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RWH 3/12/08

P.L. 2006, CHAPTER 85, *approved August 21, 2006*  
Senate, No. 468 (*Second Reprint*)

1 AN ACT requiring persons transacting business in this State and  
2 making payments to certain unincorporated construction  
3 contractors to withhold from those payments, amending  
4 N.J.S.54A:7-1 and supplementing chapter 7 of Title 54A of the  
5 New Jersey Statutes.

6  
7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9  
10 1. N.J.S.54A:7-1 is amended to read as follows:

11 54A:7-1. Requirement of withholding tax from wages.

12 (a) General.--From and after **【**the first day of the first month  
13 following at least a full calendar month after the enactment of this  
14 act**】** September 1, 1976, every employer maintaining an office or  
15 transacting business within this State and making payment of any  
16 wages subject to New Jersey personal income tax or making  
17 payment of any remuneration for employment subject to  
18 contribution under the New Jersey "unemployment compensation  
19 law" pursuant to R.S.43:21-1 et seq. that is subject to New Jersey  
20 personal income tax to a resident or nonresident individual shall  
21 deduct and withhold from such wages for each payroll period a tax  
22 computed in such manner as to result, so far as practicable, in  
23 withholding from the employee's wages during each calendar year  
24 an amount substantially equivalent to the tax reasonably estimated  
25 to be due resulting from the inclusion in the employee's New Jersey  
26 income of his wages received during such calendar year. The  
27 method of determining the amount to be withheld shall be  
28 prescribed by regulations of the director, with due regard to the  
29 withholding exemptions of the employee.

30 (b) Withholding exemptions.--For purposes of this section:

31 An employee shall be entitled to the equivalent of the same  
32 number of New Jersey withholding exemptions as the number of  
33 withholding exemptions to which he is entitled for Federal income  
34 tax withholding purposes. An employer may rely upon the number  
35 of Federal withholding exemptions claimed by the employee.

36 (c) The payor of New Jersey gambling winnings shall withhold  
37 New Jersey gross income tax on those winnings at a rate of 3% in  
38 all instances where the payor is required to withhold for federal  
39 income tax purposes under subsection (q) of section 3402 of the  
40 federal Internal Revenue Code of 1986 (26 U.S.C. s. 3402), as  
41 amended, except that this subsection shall not apply to the New

**EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly floor amendments adopted May 22, 2006.

<sup>2</sup>Assembly floor amendments adopted June 26, 2006.

1 Jersey State Lottery.  
2 (cf: P.L.1987, c.76, s.57)

3  
4 2. (New section) a. A person<sup>1</sup>, other than a governmental  
5 entity,<sup>1</sup> homeowner, or tenant,<sup>2</sup> maintaining an office or  
6 transacting business in this State and making a payment of  
7 compensation or remuneration for services rendered in this State to  
8 a resident unincorporated contractor or nonresident unincorporated  
9 contractor shall deduct and withhold from the payment a tax equal  
10 to 7 percent of the amount paid, except as otherwise provided by  
11 this section.

12 b. A person that obtains from its unincorporated contractor proof  
13 of the contractor's registration with the Division of Revenue in the  
14 Department of the Treasury shall not be required to withhold  
15 pursuant to subsection a. of this section. The types of proof  
16 required and the length of the retention period of the proofs shall be  
17 as prescribed by the Director of the Division of Taxation.

18 c. Withholding pursuant to subsection a. of this section shall not  
19 be required for payments for which withholding is required  
20 pursuant to N.J.S.54A:7-1 or such other payments as the director  
21 may prescribe by regulation.

22 d. A person required to deduct and withhold tax from a payment  
23 under subsection a. of this section shall furnish to each  
24 unincorporated contractor an annual written statement reflecting the  
25 total of all payments made and tax withheld in a calendar year on or  
26 before February 15 following the close of that calendar year in the  
27 form prescribed by the director.

28 e. Payments to an unincorporated contractor for which  
29 withholding is required by subsection a. of this section shall be  
30 taxable or subject to employer withholding under the "New Jersey  
31 Gross Income Tax Act," N.J.S.54A:1-1 et seq., as if no withholding  
32 were required by this section, but any amount actually deducted and  
33 withheld under this section in any calendar year shall be deemed to  
34 have been paid to the director on behalf of the unincorporated  
35 contractor from whom withheld, and the contractor shall be  
36 credited with having paid that amount for the taxable year  
37 beginning in such calendar year.

38 A person required to deduct and withhold tax under subsection a.  
39 of this section shall, for each calendar month, on or before the 15th  
40 day of the month following the close of the calendar month, file a  
41 return as prescribed by the director and pay over to the director or  
42 to a depository designated by the director the amounts required to  
43 be deducted and withheld. The director may, if the director  
44 believes such action necessary for the protection of the revenues,  
45 require a person to make a return and pay to the director the  
46 amounts deducted and withheld at any time, or from time to time.  
47 The director may, by regulation, require the filing of withholding

1 returns and the payment of withheld amounts on a semimonthly or  
2 more frequent basis or require the filing of returns on a quarterly  
3 basis, with payments of the amounts withheld on a monthly or more  
4 frequent basis, if the director deems such action in the best interest  
5 of the State.

6 Any reconciliation of withholding shall be filed on or before  
7 February 15 following the close of the calendar year in accordance  
8 with rules and regulations prescribed by the director.

9 f. If a person required to deduct and withhold tax under  
10 subsection a. of this section fails to collect, truthfully account for,  
11 pay over the withholding, or make returns of the withholding as  
12 required in this section, the director may serve a notice requiring  
13 such person to withhold the amounts that become withholdable after  
14 service of such notice, to deposit such withholdings in a bank  
15 approved by the director in a separate account, in trust for and  
16 payable to the State of New Jersey and keep the amount of such  
17 withholdings in such account until payment over to the director.  
18 Such notice shall remain in effect until a notice of cancellation is  
19 served by the director.

20 g. (1) A person required to deduct and withhold tax under  
21 subsection a. of this section is hereby made liable for such  
22 withholding, except as that person may be excused from that  
23 withholding pursuant to subsection b. of this section.

24 (2) The owner or lessor of the real property to which  
25 construction, improvement, alteration, or repair of a building,  
26 structure, or improvement shall be made, required to deduct and  
27 withhold tax under subsection a. of this section for a contractor with  
28 whom the owner or lessor is in direct privity of contract and who is  
29 liable pursuant to paragraph (1) of this subsection for such  
30 withholding, is hereby also made liable for that contractor's  
31 withholding from a subcontractor, or the subcontractor's  
32 withholding from a lower tier subcontractor on that contract, except  
33 as the contractor, subcontractor or lower tier subcontractor may be  
34 excused from that withholding pursuant to subsection b. of this  
35 section.

36 (3) For purposes of assessment and collection, any tax required  
37 to be withheld and paid over to the director and any additions to tax,  
38 penalties and interest with respect to that tax shall be considered the  
39 tax of that person required to deduct and withhold. Any amount  
40 actually withheld under this section shall be held to be a special  
41 fund in trust for the director. No unincorporated contractor shall  
42 have any right of action against a person required to deduct and  
43 withhold an amount of a payment in respect to any moneys  
44 deducted and withheld and paid over to the director in compliance  
45 or in intended compliance with this section.

46 h. If a person required to withhold under subsection a. of this  
47 section fails to deduct and withhold tax as required, and thereafter  
48 the tax against which the tax may be credited is paid, the tax

1 required to be deducted and withheld shall not be collected from the  
2 person required to withhold under subsection a. of this section,  
3 provided however that the person required to withhold under  
4 subsection a. of this section shall not be relieved from liability for  
5 any additions to tax, penalties and interest with respect to that tax  
6 otherwise applicable in respect of that failure to deduct and  
7 withhold.

8 i. For the purposes of this section:

9 "Contractor" means a person entering into a contract for services  
10 to construct, improve, alter, or repair a building, structure, or  
11 improvement to real property and includes a subcontractor, but shall  
12 not include professional services as defined in section 1 of  
13 P.L.1960, c.40 (C.17:16C-1 <sup>2</sup>[et seq.]<sup>2</sup>);

14 <sup>1</sup>"Governmental entity" means: the State of New Jersey, or any  
15 of its agencies, instrumentalities, public authorities, political  
16 subdivisions or public corporations, including a public corporation  
17 created pursuant to agreement or compact with another state; the  
18 United States of America and any of its agencies and  
19 instrumentalities; and the United Nations or any international  
20 organization of which the United States of America is a member.<sup>1</sup>

21 <sup>2</sup>"Homeowner" means an individual who makes a payment to a  
22 contractor to construct, improve, alter, or repair a dwelling which  
23 the individual owns and in which the individual resides or will  
24 reside.<sup>2</sup>

25 "Subcontractor" means a person entering into a contract with a  
26 contractor for services to construct, improve, alter, or repair a  
27 building, structure, or improvement to real property<sup>1</sup>, but shall not  
28 include professional services as defined in section 1 of P.L.1960,  
29 c.40 (C.17:16C-1 <sup>2</sup>[et seq.]<sup>2</sup>)<sup>1</sup>; and

30 <sup>2</sup>"Tenant" means an individual who makes a payment to a  
31 contractor to construct, improve, alter, or repair a dwelling unit  
32 which the individual rents or leases and in which the individual  
33 resides or will reside.<sup>2</sup>

34 "Unincorporated contractor" means an individual contractor or a  
35 contractor organized as a sole proprietorship, a partnership, or any  
36 other business form not taxable as a corporation for federal tax  
37 purposes.

38  
39 3. This act shall take effect immediately and apply to payments  
40 made on or after the January 1 next following enactment.

41

42

43

44

45 Requires persons transacting business in this State and making  
46 payments to unregistered unincorporated construction contractors to  
47 withhold gross income taxes from those payments.

**SENATE, No. 468**

**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Co-Sponsored by:**

**Senator Asselta**

**SYNOPSIS**

Requires persons transacting business in this State and making payments to unregistered unincorporated construction contractors to withhold gross income taxes from those payments.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT requiring persons transacting business in this State and  
2 making payments to certain unincorporated construction  
3 contractors to withhold from those payments, amending  
4 N.J.S.54A:7-1 and supplementing chapter 7 of Title 54A of the  
5 New Jersey Statutes.

6

7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9

10 1. N.J.S.54A:7-1 is amended to read as follows:

11 54A:7-1. Requirement of withholding tax from wages. (a)

12 General.--From and after [the first day of the first month following  
13 at least a full calendar month after the enactment of this act]  
14 September 1, 1976, every employer maintaining an office or  
15 transacting business within this State and making payment of any  
16 wages subject to New Jersey personal income tax or making  
17 payment of any remuneration for employment subject to  
18 contribution under the New Jersey "unemployment compensation  
19 law" pursuant to R.S.43:21-1 et seq. that is subject to New Jersey  
20 personal income tax to a resident or nonresident individual shall  
21 deduct and withhold from such wages for each payroll period a tax  
22 computed in such manner as to result, so far as practicable, in  
23 withholding from the employee's wages during each calendar year  
24 an amount substantially equivalent to the tax reasonably estimated  
25 to be due resulting from the inclusion in the employee's New Jersey  
26 income of his wages received during such calendar year. The  
27 method of determining the amount to be withheld shall be  
28 prescribed by regulations of the director, with due regard to the  
29 withholding exemptions of the employee.

30 (b) Withholding exemptions.--For purposes of this section:

31 An employee shall be entitled to the equivalent of the same  
32 number of New Jersey withholding exemptions as the number of  
33 withholding exemptions to which he is entitled for Federal income  
34 tax withholding purposes. An employer may rely upon the number  
35 of Federal withholding exemptions claimed by the employee.

36 (c) The payor of New Jersey gambling winnings shall withhold  
37 New Jersey gross income tax on those winnings at a rate of 3% in  
38 all instances where the payor is required to withhold for federal  
39 income tax purposes under subsection (q) of section 3402 of the  
40 federal Internal Revenue Code of 1986 (26 U.S.C. s. 3402), as  
41 amended, except that this subsection shall not apply to the New  
42 Jersey State Lottery.

43 (cf: P.L.1987, c.76, s.57)

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**



- 1       2. (New section) a. A person maintaining an office or  
2 transacting business in this State and making a payment of  
3 compensation or remuneration for services rendered in this State to  
4 a resident unincorporated contractor or nonresident unincorporated  
5 contractor shall deduct and withhold from the payment a tax equal  
6 to 7 percent of the amount paid, except as otherwise provided by  
7 this section.
- 8       b. A person that obtains from its unincorporated contractor proof  
9 of the contractor's registration with the Division of Revenue in the  
10 Department of the Treasury shall not be required to withhold  
11 pursuant to subsection a. of this section. The types of proof  
12 required and the length of the retention period of the proofs shall be  
13 as prescribed by the Director of the Division of Taxation.
- 14       c. Withholding pursuant to subsection a. of this section shall not  
15 be required for payments for which withholding is required  
16 pursuant to N.J.S.54A:7-1 or such other payments as the director  
17 may prescribe by regulation.
- 18       d. A person required to deduct and withhold tax from a payment  
19 under subsection a. of this section shall furnish to each  
20 unincorporated contractor an annual written statement reflecting the  
21 total of all payments made and tax withheld in a calendar year on or  
22 before February 15 following the close of that calendar year in the  
23 form prescribed by the director.
- 24       e. Payments to an unincorporated contractor for which  
25 withholding is required by subsection a. of this section shall be  
26 taxable or subject to employer withholding under the "New Jersey  
27 Gross Income Tax Act," N.J.S.54A:1-1 et seq., as if no withholding  
28 were required by this section, but any amount actually deducted and  
29 withheld under this section in any calendar year shall be deemed to  
30 have been paid to the director on behalf of the unincorporated  
31 contractor from whom withheld, and the contractor shall be  
32 credited with having paid that amount for the taxable year  
33 beginning in such calendar year.
- 34       A person required to deduct and withhold tax under subsection a.  
35 of this section shall, for each calendar month, on or before the 15th  
36 day of the month following the close of the calendar month, file a  
37 return as prescribed by the director and pay over to the director or  
38 to a depository designated by the director the amounts required to  
39 be deducted and withheld. The director may, if the director  
40 believes such action necessary for the protection of the revenues,  
41 require a person to make a return and pay to the director the  
42 amounts deducted and withheld at any time, or from time to time.  
43 The director may, by regulation, require the filing of withholding  
44 returns and the payment of withheld amounts on a semimonthly or  
45 more frequent basis or require the filing of returns on a quarterly  
46 basis, with payments of the amounts withheld on a monthly or more  
47 frequent basis, if the director deems such action in the best interest  
48 of the State.

1 Any reconciliation of withholding shall be filed on or before  
2 February 15 following the close of the calendar year in accordance  
3 with rules and regulations prescribed by the director.

4 f. If a person required to deduct and withhold tax under  
5 subsection a. of this section fails to collect, truthfully account for,  
6 pay over the withholding, or make returns of the withholding as  
7 required in this section, the director may serve a notice requiring  
8 such person to withhold the amounts that become withholdable after  
9 service of such notice, to deposit such withholdings in a bank  
10 approved by the director in a separate account, in trust for and  
11 payable to the State of New Jersey and keep the amount of such  
12 withholdings in such account until payment over to the director.  
13 Such notice shall remain in effect until a notice of cancellation is  
14 served by the director.

15 g. (1) A person required to deduct and withhold tax under  
16 subsection a. of this section is hereby made liable for such  
17 withholding, except as that person may be excused from that  
18 withholding pursuant to subsection b. of this section.

19 (2) The owner or lessor of the real property to which  
20 construction, improvement, alteration, or repair of a building,  
21 structure, or improvement shall be made, required to deduct and  
22 withhold tax under subsection a. of this section for a contractor with  
23 whom the owner or lessor is in direct privity of contract and who is  
24 liable pursuant to paragraph 1) of this subsection for such  
25 withholding, is hereby also made liable for that contractor's  
26 withholding from a subcontractor, or the subcontractor's  
27 withholding from a lower tier subcontractor on that contract, except  
28 as the contractor, subcontractor or lower tier subcontractor may be  
29 excused from that withholding pursuant to subsection b. of this  
30 section.

31 (3) For purposes of assessment and collection, any tax required  
32 to be withheld and paid over to the director and any additions to tax,  
33 penalties and interest with respect to that tax shall be considered the  
34 tax of that person required to deduct and withhold. Any amount  
35 actually withheld under this section shall be held to be a special  
36 fund in trust for the director. No unincorporated contractor shall  
37 have any right of action against a person required to deduct and  
38 withhold an amount of a payment in respect to any moneys  
39 deducted and withheld and paid over to the director in compliance  
40 or in intended compliance with this section.

41 h. If a person required to withhold under subsection a. of this  
42 section fails to deduct and withhold tax as required, and thereafter  
43 the tax against which the tax may be credited is paid, the tax  
44 required to be deducted and withheld shall not be collected from the  
45 person required to withhold under subsection a. of this section,  
46 provided however that the person required to withhold under  
47 subsection a. of this section shall not be relieved from liability for  
48 any additions to tax, penalties and interest with respect to that tax

1 otherwise applicable in respect of that failure to deduct and  
2 withhold.

3 i. For the purposes of this section:

4 "Contractor" means a person entering into a contract for services  
5 to construct, improve, alter, or repair a building, structure, or  
6 improvement to real property and includes a subcontractor, but shall  
7 not include professional services as defined in section 1 of  
8 P.L.1960, c.40 (C.17:16C-1 et seq.);

9 "Subcontractor" means a person entering into a contract with a  
10 contractor for services to construct, improve, alter, or repair a  
11 building, structure, or improvement to real property; and

12 "Unincorporated contractor" means an individual contractor or a  
13 contractor organized as a sole proprietorship, a partnership, or any  
14 other business form not taxable as a corporation for federal tax  
15 purposes.

16

17 3. This act shall take effect immediately and apply to payments  
18 made on or after the January 1 next following enactment.

19

20

21

#### STATEMENT

22

23 This bill requires persons transacting business in this State and  
24 making payments to unregistered unincorporated construction  
25 contractors for services rendered in New Jersey to withhold tax  
26 from those payments, to assure that the wage taxes of the employees  
27 of the unregistered businesses are properly withheld and paid.

28 The bill requires persons making business payments to resident  
29 unincorporated contractors or nonresident unincorporated  
30 contractors to deduct and withhold 7 percent of each payment made.  
31 The bill defines a contractor as any person that enters into a  
32 contract for services to construct, improve, alter, or repair a  
33 building, structure or improvement to real property and includes a  
34 subcontractor or lower tier subcontractor. An unincorporated  
35 contractor is an individual or sole proprietor, a partnership, or any  
36 other business form not taxable as a corporation for federal tax  
37 purposes, such as a limited liability company.

38 The bill excludes "professional services" from the definition of  
39 contractor. "Professional services" are defined as services rendered  
40 or performed by a person authorized by law to practice a recognized  
41 profession whose practice is regulated by law and the performance  
42 of which services requires knowledge of an advanced type in a  
43 field of learning acquired by a prolonged formal course of  
44 specialized instruction and study as distinguished from general  
45 academic instruction or apprenticeship and training.

46 The withholding is not required if the person making the  
47 payment has obtained from the person receiving the payment proof  
48 of the recipient's registration with the Division of Revenue in the

1 Department of the Treasury. The withholding is therefore only  
2 required from payments to persons who are not properly registered  
3 for tax purposes. No withholding under this bill is required for  
4 payments made to employees of the paying party (although  
5 payments to those parties generally must be withheld upon pursuant  
6 to N.J.S.A.54A:7-1)

7 Failure to withhold and pay the withheld tax over to the Director  
8 of the Division of Taxation will result in the imposition of penalties  
9 currently provided for other failures to pay taxes, generally 5% of  
10 the tax due per month up to 25% of the total liability and interest at  
11 3% above the prime rate every month or fraction of a month a tax is  
12 unpaid, the interest compounded annually, on unpaid tax, interest  
13 and penalty. Under the bill, each contractor is responsible for the  
14 payments made to lower tier contractors, while the property owner  
15 or lessor who directly enters the contract with a contractor is liable  
16 for the withholding of the owner or lessor's payments and all of the  
17 contractor's and subcontractors' withholding.

18 This bill also expands the definition of wages generally subject  
19 to withholding to include wages that are subject to withholding  
20 under the New Jersey unemployment compensation law.

# SENATE LABOR COMMITTEE

## STATEMENT TO

### SENATE, No. 468

# STATE OF NEW JERSEY

DATED: FEBRUARY 6, 2006

This bill requires persons transacting business in this State and making payments to unregistered unincorporated construction contractors for services rendered in New Jersey to withhold tax from those payments, to assure that the wage taxes of the employees of the unregistered businesses are properly withheld and paid.

The bill requires persons making business payments to resident unincorporated contractors or nonresident unincorporated contractors to deduct and withhold 7 percent of each payment made. The bill defines a contractor as any person that enters into a contract for services to construct, improve, alter, or repair a building, structure or improvement to real property and includes a subcontractor or lower tier subcontractor. An unincorporated contractor is an individual or sole proprietor, a partnership, or any other business form not taxable as a corporation for federal tax purposes, such as a limited liability company.

The bill excludes "professional services" from the definition of contractor. "Professional services" are defined as services rendered or performed by a person authorized by law to practice a recognized profession whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.

The withholding is not required if the person making the payment has obtained from the person receiving the payment proof of the recipient's registration with the Division of Revenue in the Department of the Treasury. The withholding is therefore only required from payments to persons who are not properly registered for tax purposes. No withholding under this bill is required for payments made to employees of the paying party (although payments to those parties generally must be withheld upon pursuant to N.J.S.A.54A:7-1).

Failure to withhold and pay the withheld tax over to the Director of the Division of Taxation will result in the imposition of penalties currently provided for other failures to pay taxes, generally 5% of the tax due per month up to 25% of the total liability and interest at 3% above the prime rate every month or fraction of a month a tax is unpaid, the interest compounded annually, on unpaid tax, interest and

penalty. Under the bill, each contractor is responsible for the payments made to lower tier contractors, while the property owner or lessor who directly enters the contract with a contractor is liable for the withholding of the owner or lessor's payments and all of the contractor's and subcontractors' withholding.

This bill also expands the definition of wages generally subject to withholding to include wages that are subject to withholding under the New Jersey unemployment compensation law.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 468

# STATE OF NEW JERSEY

DATED: MARCH 6, 2006

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 468.

This bill requires persons transacting business in this State and making payments to unregistered unincorporated construction contractors for services rendered in New Jersey to withhold tax from those payments, to assure that the wage taxes of the employees of the unregistered businesses are properly withheld and paid.

The bill requires persons making business payments to resident unincorporated contractors or nonresident unincorporated contractors to deduct and withhold 7 percent of each payment made. The bill defines a contractor as any person that enters into a contract for services to construct, improve, alter, or repair a building, structure or improvement to real property and includes a subcontractor or lower tier subcontractor. An unincorporated contractor is an individual or sole proprietor, a partnership, or any other business form not taxable as a corporation for federal tax purposes, such as a limited liability company.

The bill excludes "professional services" from the definition of contractor. "Professional services" are defined as services rendered or performed by a person authorized by law to practice a recognized profession whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.

The withholding is not required if the person making the payment has obtained from the person receiving the payment proof of the recipient's registration with the Division of Revenue in the Department of the Treasury. The withholding is therefore only required from payments to persons who are not properly registered for tax purposes. No withholding under this bill is required for payments made to employees of the paying party (although payments to those parties generally must be withheld upon pursuant to N.J.S.A.54A:7-1).

Failure to withhold and pay the withheld tax over to the Director of the Division of Taxation will result in the imposition of penalties currently provided for other failures to pay taxes, generally 5% of the tax due per month up to 25% of the total liability and interest at 3%

above the prime rate every month or fraction of a month a tax is unpaid, the interest compounded annually, on unpaid tax, interest and penalty. Under the bill, each contractor is responsible for the payments made to lower tier contractors, while the property owner or lessor who directly enters the contract with a contractor is liable for the withholding of the owner or lessor's payments and all of the contractor's and subcontractors' withholding.

This bill also expands the definition of wages generally subject to withholding to include wages that are subject to withholding under the New Jersey unemployment compensation law.

**FISCAL IMPACT:**

While this bill would be expected to increase the collection of existing but unpaid gross income tax liabilities and unemployment compensation tax liabilities, in the absence of information on the scope of tax avoidance by unregistered, unincorporated construction contractors in New Jersey it is not possible to reliably quantify the revenue impact. Thus, it is not possible to quantify the amount of current tax avoidance and the portion of the uncollected taxes that would be received by the State as a result of the provisions of this bill.



STATEMENT TO

**SENATE, No. 468**

with Assembly Floor Amendments  
(Proposed By Assemblyman BURZICHELLI)

ADOPTED: MAY 22, 2006

These Assembly amendments specify that government entities are exempt from the bill's requirements regarding the withholding of taxes from construction contractors and subcontractors, and that subcontractors, as well as contractors, providing professional services are not subject to the provisions of the bill.

STATEMENT TO

[First Reprint]

**SENATE, No. 468**

with Assembly Floor Amendments  
(Proposed By Assemblyman BURZICHELLI)

ADOPTED: JUNE 26, 2006

These Assembly amendments exempt homeowners or tenants who enter into contracts for the improvement of their residential property or units from having to obtain from the contractors proof of their tax registration or having to deduct and withhold taxes from the contractors.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 468**  
**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

DATED: MARCH 15, 2006

**SUMMARY**

**Synopsis:** Requires persons transacting business in this State and making payments to unregistered unincorporated construction contractors to withhold gross income taxes from those payments.

**Type of Impact:** Annual Revenue Increase to the Property Tax Relief Fund.

**Agencies Affected:** Department of the Treasury.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Fiscal Year 2006</u></b>	<b><u>Fiscal Year 2007</u></b>	<b><u>Fiscal Year 2008</u></b>
<b>State Revenue</b>	Unquantifiable Annual Revenue Gain		

- The Office of Legislative Services (OLS) expects this bill to increase annual State General Fund revenues, yet it cannot quantify the gain without a better understanding of the scope of tax evasion by unregistered, unincorporated construction contractors in New Jersey and of the extent to which the bill would advance their compliance with State tax laws.
- Every percentage point rise in reported construction activity would increase New Jersey's State calendar year 2007 revenues by about \$7.7 million, assuming a three percent tax rate.

**BILL DESCRIPTION**

Senate Bill No. 468 of 2006 requires New Jersey businesses to withhold seven percent of each payment made to any unincorporated contractor and to remit the amount withheld to the State. The withholding is not required if the contractor proves registration with the Division of Revenue in the Department of the Treasury.

The substitute defines a contractor as any person who enters into a contract for services to construct, improve, alter, or repair a building, structure or improvement to real property and includes a subcontractor or lower tier subcontractor.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

The OLS expects this bill to increase annual State General Fund revenues, yet it cannot quantify the gain without a better understanding of the scope of tax evasion by unregistered, unincorporated construction contractors in New Jersey and of the extent to which the bill would advance their compliance with State tax laws. While the legislation facilitates the enforcement of State tax laws by requiring New Jersey businesses to withhold seven percent of their payments to the above group of contractors, the OLS cautions that the latter may eschew the withholding requirement by registering with the State and may continue not to report their full income.

The OLS notes that the construction industry is often assumed to have a higher incidence of underground activity than most other industries. The Québec Ministry of Finances estimated in its 2005 study "L'Evasion Fiscale au Québec" that the size of the black market in construction was 14 percent of the industry's gross Québec product. The 2000 International Monetary Fund working paper "Shadow Economies Around the World: Size, Causes, and Consequences" by Friedrich Schneider and Dominik Enste suggests that the percentage might also serve as a reasonable approximation for underground construction activities in the United States, as the authors reviewed six studies indicating that the size of the overall United States shadow economy might range from 6.7 percent to 13.9 percent of its gross domestic product.

If 14 percent of New Jersey's gross construction product went indeed unreported, about \$3.6 billion of 2007 construction spending would be underground, according to an OLS projection. At a three percent tax rate, the State would thus lose about \$108 million in calendar year 2007 income tax revenue. Alternatively, every percentage point rise in reported construction activity would increase New Jersey's 2007 gross construction product by an estimated \$260 million and State calendar year 2007 revenues by about \$7.7 million, assuming a three percent tax rate.

To arrive at these amounts, the OLS relies on New Jersey gross state product data for the construction industry, as reported by the Bureau of Economic Analysis within the United States Department of Commerce. In 2004, the official New Jersey gross construction product was \$17.8 billion. Inflating this amount annually by the data's annualized growth rate from 1998 through 2004, or 7.5 percent, the OLS estimates a 2007 equivalent total of \$22.1 billion. Assuming that this amount represents 86 percent of total construction spending (14 percent tax evasion), the OLS calculates actual 2007 New Jersey construction spending to total roughly \$25.7 billion. Lastly, the agency computes the putative impact of increasing compliance with the State's tax laws by one and 14 percent respectively.

*Section:* Revenue, Finance and Appropriations

*Analyst:* Thomas Koenig  
Associate Fiscal Analyst

*Approved:* David J. Rosen  
Legislative Budget and Finance Officer

S468

3

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 468

### STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JUNE 29, 2006

#### SUMMARY

- Synopsis:** Requires persons transacting business in this State and making payments to unregistered unincorporated construction contractors to withhold gross income taxes from those payments.
- Type of Impact:** Annual Revenue Increase to the Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Fiscal Year 2006</u></b>	<b><u>Fiscal Year 2007</u></b>	<b><u>Fiscal Year 2008</u></b>
<b>State Revenue</b>	Unquantifiable Annual Revenue Gain		

- The Office of Legislative Services (OLS) expects this bill to increase annual State General Fund revenues, yet it cannot quantify the gain without a better understanding of the scope of tax evasion by unregistered, unincorporated construction contractors in New Jersey and of the extent to which the bill would advance their compliance with State tax laws.
- Every percentage point rise in reported construction activity would increase New Jersey's State calendar year 2007 revenues by about \$7.7 million, assuming a three percent tax rate.

#### BILL DESCRIPTION

Senate Bill No. 468 (1R) of 2006 requires New Jersey businesses to withhold seven percent of each payment made to any unincorporated contractor and to remit the amount withheld to the State. The withholding is not required if the contractor proves registration with the Division of Revenue in the Department of the Treasury.

The bill defines a contractor as any person who enters into a contract for services to construct, improve, alter, or repair a building, structure or improvement to real property and includes a subcontractor or lower tier subcontractor who is not performing services whose

practice is regulated by law and whose performance requires advanced knowledge acquired by a prolonged formal course of specialized instruction and study.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS expects this bill to increase annual State General Fund revenues, yet it cannot quantify the gain without a better understanding of the scope of tax evasion by unregistered, unincorporated construction contractors in New Jersey and of the extent to which the bill would advance their compliance with State tax laws. While the legislation facilitates the enforcement of State tax laws by requiring New Jersey businesses to withhold seven percent of their payments to the above group of contractors, the OLS cautions that the latter may eschew the withholding requirement by registering with the State and may continue not to report their full income.

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*Section: Revenue, Finance and Appropriations*

*Analyst: Thomas Koenig  
Associate Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.



**ASSEMBLY, No. 1910**

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**STATE OF NEW JERSEY**

**212th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblywoman JOAN M. VOSS**

**District 38 (Bergen)**

**SYNOPSIS**

Requires persons transacting business in this State and making payments to unregistered unincorporated construction contractors to withhold gross income taxes from those payments.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 2/24/2006)**

A1910 BURZICHELLI, VOSS

2

1 AN ACT requiring persons transacting business in this State and  
2 making payments to certain unincorporated construction  
3 contractors to withhold tax from those payments, amending  
4 N.J.S.54A:7-1 and supplementing chapter 7 of Title 54A of the  
5 New Jersey Statutes

6

7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9

10 1. N.J.S.54A:7-1 is amended to read as follows:

11 54A:7-1. Requirement of withholding tax from wages. (a)

12 General.--From and after [the first day of the first month following  
13 at least a full calendar month after the enactment of this act]  
14 September 1, 1976, every employer maintaining an office or  
15 transacting business within this State and making payment of any  
16 wages subject to New Jersey personal income tax or making  
17 payment of any remuneration for employment subject to  
18 contribution under the New Jersey "unemployment compensation  
19 law" pursuant to R.S.43:21-1 et seq. that is subject to New Jersey  
20 personal income tax to a resident or nonresident individual shall  
21 deduct and withhold from such wages for each payroll period a tax  
22 computed in such manner as to result, so far as practicable, in  
23 withholding from the employee's wages during each calendar year  
24 an amount substantially equivalent to the tax reasonably estimated  
25 to be due resulting from the inclusion in the employee's New Jersey  
26 income of his wages received during such calendar year. The  
27 method of determining the amount to be withheld shall be  
28 prescribed by regulations of the director, with due regard to the  
29 withholding exemptions of the employee.

30 (b) Withholding exemptions.--For purposes of this section:

31 An employee shall be entitled to the equivalent of the same  
32 number of New Jersey withholding exemptions as the number of  
33 withholding exemptions to which he is entitled for Federal income  
34 tax withholding purposes. An employer may rely upon the number  
35 of Federal withholding exemptions claimed by the employee.

36 (c) The payor of New Jersey gambling winnings shall withhold  
37 New Jersey gross income tax on those winnings at a rate of 3% in  
38 all instances where the payor is required to withhold for federal  
39 income tax purposes under subsection (q) of section 3402 of the  
40 federal Internal Revenue Code of 1986 (26 U.S.C. s. 3402), as  
41 amended, except that this subsection shall not apply to the New  
42 Jersey State Lottery.

43 (cf: P.L.1987, c.76, s.57)

44

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

- 1       2. (New section) a. A person, other than a governmental entity,  
2 maintaining an office or transacting business in this State and  
3 making a payment of compensation or remuneration for services  
4 rendered in this State to a resident unincorporated contractor or  
5 nonresident unincorporated contractor shall deduct and withhold  
6 from the payment a tax equal to 7 percent of the amount paid,  
7 except as otherwise provided by this section.
- 8       b. A person that obtains from its unincorporated contractor proof  
9 of the contractor's registration with the Division of Revenue in the  
10 Department of the Treasury shall not be required to withhold  
11 pursuant to subsection a. of this section. The types of proof  
12 required and the length of the retention period of the proofs shall be  
13 as prescribed by the Director of the Division of Taxation.
- 14       c. Withholding pursuant to subsection a. of this section shall not  
15 be required for payments for which withholding is required  
16 pursuant to N.J.S.54A:7-1 or such other payments as the director  
17 may prescribe by regulation.
- 18       d. A person required to deduct and withhold tax from a payment  
19 under subsection a. of this section shall furnish to each  
20 unincorporated contractor an annual written statement reflecting the  
21 total of all payments made and tax withheld in a calendar year on or  
22 before February 15 following the close of that calendar year in the  
23 form prescribed by the director.
- 24       e. Payments to an unincorporated contractor for which  
25 withholding is required by subsection a. of this section shall be  
26 taxable or subject to employer withholding under the "New Jersey  
27 Gross Income Tax Act," N.J.S.54A:1-1 et seq., as if no withholding  
28 were required by this section, but any amount actually deducted and  
29 withheld under this section in any calendar year shall be deemed to  
30 have been paid to the director on behalf of the unincorporated  
31 contractor from whom withheld, and the contractor shall be  
32 credited with having paid that amount for the taxable year  
33 beginning in such calendar year.
- 34       A person required to deduct and withhold tax under subsection a.  
35 of this section shall, for each calendar month, on or before the 15th  
36 day of the month following the close of the calendar month, file a  
37 return as prescribed by the director and pay over to the director or  
38 to a depository designated by the director the amounts required to  
39 be deducted and withheld. The director may, if the director  
40 believes such action necessary for the protection of the revenues,  
41 require a person to make a return and pay to the director the  
42 amounts deducted and withheld at any time, or from time to time.  
43 The director may, by regulation, require the filing of withholding  
44 returns and the payment of withheld amounts on a semimonthly or  
45 more frequent basis or require the filing of returns on a quarterly  
46 basis, with payments of the amounts withheld on a monthly or more  
47 frequent basis, if the director deems such action in the best interest  
48 of the State.

1 Any reconciliation of withholding shall be filed on or before  
2 February 15 following the close of the calendar year in accordance  
3 with rules and regulations prescribed by the director.

4 f. If a person required to deduct and withhold tax under  
5 subsection a. of this section fails to collect, truthfully account for,  
6 pay over the withholding, or make returns of the withholding as  
7 required in this section, the director may serve a notice requiring  
8 such person to withhold the amounts that become withholdable after  
9 service of such notice, to deposit such withholdings in a bank  
10 approved by the director in a separate account, in trust for and  
11 payable to the State of New Jersey and keep the amount of such  
12 withholdings in such account until payment over to the director.  
13 Such notice shall remain in effect until a notice of cancellation is  
14 served by the director.

15 g. (1) A person required to deduct and withhold tax under  
16 subsection a. of this section is hereby made liable for such  
17 withholding, except as that person may be excused from that  
18 withholding pursuant to subsection b. of this section.

19 (2) The owner or lessor of the real property to which  
20 construction, improvement, alteration, or repair of a building,  
21 structure, or improvement shall be made, required to deduct and  
22 withhold tax under subsection a. of this section for a contractor with  
23 whom the owner or lessor is in direct privity of contract and who is  
24 liable pursuant to paragraph 1) of this subsection for such  
25 withholding, is hereby also made liable for that contractor's  
26 withholding from a subcontractor, or the subcontractor's  
27 withholding from a lower tier subcontractor on that contract, except  
28 as the contractor, subcontractor or lower tier subcontractor may be  
29 excused from that withholding pursuant to subsection b. of this  
30 section.

31 (3) For purposes of assessment and collection, any tax required  
32 to be withheld and paid over to the director and any additions to tax,  
33 penalties and interest with respect to that tax shall be considered the  
34 tax of that person required to deduct and withhold. Any amount  
35 actually withheld under this section shall be held to be a special  
36 fund in trust for the director. No unincorporated contractor shall  
37 have any right of action against a person required to deduct and  
38 withhold an amount of a payment in respect to any moneys  
39 deducted and withheld and paid over to the director in compliance  
40 or in intended compliance with this section.

41 h. If a person required to withhold under subsection a. of this  
42 section fails to deduct and withhold tax as required, and thereafter  
43 the tax against which the tax may be credited is paid, the tax  
44 required to be deducted and withheld shall not be collected from the  
45 person required to withhold under subsection a. of this section,  
46 provided however that the person required to withhold under  
47 subsection a. of this section shall not be relieved from liability for  
48 any additions to tax, penalties and interest with respect to that tax

1 otherwise applicable in respect of that failure to deduct and  
2 withhold.

3 i. For the purposes of this section:

4 "Contractor" means a person entering into a contract for services  
5 to construct, improve, alter, or repair a building, structure, or  
6 improvement to real property and includes a subcontractor, but shall  
7 not include professional services as defined in section 1 of  
8 P.L.1960, c.40 (C.17:16C-1 et seq.);

9 "Governmental entity" means: the State of New Jersey, or any of  
10 its agencies, instrumentalities, public authorities, political  
11 subdivisions or public corporations, including a public corporation  
12 created pursuant to agreement or compact with another state; the  
13 United States of America and any of its agencies and  
14 instrumentalities; and the United Nations or any international  
15 organization of which the United States of America is a member.

16 "Subcontractor" means a person entering into a contract with a  
17 contractor for services to construct, improve, alter, or repair a  
18 building, structure, or improvement to real property, but shall not  
19 include professional services as defined in section 1 of P.L.1960,  
20 c.40 (C.17:16C-1 et seq.); and

21 "Unincorporated contractor" means an individual contractor or a  
22 contractor organized as a sole proprietorship, a partnership, or any  
23 other business form not taxable as a corporation for federal tax  
24 purposes.

25

26 3. This act shall take effect immediately and apply to payments  
27 made on or after the January 1 next following enactment.

28

29

30

#### STATEMENT

31

32 This bill requires non-governmental persons transacting business  
33 in this State and making payments to maintaining an office or  
34 unregistered unincorporated construction contractors for services  
35 rendered in New Jersey to withhold tax from those payments, to  
36 assure that the wage taxes of the employees of the unregistered  
37 businesses are properly withheld and paid.

38 The bill requires persons making business payments to resident  
39 unincorporated contractors or nonresident unincorporated  
40 contractors to deduct and withhold 7 percent of each payment made.  
41 The bill defines a contractor as any person that enters into a  
42 contract for services to construct, improve, alter, or repair a  
43 building, structure or improvement to real property and includes a  
44 subcontractor or lower tier subcontractor. An unincorporated  
45 contractor is an individual or sole proprietor, a partnership, or any  
46 other business form not taxable as a corporation for federal tax  
47 purposes, such as a limited liability company.

48 The bill excludes "professional services" from the definitions of

1 "contractor" and "subcontractor." "Professional services" are  
2 defined as services rendered or performed by a person authorized by  
3 law to practice a recognized profession whose practice is regulated  
4 by law and the performance of which services requires knowledge  
5 of an advanced type in a field of learning acquired by a prolonged  
6 formal course of specialized instruction and study as distinguished  
7 from general academic instruction or apprenticeship and training.

8 The withholding is not required if the person making the  
9 payment has obtained from the person receiving the payment proof  
10 of the recipient's registration with the Division of Revenue in the  
11 Department of the Treasury. The withholding is therefore only  
12 required from payments to persons who are not properly registered  
13 for tax purposes. No withholding under this bill is required for  
14 payments made to employees of the paying party (although  
15 payments to those parties generally must be withheld upon pursuant  
16 to N.J.S.A.54A:7-1).

17 Failure to withhold and pay the withheld tax over to the Director  
18 of the Division of Taxation will result in the imposition of penalties  
19 currently provided for other failures to pay taxes, generally 5% of  
20 the tax due per month up to 25% of the total liability and interest at  
21 3% above the prime rate every month or fraction of a month a tax is  
22 unpaid, the interest compounded annually, on unpaid tax, interest  
23 and penalty. Under the bill, each contractor is responsible for the  
24 payments made to lower tier contractors, while the property owner  
25 or lessor who directly enters the contract with a contractor is liable  
26 for the withholding of the owner or lessor's payments and all of the  
27 contractor's and subcontractors' withholding.

28 This bill also expands the definition of wages generally subject  
29 to withholding to include wages that are subject to withholding  
30 under the New Jersey unemployment compensation law.

# ASSEMBLY LABOR COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 1910

# STATE OF NEW JERSEY

DATED: FEBRUARY 27, 2006

The Assembly Labor Committee reports favorably Assembly Bill No. 1910.

This bill requires non-governmental persons maintaining an office or transacting business in this State and making payments to unregistered, unincorporated construction contractors for services rendered in New Jersey to withhold tax from those payments, to assure that the wage taxes of the employees of the unregistered businesses are properly withheld and paid.

The bill requires persons making business payments to resident or nonresident unincorporated construction contractors to deduct and withhold 7 percent of each payment made. The bill defines a contractor as any person that enters into a contract for services to construct, improve, alter, or repair a building, structure or improvement to real property and includes a subcontractor or lower tier subcontractor. An unincorporated contractor is an individual or sole proprietor, a partnership, or any other business form not taxable as a corporation for federal tax purposes, such as a limited liability company.

The bill excludes "professional services" from the definitions of "contractor" and "subcontractor." "Professional services" are defined as services rendered or performed by a person authorized by law to practice a recognized profession whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.

The withholding is not required if the person making the payment has obtained from the person receiving the payment proof of the recipient's registration with the Division of Revenue in the Department of the Treasury. The withholding is therefore only required from payments to persons who are not properly registered for tax purposes. No withholding under this bill is required for payments made to employees of the paying party (although payments to those parties generally must be withheld pursuant to N.J.S.54A:7-1).

Failure to withhold and pay the withheld tax over to the Director of the Division of Taxation will result in the imposition of penalties currently provided for other failures to pay taxes, generally 5% of

the tax due per month up to 25% of the total liability and interest at 3% above the prime rate every month or fraction of a month a tax is unpaid, the interest compounded annually, on unpaid tax, interest and penalty. Under the bill, each contractor is responsible for the payments made to lower tier contractors, while the property owner or lessor who directly enters the contract with a contractor is liable for the withholding of the owner or lessor's payments and all of the contractor's and subcontractors' withholding.

This bill also expands the definition of wages generally subject to withholding to include wages that are subject to withholding under the New Jersey "unemployment compensation law."

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.