

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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SENATE BILL DRS35238-MCx-144 (03/21)

Short Title: Withholdings for Property Sales: Nonresidents. (Public)

Sponsors: Senators McInnis and Tucker (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE WITHHOLDINGS BY A BUYER OF PROPERTY FROM A  
3 NONRESIDENT SELLER.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 4A of Subchapter I of Chapter 105 of the General Statutes is  
6 amended by adding a new section to read:

7 "**§ 105-163.3A. Nonresident property sales withholdings.**

8 (a) Withholding. – A person who purchases residential real property, or residential real  
9 property and associated tangible personal property, from a nonresident seller shall withhold the  
10 lesser of the net proceeds payable to the nonresident seller or an amount equal to the product of  
11 the percentage provided in G.S. 105-153.7 multiplied by the gain recognized on the sale. If a  
12 seller finances all or part of the transaction, in lieu of remitting the tax due on each installment  
13 payment, the seller may give the buyer an affidavit stating that, for State income tax purposes,  
14 the seller will elect out of installment sales treatment, as defined by Section 453 of the Code,  
15 and remit the entire amount of tax to be due over the period of the installment agreement. The  
16 provisions of this section do not apply to a nonresident seller who (i) has filed at least one State  
17 income tax return and is not delinquent with respect to filing State income tax returns, (ii) has  
18 been in business in this State during the last two taxable years, including the year of sale, and  
19 shall continue in substantially the same business in the State after the sale, and (iii) is registered  
20 to do business in this State.

21 (b) Definitions. – The following definitions apply in this section:

22 (1) Nonresident seller. – Any of the following:

- 23 a. An individual whose permanent home is outside of this State on the  
24 date of the sale.  
25 b. A partnership whose principal place of business is located outside of  
26 this State.  
27 c. A trust administered outside of this State.  
28 d. An estate of a decedent whose permanent home was outside of this  
29 State at the time of death.

30 (2) Sale. – A transfer where gain or loss is computed in accordance with Section  
31 1001 of the Code together with any modifications provided in Part 2 of  
32 Article 4 of this Subchapter. A sale does not include (i) tax exempt or tax  
33 deferred transactions, other than installment sales, (ii) transactions to the  
34 extent the gain on the sale of a principal residence is excluded in accordance  
35 with Section 121 of the Code, or (iii) other transactions excluded by the



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1                    Department on the grounds that the benefits to the State are insufficient to  
2                    justify the burdens imposed by this section.

3            (c)    Remittance. – A person who withholds an amount pursuant to this section (i) is  
4            liable for the collection and payment of the amount and (ii) shall remit the amount withheld to  
5            the Department on or before the fifteenth day of the month following the month in which the  
6            sale takes place, unless the time for remittance is extended by the Department for a  
7            seller-financed sale. Nothing in this section shall be construed as making a lending institution,  
8            real estate agent, or closing attorney liable for collection and payment of amounts withheld  
9            pursuant to this section; however, a lending institution, real estate agent, or closing attorney  
10           that has withheld taxes is required to remit the amount withheld within the time frame provided  
11           in this subsection. In every sale for which withholding is required by subsection (a) of this  
12           section, the closing attorney shall report to the Department, within the time frame provided in  
13           this subsection, (i) the nonresident seller's name, address, and Social Security number or federal  
14           employer identification number, (ii) the location of the property, (iii) the date of the closing,  
15           and (iv) the gross sales price of the real property and any associated tangible personal property.  
16           If a withholding payment either contains a computational error or results in excess withholding  
17           based on the amount of gain required to be recognized from the sale, the nonresident seller may  
18           submit additional documentation of the error with the Department and request a refund for any  
19           amount over withheld or pay any amount due."

20            **SECTION 2.** This act becomes effective July 1, 2017, and applies to sales of  
21            residential real property, or residential real property and associated tangible personal property,  
22            occurring on or after that date.