



**NCDOR**

**NORTH  
CAROLINA  
DEPARTMENT  
OF REVENUE**

## **IMPORTANT NOTICE: SECRETARY ANNOUNCES WAIVER OF FAILURE TO FILE PENALTY FOR NC-3 FORMS DUE TO BE FILED ON JANUARY 31, 2018**

The following important information is addressed in this notice:

- Automatic waiver of failure to file penalty on Form NC-3 if form is not filed by January 31, 2018 due date
- Clarification of filing requirements for Form NC-3 and certain 1099 informational returns

### **Secretary Announces Automatic Waiver of the Late Filing Penalty for Form NC-3**

On September 15, 2017, the Secretary of Revenue (“Secretary”) announced that the Department of Revenue (“Department”) would impose a failure to file penalty on NC-3 forms due to be filed on January 31, 2018, if the form was not timely filed. (See [Important Notice dated September 15, 2017](#).) Because the Secretary has become aware that some taxpayers have had questions regarding the Department’s filing requirements for Form NC-3 and certain 1099 informational returns, the Secretary has elected to automatically waive the failure to file penalty on NC-3 forms due to be filed by January 31, 2018, but which are filed after that date. As such, the Department will not impose the failure to file penalty on NC-3 forms due to be filed on January 31, 2018 if the return is not timely filed. Taxpayers who submit Form NC-3 after January 31, 2018 should not include the \$50 failure to file penalty on Line 21. If a taxpayer has previously paid the \$50 failure to file penalty on Form NC-3, the Department will refund the penalty.

### **Clarification of Filing Requirements for Form NC-3 and Certain 1099 Informational Returns**

In November 2017, the Department published a specifications document to assist employers with filing Form NC-3. (See [eNC3 Specifications for Form NC-3](#)) The Department also published an additional document in December 2017 (revised January 2018) to assist certain entities with the submission of various forms including, but not limited to, NC-1099NRS, NC-1099PS, NC-1099ITIN, 1099-K, 1099-R, and 1099-MISC. (See [eNC3 Specifications for 1099 Reporting](#))

The Department continues to receive questions regarding the filing of NC-3, W-2, and 1099 forms. Specifically, the Department has been asked to provide additional guidance to the following questions:

1. Is there a requirement to file Form 1099-MISC directly with the Secretary if the payer has not withheld North Carolina income tax from the recipient?

Response: **Yes.**

G.S. 105-262(a) authorizes the Secretary to adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. [Administrative Rule 17 NCAC 06C .0203](#), provides, in pertinent part:

Form NC-1099 PS, NC-1099 ITIN, NC-1099 NRS, **and any federal report of Form 1099-MISC or 1099-R shall be filed with North Carolina**; however, other reports of 1099 information (interest, rents, premiums, dividends) shall not be filed with North Carolina unless the payments have not been reported to the Internal Revenue Service.

The rule, as amended and readopted on May 1, 2016, reflects the Department's current administrative policy for reporting income and withholdings. The eNC3 specifications document for 1099 reporting reiterates the Department's policy but limits the filing requirement for 1099-MISC and 1099-R forms. With respect to 1099-MISC forms, a payee must file Form 1099-MISC directly with the Secretary if either of the following conditions are met:

- (1) Box 16 (State tax withheld) is populated and North Carolina income tax has been withheld, or
  - (2) Either Box 3 (Other income) or Box 7 (Nonemployee compensation) is populated and the recipient's address is located in North Carolina.
2. We filed NC-3s for all clients by the deadline and only attached the related W-2 (state copy) for wages for our clients. We did not file the state copy of Form 1099-MISC with the Department because it was our understanding that we were not required to do so as North Carolina receives this information directly from the Internal Revenue Service. None of our clients have state tax withheld from any 1099, so there is nothing to report regarding 1099 state withholding. Should we send a second NC-3 as a "cover page" to the state along with copies of any 1099 forms that meet the State's specifications?

Response: **No.** Do not send a second NC-3 or NC-3X as a cover page with 1099-MISC forms.

You may submit the required 1099-MISC forms either by using the Department's eNC3 application portal or by mailing paper copies to the Department. For information on uploading documents to the Department, see "[Web File Upload](#)." If you have problems uploading the documents to the Department, you may email the Department at [eNC3@ncdor.gov](mailto:eNC3@ncdor.gov).

If you submit paper 1099-MISC forms to the Department, include a cover statement that identifies the business' name, federal identification number, state identification number (if available), and a statement that original NC-3 form has been previously filed. Mail the paper forms to the address given in the response to question number 3.

3. Can I submit the original Form NC-3 and its accompanying W-2s or 1099s in paper form?

Response: **Yes.**

G.S. 105-163.7(b), G.S. 163.2A(b), G.S. 105-163.3(d), and G.S. 105-251.2(d) require Form NC-3 and certain withholding statements or other informational reports (W-2 and 1099 forms) to be filed with the Secretary in an electronic format. However, North Carolina law also authorizes the Secretary, upon show of good cause, to waive the electronic submission requirement.

As announced on September 15, 2017, the Secretary has granted an automatic waiver to businesses that cannot meet the electronic submission filing requirement for NC-3, W-2, and 1099 forms due to be filed on January 31, 2018. This is an automatic waiver – no action is required.

Businesses that cannot meet the electronic submission requirement can mail NC-3, W-2, and 1099 forms to the Department at the following address:

North Carolina Department of Revenue  
PO Box 25000  
Raleigh, NC 27640-0001

4. Will the Secretary impose a late filing penalty of \$50 on a late filed Form NC-3?

Response: **No.**

See "Secretary Announces Automatic Waiver of the Late Filing Penalty for Form NC-3."

## **Assistance**

If you have any questions about this notice, you may call the Taxpayer Assistance Division at 877-252-3052 (8:00 am until 5:00 pm EST, Monday through Friday), or write the Department at PO Box 1168, Raleigh, NC 2760.

*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.*