

2012 -- S 2627

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TAXATION - STATE TAX OFFICIALS

Introduced By: Senators Lombardo, Ruggerio, Cote, P Fogarty, and Nesselbush

Date Introduced: March 01, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 44-1-6 of the General Laws in Chapter 44-1 entitled "State Tax  
2 Officials" is hereby amended to read as follows:

3           **44-1-6. Additional collection powers -- Nonresident contractors.** -- (a) ~~Any person~~  
4 ~~doing business with a nonresident contractor shall withhold payment of an amount of three~~  
5 ~~percent (3%) of the contract price until thirty (30) days after the contractor has completed the~~  
6 ~~contract and has requested the tax administrator, in writing, to audit the records for the particular~~  
7 ~~project, a receipted copy of the request to be furnished to the person holding the funds. The tax~~  
8 ~~administrator shall, within thirty (30) days after receipt of the request, furnish to the nonresident~~  
9 ~~contractor and to the person holding the funds either a certificate of no tax due or a certificate of~~  
10 ~~sales and use tax or income tax withheld, or both, due from the nonresident contractor.~~ Any  
11 person doing business with a nonresident contractor and making payments of the contract price to  
12 such nonresident contractor shall deduct and withhold from such payments an amount of five  
13 percent (5%) of such payments, unless such nonresident contractor has furnished a certificate of  
14 compliance as described in subparagraph (b) of this section. The amounts so required to be  
15 deducted and withheld shall be paid over to the tax administrator by the last day of the month  
16 following the calendar quarter in which the first payment to the nonresident contractor is made,  
17 and every calendar quarter thereafter. Each such payment to the tax administrator shall be  
18 accompanied by a form prescribed by the tax administrator. The amount required to be deducted  
19 and withheld from the nonresident contractor, when so deducted and withheld, shall be held to be

1 a special fund in trust for the state. No nonresident contractor shall have any right of action  
2 against a person deducting and withholding under this subdivision with respect to any moneys  
3 deducted and withheld and paid over to the tax administrator in compliance with or intended  
4 compliance with this subdivision.

5 ~~(b) Upon receipt of a certificate of no tax due, the person holding the payment may pay~~  
6 ~~the nonresident contractor. Upon receipt of a certificate of taxes due, the person may pay to the~~  
7 ~~contractor out of the amount withheld the excess over the amount of taxes stated in the certificate~~  
8 ~~together with the interest and penalties assessed. If the tax administrator furnishes neither~~  
9 ~~certificate to both parties within thirty (30) days after receipt of a written request for the making~~  
10 ~~of the audit, the person holding the payment may immediately pay the payment withheld to the~~  
11 ~~nonresident contractor under the terms of the contract free from any claims of the tax~~  
12 ~~administrator against either the person holding the payment or the nonresident contractor for~~  
13 ~~payment of sales or use taxes or income taxes withheld, or both.~~

14 A nonresident contractor shall request in writing, that the tax administrator audit the  
15 records of such contractor for a project for which amounts were deducted and withheld from such  
16 contractor under subparagraph (a) of this section. If such request is not made within three (3)  
17 years after the date the final payment of such amounts was made to the tax administrator, such  
18 contractor waives the right to request such audit and claim a refund of such amounts. The tax  
19 administrator shall, after receipt of such request, conduct an audit and issue to the nonresident  
20 contractor a certificate of no tax due or a certificate of tax due from the nonresident contractor.  
21 Not later than ninety (90) days after the issuance of a certificate of no tax due, the tax  
22 administrator shall return to the nonresident contractor the amounts deducted and withheld from  
23 such contractor and paid over to the tax administrator. Upon issuance of a certificate of taxes due,  
24 the tax administrator may return to the nonresident contractor the amount by which the amounts  
25 deducted and withheld and paid over to the tax administrator under subparagraph (a) of this  
26 section exceed the amount of taxes set forth in the certificate, together with the interest and  
27 penalties then assessed.

28 ~~(c) In the event the tax administrator serves upon the contractor and the person holding~~  
29 ~~the payment a certificate showing the taxes due within a thirty (30) day period, the person holding~~  
30 ~~the payment shall deposit with the tax administrator the amount stated in the certificate which is~~  
31 ~~not in excess of three percent (3%) of the contract price, taking a receipt for the amount, and is~~  
32 ~~free from any claim of the nonresident contractor for that amount or of the tax administrator for~~  
33 ~~sales and use taxes or income taxes withheld, or both, arising out of the materials, equipment, and~~  
34 ~~services used in performance of the contract of the nonresident contractor on that project.~~

1 When a person doing business with the nonresident contractor pays over to the tax  
2 administrator amounts deducted and withheld pursuant to subparagraph (a) of this section, such  
3 person shall not be liable for any claim of the nonresident contractor for such amounts or for any  
4 claim of the tax administrator for any taxes of the nonresident contractor arising from the  
5 activities of the nonresident contractor on the project for which the amounts were paid over. Such  
6 payment shall not relieve the person doing business with the nonresident contractor of such  
7 person's liability for use taxes due on purchases of services from such nonresident contractor.

8 (d) When a nonresident contractor enters into a contract with the state, said contractor  
9 shall provide the department of labor with evidence demonstrating compliance with the  
10 provisions of chapter 37-13 regarding prevailing wages and any other provisions of the general  
11 laws related to conditions of employment.

12 (e) Not later than one hundred twenty (120) days after the commencement of the contract,  
13 or thirty (30) days after the completion of the contract, whichever is earlier, a nonresident  
14 contractor may: (i) Furnish a guarantee bond in a sum equivalent to five percent (5%) of the  
15 contract price; or (ii) Deposit with the tax administrator a cash bond in a sum equal to five percent  
16 (5%) of the contract price, in lieu of the requirements contained in subparagraph (a) of this  
17 subdivision. The tax administrator may accept such bond on such terms and conditions as the tax  
18 administrator may require, and upon acceptance of such bond, shall issue a certificate of  
19 compliance to the contractor. The provisions of subparagraph (b) of this subdivision shall apply  
20 to such bond, upon completion of the contract, in the same manner as such provisions apply to  
21 amounts paid over under subparagraph (a) of this section.

22 (f) Upon the furnishing of a certificate of compliance by the nonresident contractor to the  
23 person doing business with a nonresident contractor, such person shall not be liable for any claim  
24 of the tax administrator for any taxes of the nonresident contractor arising from the activities of  
25 such contractor on the project for which the bond was provided. Such certificate of compliance  
26 shall not relieve the person doing business with the nonresident contractor of such person's  
27 liability for use taxes due on purchases of services from such nonresident contractor.

28 (g) If any person doing business with a nonresident contractor fails to deduct and  
29 withhold and pay over to the tax administrator amounts under subparagraph (a) of this section or  
30 fails to obtain a certificate of compliance from the nonresident contractor pursuant to  
31 subparagraph (f) of this section, such person shall be personally liable for payment of any taxes of  
32 the nonresident contractor arising from the activities of such contractor on the project for which  
33 such amounts or certificate were required.

34 ~~(d)~~(h) As used in this section, "a nonresident contractor" is one who does not maintain a

1 regular place of business in this state. "A regular place of business" means and includes any bona  
2 fide office (other than a statutory office), factory, warehouse, or other space in this state at which  
3 the taxpayer is doing business in its own name in a regular and systematic manner, and which is  
4 continuously maintained, occupied, and used by the taxpayer in carrying on its business through  
5 its regular employees regularly in attendance. ~~A temporary office at the site of construction shall~~  
6 ~~not constitute a regular place of business.~~ to carry on the contractor's business in the contractor's  
7 own name, except that "regular place of business" does not include a place of business for a  
8 statutory agent for service of process, or a temporary office or location used by the contractor  
9 only for the duration of the contract, whether or not at the site of construction, or an office  
10 maintained, occupied and used by a person affiliated with the contractor; "contract price" means  
11 the total contract price, including deposits, amounts held as retainage, costs for any change  
12 orders, or charges for add-ons; and "person doing business with a nonresident contractor" does  
13 not include an owner or tenant of real property used exclusively for residential purposes and  
14 consisting of three (3) or fewer dwelling units, in one of which the owner or tenant resides,  
15 provided each nonresident contractor doing business with such owner or tenant shall be required  
16 to comply with the bond requirements under subparagraph (e).

17 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would amend the law regarding nonresident contractors to provide, among other  
2 things, that the nonresident contractor comply with the prevailing wage laws, withhold five  
3 percent (5%) of the contract payment unless a certificate of tax compliance has been issued and  
4 bonding requirements.

5           This act would take effect upon passage.

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