

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

**S**

**D**

**SENATE DRS15272-LRx-144A\* (5/13)**

Short Title: 2004 ESC Omnibus Act.

(Public)

---

Sponsors: Senator Nesbitt.

---

Referred to:

---

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY  
LAWS OF NORTH CAROLINA AND APPROPRIATING REED ACT FUNDS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 2 of S.L. 2003-405 reads as rewritten:

**"SECTION 2.** This act is effective when it becomes law. This act is repealed for taxes imposed in the ~~2005-2006~~ and subsequent calendar years."

**SECTION 2.** A tax is imposed for the 2005 calendar year upon contributions under Chapter 96 of the General Statutes at the rate of two percent (2%) of the amount of contributions due. The tax is due and payable at the time and in the same manner as the contributions. The collection of this tax, the assessment of interest and penalties on unpaid taxes, the filing of judgment liens, and the enforcement of the liens for unpaid taxes are governed by the provisions of G.S. 96-10 where applicable. Taxes collected under this section shall be credited to the Worker Training Trust Fund, and refunds and the costs of collection of the taxes shall be paid from the same Fund. Any interest or penalties collected on unpaid taxes shall be credited to the Special Employment Security Administration Fund, and any interest or penalties refunded on taxes imposed by this section shall be paid from the same Fund. The Employment Security Commission may use moneys from the Special Employment Security Administration Fund as advances against the collection of the tax imposed by this section.

**SECTION 3.** G.S. 96-9(d)(2)d. reads as rewritten:

"d. As of July 31 of each year, and prior to January 1 of the succeeding year, the Commission shall determine the balance of each such employer's account and shall furnish him with a statement of all charges and credits thereto.

As of the second computation date (August 1) following the effective date of liability and as of each computation date

1 thereafter, any credit balance remaining in the employer's  
2 account (after all applicable postings) in excess of whichever is  
3 the greater (a) benefits charged to such account during the 12  
4 months ending on such computation date, or (b) one percent  
5 (1%) of taxable wages for the 12 months ending on June 30  
6 preceding such computation date shall be refunded. Any such  
7 refund shall be made prior to February 1 following such  
8 computation date.

9 Should the balance in such account not equal that requiring  
10 a refund, the employer shall upon notice and demand for  
11 payment mailed to his last known address pay into his account  
12 an amount that will bring such balance to the minimum required  
13 for a refund. Such amount shall become due on or before the  
14 tenth day following the mailing of such notice and demand for  
15 payment. Any such amount unpaid on the due date shall be  
16 collected in the same manner, including interest, as prescribed  
17 in G.S. 96-10.

18 Upon a change in election as to the method of payment from  
19 reimbursement to contributions, or upon termination of  
20 coverage and after all applicable benefits paid based on wages  
21 paid prior to such change in election or termination of coverage  
22 have been charged, any credit balance in such account shall be  
23 refunded to the employer.

24 Should there be a debit balance in such account, the  
25 employer shall, upon notice and demand for payment, mailed to  
26 his last-known address, pay into his account an amount equal to  
27 such debit balance. Such amount shall become due on or before  
28 the tenth day following the mailing of such notice and demand  
29 for payment.

30 Any such amount unpaid on the date due shall be collected  
31 in the same manner, including interest, as prescribed in  
32 G.S. 96-10.

33 Beginning January 1, 1978, each employer paying by  
34 reimbursement shall have his account computed on computation  
35 date (August 1) and if there is a deficit shall be billed for an  
36 amount necessary to bring his account to one percent (1%) of  
37 his taxable payroll. Any amount of his account in excess of that  
38 required to equal one percent (1%) of his payroll shall be  
39 refunded. Amounts due from any employer to bring his account  
40 to a one percent (1%) balance shall be billed as soon as  
41 practical and payment will be due within 25 days from the date  
42 of mailing of the statement of amount due. Amounts due from  
43 any nonprofit organization to bring its account to a one percent  
44 (1%) balance shall be billed as soon as practical, and payment

1                    will be due within 60 days from the date of mailing of the  
 2                    statement of the amount due."

3                    **SECTION 4.** S.L. 2003-405 is reenacted.

4                    **SECTION 5.** G.S. 96-5(c1) is repealed.

5                    **SECTION 6.** G.S. 96-15(c) reads as rewritten:

6                    "(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals  
 7 referee shall set a hearing in which the parties are given reasonable opportunity to be  
 8 heard. The conduct of hearings shall be governed by suitable regulations established by  
 9 the Commission. Such regulations need not conform to common law or statutory rules  
 10 of evidence or technical or formal rules of procedure but shall provide for the conduct  
 11 of hearings in such manner as to ascertain the substantial rights of the parties. The  
 12 hearings may be conducted by conference telephone call or other similar means  
 13 provided that if any party files with the Commission prior written objection to the  
 14 telephone procedure, that party will be afforded an opportunity for an in-person hearing  
 15 at such place in the State as the Commission by regulation shall provide. The appeals  
 16 referee may affirm or modify the conclusion of the adjudicator or issue a new decision  
 17 in which findings of fact and conclusions of law will be set out or dismiss an appeal  
 18 when the appellant fails to appear at the appeals hearing to prosecute the appeal after  
 19 having been duly notified of the appeals hearing. The evidence taken at the hearings  
 20 before the appeals referee shall be recorded and the decision of the appeals referee shall  
 21 be deemed to be the final decision of the Commission unless within 10 days after the  
 22 date of notification or mailing of the decision, whichever is earlier a written appeal is  
 23 filed pursuant to such regulations as the Commission may adopt. No person may be  
 24 appointed as an appeals referee unless he or she possesses the minimum qualifications  
 25 necessary to be a staff attorney eligible for designation by the Commission as a hearing  
 26 officer under G.S. 96-4(m). No appeals referee in full-time permanent status may  
 27 engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as  
 28 appeals referee; violation of this prohibition shall be grounds for removal. Whenever an  
 29 appeal is taken from a decision of the appeals referee, the appealing party shall submit a  
 30 clear written statement containing the grounds for the appeal within the time allowed by  
 31 law for taking the appeal, and if such timely statement is not submitted, ~~an appeals~~  
 32 ~~referee~~ the Commission may dismiss the appeal."

33                    **SECTION 7.** G.S. 96-8(6)k. is amended by adding a new sub-subdivision to  
 34 read:

35                    "k.     The term "employment" does not include:

36                    ...

37                    20.     Services performed by an individual who is an alien  
 38                    having residence in a foreign country which the  
 39                    individual has no intention of abandoning who possesses  
 40                    a valid J-1 Visa and is present in the State for a period of  
 41                    six months or less pursuant to the provisions of 8 U.S.C.  
 42                    1101(a)(15)(F)(J)(M)(Q)."  
 43

1           **SECTION 8.** Section 2 of this act is effective for the 2005 calendar year  
2 only. Section 3 of this act becomes effective August 1, 2004, and applies to amounts  
3 due on or after that date. Section 4 of this act is effective on and after August 12, 2003,  
4 and is repealed for taxes imposed in the 2006 and subsequent calendar years. The  
5 remainder of this act is effective when it becomes law.