

# HOUSE BILL 1143

Q3

71r2885

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By: **Delegate Barve**

Introduced and read first time: February 19, 2007

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Withholding – Nonresident Contractors**

3 FOR the purpose of repealing a requirement for withholding of a certain part of the  
4 contract price under certain contracts with certain contractors that do not  
5 maintain a regular place of business in the State, pending certain tax  
6 compliance verification; providing for the application of this Act; and generally  
7 relating to the repeal of a requirement for withholding of a certain part of the  
8 contract price under certain contracts with certain contractors that do not  
9 maintain a regular place of business in the State, pending certain tax  
10 compliance verification.

11 BY repealing

12 Article – Tax – General

13 Section 13–803

14 Annotated Code of Maryland

15 (2004 Replacement Volume and 2006 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Tax – General**

19 [13–803.

20 (a) (1) In this section the following words have the meanings indicated.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (2) “Nonresident contractor” means a contractor that does not  
2 maintain a regular place of business in this State.

3           (3) (i) “Regular place of business” means:

4                   1. a bona fide office, other than a statutory office;

5                   2. a factory;

6                   3. a warehouse; or

7                   4. any other space in this State:

8                           A. at which a person is doing business in its own name in  
9 a regular and systematic manner; and

10                           B. that is continuously maintained, occupied, and used  
11 by the person in carrying on its business through its regular employees regularly in  
12 attendance.

13                   (ii) “Regular place of business” does not include a temporary  
14 office at the site of construction.

15           (b) (1) Except as provided in paragraph (2) or (3) of this subsection, any  
16 person doing business with a nonresident contractor under a contract that equals or  
17 exceeds \$50,000 or reasonably can be expected to equal or exceed \$50,000 shall  
18 withhold payment of 3% of the contract price until 30 days after the nonresident  
19 contractor has:

20                           (i) completed the contract;

21                           (ii) requested in writing for the Comptroller to issue a tax  
22 clearance certificate; and

23                           (iii) provided a receipted copy of the request to the person  
24 required to withhold the payment.

25           (2) This subsection applies only to a person who enters into a direct  
26 contract with a nonresident contractor and may not be construed to impose any  
27 liability on an owner of property unless the owner enters into a direct contract with a  
28 nonresident contractor.

29           (3) This subsection does not apply to:

1 (i) an owner of property who contracts for the improvement of  
2 residential real property that the owner occupies or intends to occupy; or

3 (ii) a contract for the improvement of real property if the total  
4 value of the improvement is less than \$500,000 or a subcontract under a contract for  
5 the improvement of real property if the total value of the improvement is less than  
6 \$500,000.

7 (c) (1) Within 30 days after receipt of a written request for a tax clearance  
8 certificate, the Comptroller shall furnish to the nonresident contractor and to the  
9 person required to withhold the payment:

10 (i) a certificate of no tax due from the nonresident contractor;  
11 or

12 (ii) a certificate that taxes are due, including the amount of  
13 sales and use tax, income tax withheld, or both, due from the nonresident contractor  
14 including any interest and penalties.

15 (2) If the Comptroller furnishes a certificate of no tax due from the  
16 nonresident contractor or if the Comptroller fails to provide, within 30 days after  
17 receipt of a written request for a tax clearance certificate, to both the nonresident  
18 contractor and the person required to withhold the payment, a certificate under  
19 paragraph (1)(i) or (ii) of this subsection, the person required to withhold the payment  
20 may pay the nonresident contractor the amount withheld under the terms of the  
21 contract free from any claims of the Comptroller against the person required to  
22 withhold the payment.

23 (3) If the Comptroller furnishes a certificate that taxes are due from  
24 the nonresident contractor, the person required to withhold the payment:

25 (i) shall pay over to the Comptroller the amount due as stated  
26 in the certificate up to 3% of the contract price, taking a receipt for the amount; and

27 (ii) may pay to the nonresident contractor the excess of the  
28 amount withheld over the amount due as stated in the certificate.

29 (4) On paying over amounts withheld to the Comptroller as required  
30 under paragraph (3) of this subsection, the person required to withhold the payment is  
31 free from:

32 (i) any claim of the nonresident contractor for that amount; and

1 (ii) any claim of the Comptroller for taxes due from the  
2 nonresident contractor.

3 (d) (1) A person that fails to withhold or to pay over the amounts withheld  
4 as required in this section shall be personally liable for the payment of any sales and  
5 use tax or income tax withheld attributable to the contract up to 3% of the contract  
6 price.

7 (2) The amounts under paragraph (1) of this subsection shall be  
8 recoverable by the Comptroller by appropriate legal proceedings, which may include  
9 the issuance of an assessment under this article.

10 (e) (1) A nonresident contractor's liability for any sales and use tax or  
11 income tax withheld attributable to a contract that is subject to this section is not  
12 affected by:

13 (i) the Comptroller's failure to provide a certificate under  
14 subsection (c)(1)(i) or (ii) of this section within 30 days after receipt of a written  
15 request for a tax clearance certificate; or

16 (ii) the issuance of an erroneous certificate by the Comptroller  
17 under this section.

18 (2) The release of payment withheld under this section to a  
19 nonresident contractor or the payment over of amounts withheld to the Comptroller by  
20 a person required to withhold payment under this section does not affect a nonresident  
21 contractor's liability for any sales and use tax or income tax withheld in excess of the  
22 amount paid over to the Comptroller.

23 (3) This section may not be construed to prohibit the Comptroller from  
24 collecting taxes due from a nonresident contractor in any other manner authorized by  
25 law.]

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 July 1, 2007, and shall be applicable to contracts entered into on or after July 1, 2007.