



**NCDOR**

**NORTH  
CAROLINA  
DEPARTMENT  
OF REVENUE**

## **Important Notice: Various Updates to North Carolina Withholding Tax Informational Returns Due in 2021**

The following important information is addressed in this notice:

- New requirement to file federal Form 1099-NEC if the statement reports North Carolina income tax withheld.
- New Requirement to file North Carolina Form NC-1099M.
- Extension of the automatic waiver of the penalty for failure to file Form NC-3, along with the required W-2 and 1099 statements, electronically.
- Extension of waiver of the administrative requirement to file federal Form 1099-MISC if the statement does not report North Carolina income tax withheld

### **Secretary Announces New Requirement to File Federal Form 1099-NEC if the Statement Reports North Carolina Income Tax Withheld**

The Protecting Americans from Tax Hikes Act (“PATH Act”) modified federal statutes controlling returns and statements related to employee wage information and nonemployee compensation.<sup>1</sup> As part of these changes, beginning with tax year 2020, taxpayers are required to use federal [Form 1099-NEC](#) to report payments totaling at least \$600 in a calendar year made to a person for services performed in a trade or business by someone who is not an employee, also known as nonemployee compensation.

Effective for informational returns due to be filed on or before January 31, 2021, the Secretary will require taxpayers to submit, as a part of the taxpayer’s annual Form NC-3 filing requirement, a paper or electronic copy of any federal Form 1099-NEC statement that reports North Carolina income tax withheld.

### **Secretary Announces New Requirement to File Form NC-1099M**

Pursuant to [N.C. Gen. Stat. § 105-163.3](#), every payer who pays more than \$1,500 during a calendar year to a payee must deduct and withhold North Carolina income tax from the compensation paid to a payee. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the payee. *Id.*

For North Carolina withholding tax purposes, [N.C. Gen. Stat. § 105-163.1](#) specifically defines the terms compensation, payee, and payer to mean:

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<sup>1</sup> [Public Law 114-113](#).

- Compensation - Consideration a payer pays a payee.
- Payee – Any of the following:
  - a. A nonresident contractor.
  - b. An ITIN contractor.
  - c. A person who performs services in this State for compensation that fails to provide the payer a taxpayer identification number.
  - d. A person who performs services in this State for compensation that fails to provide the payer a valid taxpayer identification number. The Secretary must notify a payer that a taxpayer identification number is not valid.
- Payer - A person who, in the course of a trade or business, pays compensation.

For compensation paid to a payee before January 1, 2020, the Department allowed payers to report the amount of compensation paid to a payee on Form NC-1099-ITIN, *Compensation Paid to an ITIN Contractor*, or Form NC-1099PS, *Personal Services Income Paid to a Nonresident*, as applicable. Effective for compensation paid to a payee on or after January 1, 2020, the Department has retired Form NC-1099-ITIN and Form NC-1099PS. Beginning on or after January 1, 2020, payers should report compensation paid to a payee on a new tax form, North Carolina [Form NC-1099M](#), *Compensation Paid to a Payee*.

**Important:** If a payer is required to file a federal Form 1099-MISC or a federal Form 1099-NEC to report the compensation paid to a payee, the payer is not required to complete Form NC-1099M. Instead, the Secretary requires the payer to submit, as a part of a payer’s annual Form NC-3 filing requirement, a paper or electronic copy of any federal Form 1099-MISC or Form 1099-NEC statement issued to a payee that reports North Carolina income tax withheld.

### **Secretary Extends the Automatic Waiver of the Penalty for Failure to File Form NC-3 and Required W-2 and 1099 Statements Electronically**

[N.C. Gen. Stat. § 105-163.7\(b\)](#) requires every employer to annually file an informational return (“Form NC-3”) with the Secretary that reconciles the total North Carolina income tax withheld as listed on federal Form W-2 (“W-2”) and various 1099 statements with the amount of tax reported to the Department as withheld for the year.<sup>2</sup> By statute, Form NC-3 must be filed in an electronic format and must include any additional information required by the Secretary.

[N.C. Gen. Stat. § 105-236\(a\)\(10\)d](#) requires the Secretary to assess a \$200 penalty against taxpayers that fail to file the informational return in the format prescribed by the Secretary. For purposes of Form NC-3, the format prescribed by the Secretary requires a taxpayer to file one Form NC-3, along with the State’s copy of each required W-2 and 1099 statement, in an electronic format on or before the due date via the Department’s eNC3 and Information Reporting Application. [N.C. Gen. Stat. § 105-237\(a\)](#) allows the Secretary administrative discretion to reduce or waive certain penalties, including penalties regarding informational returns.

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<sup>2</sup> N.C. Gen. Stat. §§ [105-163.2A\(b\)](#), [105-163.2B](#), and [105-163.3\(d\)](#) also require pension payers, the North Carolina Lottery Commission, and certain other payers to annually file Form NC-3.

Beginning in 2019, the Secretary automatically waived the penalty for failure to file Form NC-3 in the format prescribed by the Secretary because certain software vendors have failed to provide taxpayers with the support they need to file the required documents with the Department in an electronic format.<sup>3</sup> It is for that reason that the Department will waive the \$200 penalty against a taxpayer that fails to file Form NC-3 and the required W-2 and 1099 statements in the format prescribed by the Secretary. This waiver will continue until further notice.

Taxpayers do not need to request the penalty waiver when they file Form NC-3 and the required W-2 and 1099 statements. However, if a taxpayer receives a proposed assessment of the \$200 penalty, the taxpayer should contact the Department by phone, at 1-877-252-3052, or by writing the Department at the following address: North Carolina Department of Revenue Customer Interaction Center, P.O. Box 1168, Raleigh, NC 27602. Importantly, the waiver of the \$200 penalty does not alleviate the taxpayer of its responsibility to timely file Form NC-3 and the required statements by the due date of the return.

In general, Form NC-3 is due on January 31 of the succeeding tax year.<sup>4</sup> If a taxpayer does not timely file Form NC-3 on or before January 31 of the succeeding tax year, the Secretary is required to impose a failure to timely file penalty against the taxpayer as prescribed under [N.C. Gen. Stat. § 105-236\(a\)\(10\)c](#). The failure to file penalty is \$50 per day, up to a maximum of \$1,000. While some taxpayers have had difficulty filing Form NC-3 electronically, the Department continues to encourage the electronic submission of the form and the required statements. For information on submitting the forms electronically, visit [www.ncdor.gov/eNC3](http://www.ncdor.gov/eNC3).

### **Secretary Extends Waiver of the Administrative Requirement to File Federal Form 1099-MISC if the Statement Does Not Report NC Income Tax Withheld**

[N.C. Gen. Stat. § 105-163.7\(b\)](#) permits the Secretary to require additional information to be included on an informational return. [Administrative Rule 17 NCAC 06C .0203\(b\)](#) provides a specific list of the required forms that must be submitted to the Department when the taxpayer annually files Form NC-3 with the Secretary.

The Secretary is aware that certain software vendors do not provide adequate support for the electronic filing of federal Form 1099-MISC statements with the Secretary. The Department understands that printing and filing paper copies of federal Form 1099-MISC statements is often burdensome and time consuming for businesses and accounting firms. Therefore, the Secretary will not require taxpayers to submit a paper or electronic copy of a federal Form 1099-MISC statement when the taxpayer files Form NC-3 if the 1099-MISC statement does not report North Carolina income tax withheld. This waiver will continue until further notice.

**Important:** A federal Form 1099-MISC statement that reports North Carolina income tax withheld must be filed with the Department as a part of the taxpayer's annual Form NC-3 filing requirement.

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<sup>3</sup> See the Department's Important Notice dated [August 5, 2019](#).

<sup>4</sup> Unless you terminate your business, Form NC-3 and the State's copy of each required statement must be filed with the Department on or before January 31 of the succeeding year.

## **Assistance**

If you have any questions about this notice, you may call the North Carolina Department of Revenue Customer Interaction Center at 1-877-252-3052 (8:00 am until 5:00 pm EST, Monday through Friday), or write the Department at PO Box 1168, Raleigh, NC 27602.

*To the extent there is any change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding the subject of this notice and issued prior to this notice conflict with this important notice, the provisions contained in this important notice supersede the previous guidance.*