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## Notice Gross Income Tax

### New Withholding Requirement for Construction Contractor Services Effective January 1, 2007

Under Chapter 85, P.L. 2006, all persons and businesses, other than governmental entities, homeowners, or tenants, maintaining an office or transacting business in New Jersey and making a payment for services rendered to resident unregistered, unincorporated contractors or nonresident unregistered, unincorporated contractors must deduct and withhold from the payment a tax equal to 7 % of the amount paid.

The purpose of Chapter 85, P.L. 2006 is to ensure that the income taxes of resident and nonresident persons engaged in businesses are properly withheld and paid over to the State of New Jersey pending the filing of a New Jersey Gross Income Tax or Partnership Return. The Act takes effect immediately, but applies to payments made on or after January 1, 2007.

All persons and businesses include those that own real estate and contract with unregistered, unincorporated contractors for repair and construction services to buildings (rental properties, investment properties, etc.) not deemed as their principal residences.

For purposes of the new law:

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

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

Withholding on the remuneration is not required if the person making the payment has obtained from the person receiving the payment proof of the construction contractor's registration with the Division of Revenue, Department of Treasury. A **Business Registration Certificate** serves as proof of a valid business registration with the Division of Revenue. Unincorporated Construction Contractors with no business tax or employer obligations may register with the Division of Revenue using **Form REG-A** instead of **Form NJ-REG** in order to obtain the **Business Registration Certificate**. For registered vendors, the New Jersey Division of Revenue's website will generate an online, printable Business Registration Certificate that contractors should provide to their employers.

The online, printable Business Registration Certificate from the New Jersey Division of Revenue's website serves as proof of the construction contractor's registration with the Division of Revenue and should be retained by the person making the payment.

The person making the payment should also provide the unregistered, unincorporated contractor with Federal Form 1099-MISC. If the payor is already an employer, they can utilize their regular Form 927/927-W to report and remit New Jersey income tax withheld from

unregistered, unincorporated contractors. If the payor is not an existent employer, they will file the new **NJ-550** Form. The year end requirement for both types of payors will be the new Schedule **NJ-W-3-UNC**; a reconciliation of income tax withheld. The reconciliation is due in February, 2008 and will be available later this year.

The owner or lessor of real property to which construction or repair is being made who is required to deduct and withhold tax under the new law is also made liable for that contractor's withholding from a subcontractor, or the subcontractor's withholding from a lower tier subcontractor on that contract. Failure to withhold and make payment to the Division of Taxation will result in the imposition of penalties currently provided for other failures to withhold income tax from employee pay. See N.J.S.A. 54A:7-6.

The contractor, subcontractor or lower tier subcontractor may be excused from withholding if they have proof of registration with the Division of Revenue. Property owners also are excused from liability with respect to subcontractors if the primary contractor, with whom the owner has a contract, has provided proof of the primary contractor's registration with the Division of Revenue to the owner. With regard to liability, if the primary contractor has not provided proof of registration with the Division of Revenue, the property owner will avoid liability with respect to the primary contractor and subcontractors by withholding the 7% income tax on the contract price for the entire job, unless provided with proof that the subcontractors are registered with the Division of Revenue.

For more information regarding income tax withholding, please contact the Customer Service Center in the Division of Taxation at (609) 292-6400. If you have questions regarding services subject to the New Jersey Unemployment Compensation Law, N.J.S.A 43:21-1 et seq., you may contact the Division of Employer Accounts in the New Jersey Department of Labor and Workforce Development at (609) 777-4315.

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