

CHAPTER 85

AN ACT requiring persons transacting business in this State and making payments to certain unincorporated construction contractors to withhold from those payments, amending N.J.S.54A:7-1 and supplementing chapter 7 of Title 54A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.54A:7-1 is amended to read as follows:

Requirement of withholding tax from wages.

54A:7-1. Requirement of withholding tax from wages.

(a) General.--From and after September 1, 1976, every employer maintaining an office or transacting business within this State and making payment of any wages subject to New Jersey personal income tax or making payment of any remuneration for employment subject to contribution under the New Jersey "unemployment compensation law" pursuant to R.S.43:21-1 et seq. that is subject to New Jersey personal income tax to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due resulting from the inclusion in the employee's New Jersey income of his wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the director, with due regard to the withholding exemptions of the employee.

(b) Withholding exemptions.--For purposes of this section:

An employee shall be entitled to the equivalent of the same number of New Jersey withholding exemptions as the number of withholding exemptions to which he is entitled for Federal income tax withholding purposes. An employer may rely upon the number of Federal withholding exemptions claimed by the employee.

(c) The payor of New Jersey gambling winnings shall withhold New Jersey gross income tax on those winnings at a rate of 3% in all instances where the payor is required to withhold for federal income tax purposes under subsection (q) of section 3402 of the federal Internal Revenue Code of 1986 (26 U.S.C. s. 3402), as amended, except that this subsection shall not apply to the New Jersey State Lottery.

C.54A:7-1.2 Entities making payments to unincorporated contractors, 7 percent withholding; exceptions; definitions.

2. a. A person, other than a governmental entity, homeowner, or tenant, maintaining an office or transacting business in this State and making a payment of compensation or remuneration for services rendered in this State to a resident unincorporated contractor or nonresident unincorporated contractor shall deduct and withhold from the payment a tax equal to 7 percent of the amount paid, except as otherwise provided by this section.

b. A person that obtains from its unincorporated contractor proof of the contractor's registration with the Division of Revenue in the Department of the Treasury shall not be required to withhold pursuant to subsection a. of this section. The types of proof required and the length of the retention period of the proofs shall be as prescribed by the Director of the Division of Taxation.

c. Withholding pursuant to subsection a. of this section shall not be required for payments for which withholding is required pursuant to N.J.S.54A:7-1 or such other payments as the director may prescribe by regulation.

d. A person required to deduct and withhold tax from a payment under subsection a. of this section shall furnish to each unincorporated contractor an annual written statement reflecting the total of all payments made and tax withheld in a calendar year on or before February 15 following the close of that calendar year in the form prescribed by the director.

e. Payments to an unincorporated contractor for which withholding is required by subsection a. of this section shall be taxable or subject to employer withholding under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., as if no withholding were required by this section, but any amount actually deducted and withheld under this section in any calendar year shall be deemed to have been paid to the director on behalf of the unincorporated contractor from whom withheld, and the contractor shall be credited with having paid that amount for the taxable year beginning in such calendar year.

A person required to deduct and withhold tax under subsection a. of this section shall, for each calendar month, on or before the 15th day of the month following the close of the calendar month, file a return as prescribed by the director and pay over to the director or to a depository designated by the director the amounts required to be deducted and withheld. The director may, if the director believes such action necessary for the protection of the revenues, require a person to make a return and pay to the director the amounts deducted and withheld at any time, or from time to time. The director may, by regulation, require the filing of withholding returns and the payment of withheld amounts on a semimonthly or more frequent basis or require the filing of returns on a quarterly basis, with payments of the amounts withheld on a monthly or more frequent basis, if the director deems such action in the best interest of the State.

Any reconciliation of withholding shall be filed on or before February 15 following the close of the calendar year in accordance with rules and regulations prescribed by the director.

f. If a person required to deduct and withhold tax under subsection a. of this section fails to collect, truthfully account for, pay over the withholding, or make returns of the withholding as required in this section, the director may serve a notice requiring such person to withhold the amounts that become withholdable after service of such notice, to deposit such withholdings in a bank approved by the director in a separate account, in trust for and payable to the State of New Jersey and keep the amount of such withholdings in such account until payment over to the director. Such notice shall remain in effect until a notice of cancellation is served by the director.

g. (1) A person required to deduct and withhold tax under subsection a. of this section is hereby made liable for such withholding, except as that person may be excused from that withholding pursuant to subsection b. of this section.

(2) The owner or lessor of the real property to which construction, improvement, alteration, or repair of a building, structure, or improvement shall be made, required to deduct and withhold tax under subsection a. of this section for a contractor with whom the owner or lessor is in direct privity of contract and who is liable pursuant to paragraph (1) of this subsection for such withholding, is hereby also made liable for that contractor's withholding from a subcontractor, or the subcontractor's withholding from a lower tier subcontractor on that contract, except as the contractor, subcontractor or lower tier subcontractor may be excused from that withholding pursuant to subsection b. of this section.

(3) For purposes of assessment and collection, any tax required to be withheld and paid over to the director and any additions to tax, penalties and interest with respect to that tax shall be considered the tax of that person required to deduct and withhold. Any amount actually withheld under this section shall be held to be a special fund in trust for the director. No unincorporated contractor shall have any right of action against a person required to

deduct and withhold an amount of a payment in respect to any moneys deducted and withheld and paid over to the director in compliance or in intended compliance with this section.

h. If a person required to withhold under subsection a. of this section fails to deduct and withhold tax as required, and thereafter the tax against which the tax may be credited is paid, the tax required to be deducted and withheld shall not be collected from the person required to withhold under subsection a. of this section, provided however that the person required to withhold under subsection a. of this section shall not be relieved from liability for any additions to tax, penalties and interest with respect to that tax otherwise applicable in respect of that failure to deduct and withhold.

i. For the purposes of this section:

"Contractor" means a person entering into a contract for services to construct, improve, alter, or repair a building, structure, or improvement to real property and includes a subcontractor, but shall not include professional services as defined in section 1 of P.L.1960, c.40 (C.17:16C-1);

"Governmental entity" means: the State of New Jersey, or any of its agencies, instrumentalities, public authorities, political subdivisions or public corporations, including a public corporation created pursuant to agreement or compact with another state; the United States of America and any of its agencies and instrumentalities; and the United Nations or any international organization of which the United States of America is a member;

"Homeowner" means an individual who makes a payment to a contractor to construct, improve, alter, or repair a dwelling which the individual owns and in which the individual resides or will reside;

"Subcontractor" means a person entering into a contract with a contractor for services to construct, improve, alter, or repair a building, structure, or improvement to real property, but shall not include professional services as defined in section 1 of P.L.1960, c.40 (C.17:16C-1);

"Tenant" means an individual who makes a payment to a contractor to construct, improve, alter, or repair a dwelling unit which the individual rents or leases and in which the individual resides or will reside; and

"Unincorporated contractor" means an individual contractor or a contractor organized as a sole proprietorship, a partnership, or any other business form not taxable as a corporation for federal tax purposes.

3. This act shall take effect immediately and apply to payments made on or after the January 1 next following enactment.

Approved August 21, 2006.