

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 382
PROPOSED COMMITTEE SUBSTITUTE S382-PCS85204-RB-39

Short Title: Required Withholding for Nonresidents.

(Public)

Sponsors:

Referred to:

March 22, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE WITHHOLDING OF INCOME TAXES FROM SALES OF REAL
3 PROPERTY AND ASSOCIATED TANGIBLE PERSONAL PROPERTY BY
4 NONRESIDENTS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 105-163.1 reads as rewritten:

7 "§ 105-163.1. Definitions.

8 The following definitions apply in this Article:

9 (1) Buyer. – A person who pays compensation to a nonresident individual or
10 nonresident entity for the purchase of real property and associated personal
11 property in this State.

12 (1a) Compensation. – Consideration a payer or buyer pays to any of the
13 following:

- 14 a. A nonresident individual or nonresident entity for personal services
15 performed in this State.
16 b. An ITIN holder who is a contractor and not an employee for services
17 performed in this State.
18 c. A nonresident individual or nonresident entity for the purchase of
19 real property and associated tangible personal property located in this
20 State.

21 ...

22 (14) Withholding agent. – An employer, a pension payer, a buyer, or a payer."

23 SECTION 2. Article 4A of Chapter 105 of the General Statutes is amended by
24 adding a new section to read:

25 "§ 105-163.3A. Buyers must withhold taxes from certain nonresident sellers of real
26 property.

27 (a) Requirement. – Every buyer who purchases real estate and associated tangible
28 personal property from either a nonresident individual or nonresident entity must deduct and
29 withhold from compensation paid to the nonresident seller the State income taxes payable by
30 the nonresident seller due to the sale as provided in this section. The taxes a buyer withholds
31 are held in trust for the Secretary. The amount of taxes to be withheld is the least of the
32 following:

- 33 (1) Four percent (4%) of the amount realized on the sale as determined under
34 section 1001 of the Code.



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1 (2) The applicable percentage of the gain required to be recognized on the sale
2 under the Code, if the nonresident seller provides the buyer with an affidavit
3 signed under penalty of perjury swearing or affirming to the amount of gain
4 required to be recognized under the Code from the sale. The applicable
5 percentage is the highest marginal tax rate that could be applied to the
6 nonresident seller based on whether the nonresident seller is taxed as a
7 corporation or an individual.

8 (3) The entire net proceeds payable to the nonresident seller.

9 (b) Installment Sales. – In the case of any sale otherwise subject to this section that
10 qualifies as an installment sale within the meaning of section 453(b) of the Code, the provisions
11 of subsection (a) of this section shall be separately applied to each principal payment to be
12 made under the terms of the installment sale agreement between the parties. In determining the
13 amounts to be withheld under this subsection, the amount realized on the sale shall be
14 considered to be the principal payment, and the gain required to be recognized under the Code
15 shall be considered to be the same proportion of each principal payment as the gain required to
16 be recognized under the Code bears to the amount realized on the sale overall.

17 (c) Exemptions. – The withholding requirement does not apply to the purchase of the
18 following:

19 (1) Real property and any associated tangible personal property sold by one of
20 the following types of entities that is not subject to tax under Article 4 of this
21 Chapter:

22 a. A unit of federal, State, or local government.

23 b. A nonprofit.

24 c. An insurance company.

25 (2) Real property that is a principal residence of the nonresident seller within the
26 meaning of section 121 of the Code and any associated tangible personal
27 property.

28 (3) Real property transferred pursuant to a foreclosure of a mortgage deed of
29 trust or other lien instrument or pursuant to a deed in lieu of foreclosure.

30 (d) Return and Statement. – A buyer must file a return with the Secretary on a form
31 prescribed by the Secretary and in the manner prescribed by the Secretary. The buyer must pay
32 the withheld taxes to the Secretary on or before the 15th day of the month following the month
33 in which the sale takes place. A buyer required to deduct and withhold from a nonresident
34 seller's compensation under this section must provide the seller a written statement of the
35 information contained in the return by the due date of the return. The following information is
36 required on the return:

37 (1) The buyer's name and address.

38 (2) The seller's name, address, and taxpayer identification number.

39 (3) The total amount realized on the sale.

40 (4) The total amount of gain recognized if the seller provides an affidavit under
41 subdivision (a)(2) of this section.

42 (5) The entire net proceeds paid to the nonresident seller.

43 (6) The total amount deducted and withheld under this section.

44 (e) Buyer May Repay Amounts Withheld Improperly. – A buyer may refund to a
45 person any amount the buyer withheld improperly from the person under this section if the
46 refund is made before the end of the calendar year, before the buyer furnishes the person the
47 statement required by subsection (d) of this section, and before the buyer submits the payment
48 and return to the Secretary. An amount is withheld improperly if it is withheld from a payment
49 to a person who is not a nonresident individual or nonresident entity, if it is withheld from a
50 payment that is not compensation, or if it is in excess of the amount required to be withheld
51 under this section.

1 (f) Records. – A buyer may rely on an affidavit provided by the seller that states that
2 withholding is not required under this section because the seller is not a nonresident individual
3 or nonresident entity. The affidavit must be made under penalty of perjury."

4 **SECTION 3.** This act becomes effective January 1, 2012, and applies to sales
5 made on or after that date.