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REVENUE AND TAXATION

Income Taxes: Provide Withholding Requirements for Certain Periodic Payments

CODE SECTIONS:	O.C.G.A. §§ 48-7-100 to -101 (amended)
BILL NUMBER:	HB 1363
ACT NUMBER:	911
SUMMARY:	The Act provides a definition for “periodic payment” concerning pensions, annuities, taxable fringe benefits, interest, and dividends. A payor of a periodic payment must withhold taxes from such payment in the same manner as if the payment were wages paid to an employee. Further, the Act includes an option for the payee to avoid withholding. The Act provides authorization to the Commissioner of the Georgia Department of Revenue to prescribe forms and promulgate rules and regulations setting forth requirements for withholding and making elections.
EFFECTIVE DATE:	March 29, 1994; applicable to all taxable years beginning on or after January 1, 1994.

History

Changes in the United States Internal Revenue Code in 1992¹ prompted changes in Georgia’s income tax withholding laws.² Prior to the passage of the Act, Georgia required that withholding of taxes due on pensions, annuities, taxable fringe benefits, interest, and dividends follow the provisions of the United States Internal Revenue Code of 1986.³ The introduction of a ten percent withholding amount for federal taxes on such distributions in the Internal Revenue Code⁴ would have required a corresponding additional ten percent withholding for state taxes.⁵ The Georgia Department of Revenue viewed the possibility of an additional twenty percent withholding on such distributions as undesirable.⁶ Furthermore, there was some confusion

1. In the Unemployment Compensation Amendments of 1992, the United States Congress passed new withholding requirements for certain periodic payments. 26 U.S.C. § 3405 (Supp. V 1993).

2. 1992 Ga. Laws 1296 (formerly found at O.C.G.A. § 48-7-101(h) (Supp. 1993)).

3. *Id.*

4. 26 U.S.C. § 3405(b) (Supp. V 1993).

5. 1992 Ga. Laws 1296 (formerly found at O.C.G.A. § 48-7-101(h) (Supp. 1993)).

6. Telephone Interview with John Corn, Assistant Director, Income Tax Division,

among pension plan administrators as to the amount to be withheld from distributions.⁷ Thus, at the prompting of the Georgia Department of Revenue, members of the House of Representatives introduced HB 1363.⁸ The language of HB 1363, much like prior Georgia taxation law,⁹ is patterned after the language in the federal revenue codes.¹⁰

HB 1363

The Act adds paragraph (8.1) to Code section 48-7-100 and amends subsection (h) to Code section 48-7-101.¹¹ After introduction, HB 1363 was referred to the House Ways and Means Committee, which reported the bill favorably.¹² The bill passed the General Assembly in its original form.¹³

The Act defines a "periodic payment" which will be subject to the new withholding requirements¹⁴ as follows:

[A] designated distribution from a pension, annuity, or similar fund which is one of a series of substantially equal distributions made over . . . [t]he life or life expectancy of the participant or the joint lives or joint life expectancies of the participant and his or her beneficiary; or . . . [a] specified period of ten years or more.¹⁵

The Act's definition of a periodic payment remains similar to the definition provided in the Internal Revenue Code.¹⁶

Georgia Department of Revenue (Apr. 6, 1994) [hereinafter Corn Interview].

7. *Id.*

8. Telephone Interview with Rep. A. Richard Royal, House District No. 164 (Apr. 6, 1994) [hereinafter Royal Interview]. Rep. Royal cosponsored HB 1363 along with Reps. Buck, Skipper, Jamieson, and Culbreth. HB 1363, as introduced, 1994 Ga. Gen. Assem.

9. *Carter v. Oxford*, 118 S.E.2d 216 (Ga. Ct. App. 1960) (citing instance in which State Revenue Commissioner adopted federal tax regulation).

10. Corn Interview, *supra* note 6.

11. O.C.G.A. §§ 48-7-100(8.1), -101(h) (Supp. 1994).

12. Royal Interview, *supra* note 8; HB 1363, as introduced, 1994 Ga. Gen. Assem.

13. See Final Composite Status Sheet, Mar. 16, 1994.

14. O.C.G.A. § 48-7-100(h) (Supp. 1994).

15. *Id.* § 48-7-100(8.1) (Supp. 1994).

16. Compare *id.* § 48-7-100(8.1) (Supp. 1994) with 26 U.S.C. § 3405(e)(2) (Supp. V 1993) and 26 U.S.C. § 3405(e)(1) (Supp. V 1993). 26 U.S.C. § 3405(e)(2) provides that a periodic payment is "a designated distribution which is an annuity or similar periodic payment." 26 U.S.C. § 3405(e)(2) (Supp. V 1993). 26 U.S.C. § 3405(e)(1) defines a designated distribution as "any distribution from or under . . . an employer deferred compensation plan, . . . an individual retirement plan . . ., or . . . a commercial annuity." 26 U.S.C. § 3405(e)(1) (Supp. V 1993).

The Act amends Code section 48-7-101(h)¹⁷ by striking the old subsection (h) and inserting in its place a new subsection (h).¹⁸ The first part of new subsection (h) requires the payor of a periodic payment to withhold an amount equal to the amount that would have been required to be withheld had the payment been a payment of wages by an employer to an employee.¹⁹ The amount withheld would correspond to the amount that would have been withheld from wages for the "appropriate payroll period."²⁰

The second part of new subsection (h) provides that a payee may elect to have no withholding made by the payor.²¹ This election would be valid until revoked by the payee.²² Although the purpose of the Act was to circumvent an additional ten percent withholding on periodic payments, some taxpayers may still prefer to have taxes withheld from periodic payments rather than make estimated tax payments.²³ Consequently, election out of the withholding provision was made voluntary.²⁴

The third part of subsection (h) authorizes the Commissioner to "prescribe forms and to promulgate rules and regulations setting forth the requirements for withholding from such periodic payments and the requirements for making elections not to withhold."²⁵

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17. 1992 Ga. Laws 1296 (formerly found at O.C.G.A. § 48-7-101(h) (Supp. 1993)).

18. O.C.G.A. § 48-7-101(h) (Supp. 1994).

19. *Id.* § 48-7-101(h)(1) (Supp. 1994).

20. *Id.*; Corn Interview, *supra* note 6.

21. O.C.G.A. § 48-7-101(h)(2) (Supp. 1994).

22. *Id.*

23. Corn Interview, *supra* note 6.

24. *Id.*; O.C.G.A. § 48-7-101(h)(2) (Supp. 1994).

25. O.C.G.A. § 48-7-101(h)(3) (Supp. 1994). Currently, the Georgia Department of Revenue is planning no new forms, rules, or regulations to implement the requirements for withholding or making elections not to withhold. Corn Interview, *supra* note 6.