

## **House Bill 932**

### **House Bill 932 Clarifies Statutory Withholding Requirement on Payments to Nonresident Subcontractors**

The statutes and regulations addressing construction contractors can be confusing. In particular, a prime contractor must understand intricate details about a state's sales tax laws. Georgia, like most states, has safety measures in place to ensure that nonresident subcontractors performing work in Georgia comply with the state's sales and use tax laws. In that regard, general or prime contractors must withhold a portion of all payments to nonresident subcontractors where the total amount of the subcontracts on a job is greater than or equal to \$250,000.00. The prime contractor is relieved of the withholding obligation only if the nonresident subcontractor posts a surety bond. This article addresses House Bill 932, a bill that clarifies the amount to be withheld from payments to nonresident subcontractors.

**Nonresident Subcontractor** – A nonresident subcontractor is a person (which includes corporations) that:

- (1) does not have a bona fide place of business in Georgia through maintaining a permanent domicile or business facility in Georgia AND
- (2) is engaged in contracting real property work AND
- (3) who contracts with a prime or general contractor or who contracts with another subcontractor who has contracted to perform any part of the contract entered into by the prime or general contractor.

In past years, prime contractors struggled with whether to withhold 2% or 4%. The statute, O.C.G.A. § 48-8-63(e), imposed withholding of “up to 4%.” The Department of Revenue's regulation, GA. COMP. R. & REGS. r. 560-

12-2-.26(6)(a) , required the prime contractor to withholding 2%. Was it 2% or 4%?

Knowing how much to withhold (2% or 4%) is important. If the general or prime contractor fails to withhold, then the general or prime contractor is, itself, liable for the taxes owed by the nonresident subcontractor. House Bill 932 brings clarity to the issue of “how much to withhold.” Beginning July 1, 2012, the statute requires withholding of 2%.

Right to Release of Retainage – The prime or general contractor can release the 2% after the nonresident subcontractor gets a release of retainage authorization from the Department of Revenue. The nonresident subcontractor must file a Request for Retainage with the Department. Typically, in 5-7 days, the Department sends general contractor Certificate Authorizing Cease of Withholding Payments. With this document, the prime or general contractor can release the withheld funds without fear that the Department of Revenue will turn to the prime or general contractor for payment of the taxes owed by the nonresident subcontractor.

Fact scenarios can vary depending on the particular case. For any questions about the withholding requirement or Georgia’s tax laws on construction contractors, call Richard Litwin at (678) 990-0600.