the General Statutes at the rate of two percent (2%) of the amount of contributions due. The tax is due and payable at the time and in the same manner as the contributions. The collection of this tax, the assessment of interest and penalties on unpaid taxes, the filing of judgment liens, and the enforcement of the liens for unpaid taxes are governed by the provisions of G.S. 96-10 where applicable. Taxes collected under this section shall be credited to the Worker Training Trust Fund, and refunds and the costs of collection of the taxes shall be paid from the same Fund. Any interest or penalties collected on unpaid taxes shall be credited to the Special Employment Security Administration Fund, and any interest or penalties refunded on taxes imposed by this section shall be paid from the same Fund. The Employment Security Commission may use moneys from the Special Employment Security Administration Fund as advances against the collection of the tax imposed by this section.

**SECTION 3.** G.S. 96-9(d)(2)d. reads as rewritten:

"d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

As of the second computation date (August 1) following the effective date of liability and as of each computation date thereafter, any credit balance remaining in the employer's account (after all applicable postings) in excess of whichever is

1 the greater (a) benefits charged to such account during the 12  
2 months ending on such computation date, or (b) one percent  
3 (1%) of taxable wages for the 12 months ending on June 30  
4 preceding such computation date shall be refunded. Any such  
5 refund shall be made prior to February 1 following such  
6 computation date.

7 Should the balance in such account not equal that requiring  
8 a refund, the employer shall upon notice and demand for  
9 payment mailed to his last known address pay into his account  
10 an amount that will bring such balance to the minimum required  
11 for a refund. Such amount shall become due on or before the  
12 tenth day following the mailing of such notice and demand for  
13 payment. Any such amount unpaid on the due date shall be  
14 collected in the same manner, including interest, as prescribed  
15 in G.S. 96-10.

16 Upon a change in election as to the method of payment from  
17 reimbursement to contributions, or upon termination of  
18 coverage and after all applicable benefits paid based on wages  
19 paid prior to such change in election or termination of coverage  
20 have been charged, any credit balance in such account shall be  
21 refunded to the employer.

22 Should there be a debit balance in such account, the  
23 employer shall, upon notice and demand for payment, mailed to  
24 his last-known address, pay into his account an amount equal to  
25 such debit balance. Such amount shall become due on or before  
26 the tenth day following the mailing of such notice and demand  
27 for payment.

28 Any such amount unpaid on the date due shall be collected  
29 in the same manner, including interest, as prescribed in  
30 G.S. 96-10.

31 Beginning January 1, 1978, each employer paying by  
32 reimbursement shall have his account computed on computation  
33 date (August 1) and if there is a deficit shall be billed for an  
34 amount necessary to bring his account to one percent (1%) of  
35 his taxable payroll. Any amount of his account in excess of that  
36 required to equal one percent (1%) of his payroll shall be  
37 refunded. Amounts due from any employer to bring his account  
38 to a one percent (1%) balance shall be billed as soon as  
39 practical and payment will be due within 25 days from the date  
40 of mailing of the statement of amount due. Amounts due from  
41 any nonprofit organization to bring its account to a one percent  
42 (1%) balance shall be billed as soon as practical, and payment  
43 will be due within 60 days from the date of mailing of the  
44 statement of the amount due."

1           **SECTION 4.** S.L. 2003-405 is reenacted.

2           **SECTION 5.** G.S. 96-5(c1) is repealed.

3           **SECTION 6.** G.S. 96-15(c) reads as rewritten:

4           "(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals  
5 referee shall set a hearing in which the parties are given reasonable opportunity to be  
6 heard. The conduct of hearings shall be governed by suitable regulations established by  
7 the Commission. Such regulations need not conform to common law or statutory rules  
8 of evidence or technical or formal rules of procedure but shall provide for the conduct  
9 of hearings in such manner as to ascertain the substantial rights of the parties. The  
10 hearings may be conducted by conference telephone call or other similar means  
11 provided that if any party files with the Commission prior written objection to the  
12 telephone procedure, that party will be afforded an opportunity for an in-person hearing  
13 at such place in the State as the Commission by regulation shall provide. The appeals  
14 referee may affirm or modify the conclusion of the adjudicator or issue a new decision  
15 in which findings of fact and conclusions of law will be set out or dismiss an appeal  
16 when the appellant fails to appear at the appeals hearing to prosecute the appeal after  
17 having been duly notified of the appeals hearing. The evidence taken at the hearings  
18 before the appeals referee shall be recorded and the decision of the appeals referee shall  
19 be deemed to be the final decision of the Commission unless within 10 days after the  
20 date of notification or mailing of the decision, whichever is earlier a written appeal is  
21 filed pursuant to such regulations as the Commission may adopt. No person may be  
22 appointed as an appeals referee unless he or she possesses the minimum qualifications  
23 necessary to be a staff attorney eligible for designation by the Commission as a hearing  
24 officer under G.S. 96-4(m). No appeals referee in full-time permanent status may  
25 engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as  
26 appeals referee; violation of this prohibition shall be grounds for removal. Whenever an  
27 appeal is taken from a decision of the appeals referee, the appealing party shall submit a  
28 clear written statement containing the grounds for the appeal within the time allowed by  
29 law for taking the appeal, and if such timely statement is not submitted, ~~an appeals~~  
30 ~~referee~~ the Commission may dismiss the appeal."

31           **SECTION 7.** G.S. 96-8(6)k. is amended by adding a new sub-subdivision to  
32 read:

33           "k.    The term "employment" does not include:

34           ...

35           20.    Services performed by an individual who is an alien  
36           having residence in a foreign country which the  
37           individual has no intention of abandoning who possesses  
38           a valid J-1 Visa and is present in the State for a period of  
39           six months or less pursuant to the provisions of 8 U.S.C.  
40           1101(a)(15)(F)(J)(M)(Q)."

41  
42           **SECTION 8.** Section 2 of this act is effective for the 2005 calendar year  
43 only. Section 3 of this act becomes effective August 1, 2004, and applies to amounts  
44 due on or after that date. Section 4 of this act is effective on and after August 12, 2003,

- 1 and is repealed for taxes imposed in the 2006 and subsequent calendar years. The  
2 remainder of this act is effective when it becomes law.