

P.L. 2006, CHAPTER 85, *approved August 21, 2006*  
Senate, No. 468 (*Second Reprint*)

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

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

9  
10 1. N.J.S.54A:7-1 is amended to read as follows:

11 54A:7-1. Requirement of withholding tax from wages.

12 (a) General.--From and after **the first day of the first month**  
13 following at least a full calendar month after the enactment of this  
14 act **September 1, 1976**, every employer maintaining an office or  
15 transacting business within this State and making payment of any  
16 wages subject to New Jersey personal income tax or making  
17 payment of any remuneration for employment subject to  
18 contribution under the New Jersey "unemployment compensation  
19 law" pursuant to R.S.43:21-1 et seq. that is subject to New Jersey  
20 personal income tax to a resident or nonresident individual shall  
21 deduct and withhold from such wages for each payroll period a tax  
22 computed in such manner as to result, so far as practicable, in  
23 withholding from the employee's wages during each calendar year  
24 an amount substantially equivalent to the tax reasonably estimated  
25 to be due resulting from the inclusion in the employee's New Jersey  
26 income of his wages received during such calendar year. The  
27 method of determining the amount to be withheld shall be  
28 prescribed by regulations of the director, with due regard to the  
29 withholding exemptions of the employee.

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

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

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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly floor amendments adopted May 22, 2006.

<sup>2</sup>Assembly floor amendments adopted June 26, 2006.

1 Jersey State Lottery.  
2 (cf: P.L.1987, c.76, s.57)

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4 2. (New section) a. A person<sup>1</sup>, other than a governmental  
5 entity,<sup>1</sup> homeowner, or tenant,<sup>2</sup> maintaining an office or  
6 transacting business in this State and making a payment of  
7 compensation or remuneration for services rendered in this State to  
8 a resident unincorporated contractor or nonresident unincorporated  
9 contractor shall deduct and withhold from the payment a tax equal  
10 to 7 percent of the amount paid, except as otherwise provided by  
11 this section.

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

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

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

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

38 A person required to deduct and withhold tax under subsection a.  
39 of this section shall, for each calendar month, on or before the 15th  
40 day of the month following the close of the calendar month, file a  
41 return as prescribed by the director and pay over to the director or  
42 to a depository designated by the director the amounts required to  
43 be deducted and withheld. The director may, if the director  
44 believes such action necessary for the protection of the revenues,  
45 require a person to make a return and pay to the director the  
46 amounts deducted and withheld at any time, or from time to time.  
47 The director may, by regulation, require the filing of withholding

1 returns and the payment of withheld amounts on a semimonthly or  
2 more frequent basis or require the filing of returns on a quarterly  
3 basis, with payments of the amounts withheld on a monthly or more  
4 frequent basis, if the director deems such action in the best interest  
5 of the State.

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

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

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

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

36 (3) For purposes of assessment and collection, any tax required  
37 to be withheld and paid over to the director and any additions to tax,  
38 penalties and interest with respect to that tax shall be considered the  
39 tax of that person required to deduct and withhold. Any amount  
40 actually withheld under this section shall be held to be a special  
41 fund in trust for the director. No unincorporated contractor shall  
42 have any right of action against a person required to deduct and  
43 withhold an amount of a payment in respect to any moneys  
44 deducted and withheld and paid over to the director in compliance  
45 or in intended compliance with this section.

46 h. If a person required to withhold under subsection a. of this  
47 section fails to deduct and withhold tax as required, and thereafter  
48 the tax against which the tax may be credited is paid, the tax

1 required to be deducted and withheld shall not be collected from the  
 2 person required to withhold under subsection a. of this section,  
 3 provided however that the person required to withhold under  
 4 subsection a. of this section shall not be relieved from liability for  
 5 any additions to tax, penalties and interest with respect to that tax  
 6 otherwise applicable in respect of that failure to deduct and  
 7 withhold.

8 i. For the purposes of this section:

9 "Contractor" means a person entering into a contract for services  
 10 to construct, improve, alter, or repair a building, structure, or  
 11 improvement to real property and includes a subcontractor, but shall  
 12 not include professional services as defined in section 1 of  
 13 P.L.1960, c.40 (C.17:16C-1 <sup>2</sup>[et seq.]<sup>2</sup>);

14 <sup>1</sup>"Governmental entity" means: the State of New Jersey, or any  
 15 of its agencies, instrumentalities, public authorities, political  
 16 subdivisions or public corporations, including a public corporation  
 17 created pursuant to agreement or compact with another state; the  
 18 United States of America and any of its agencies and  
 19 instrumentalities; and the United Nations or any international  
 20 organization of which the United States of America is a member.<sup>1</sup>

21 <sup>2</sup>"Homeowner" means an individual who makes a payment to a  
 22 contractor to construct, improve, alter, or repair a dwelling which  
 23 the individual owns and in which the individual resides or will  
 24 reside.<sup>2</sup>

25 "Subcontractor" means a person entering into a contract with a  
 26 contractor for services to construct, improve, alter, or repair a  
 27 building, structure, or improvement to real property<sup>1</sup>, but shall not  
 28 include professional services as defined in section 1 of P.L.1960,  
 29 c.40 (C.17:16C-1 <sup>2</sup>[et seq.]<sup>2</sup>)<sup>1</sup>; and

30 <sup>2</sup>"Tenant" means an individual who makes a payment to a  
 31 contractor to construct, improve, alter, or repair a dwelling unit  
 32 which the individual rents or leases and in which the individual  
 33 resides or will reside.<sup>2</sup>

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

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

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45 Requires persons transacting business in this State and making  
 46 payments to unregistered unincorporated construction contractors to  
 47 withhold gross income taxes from those payments.