

## **CHAPTER 640**

### **(House Bill 1143)**

AN ACT concerning

#### **Income Tax Withholding – Nonresident Contractors**

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

BY repealing

Article – Tax – General

Section 13–803

Annotated Code of Maryland

(2004 Replacement Volume and 2006 Supplement)

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

#### **Article – Tax – General**

[13–803.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Nonresident contractor” means a contractor that does not maintain a regular place of business in this State.
- (3) (i) “Regular place of business” means:
  - 1. a bona fide office, other than a statutory office;
  - 2. a factory;

3. a warehouse; or
4. any other space in this State:
  - A. at which a person is doing business in its own name in a regular and systematic manner; and
  - B. that is continuously maintained, occupied, and used by the person in carrying on its business through its regular employees regularly in attendance.

(ii) "Regular place of business" does not include a temporary office at the site of construction.

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

- (i) completed the contract;
- (ii) requested in writing for the Comptroller to issue a tax clearance certificate; and
- (iii) provided a receipted copy of the request to the person required to withhold the payment.

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

- (3) This subsection does not apply to:
- (i) an owner of property who contracts for the improvement of residential real property that the owner occupies or intends to occupy; or
  - (ii) a contract for the improvement of real property if the total value of the improvement is less than \$500,000 or a subcontract under a contract for the improvement of real property if the total value of the improvement is less than \$500,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Approved by the Governor, May 17, 2007.**