

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 382

Short Title: Required Withholding for Nonresidents. (Public)

Sponsors: Senators Apodaca; and Hise.

Referred to: Finance.

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.

35 (2) The applicable percentage of the gain required to be recognized on the sale  
36 under the Code, if the nonresident seller provides the buyer with an affidavit



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

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

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

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

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

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

21 b. A nonprofit.

22 c. An insurance company.

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

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

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

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

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

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

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

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

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

42 (e) Buyer May Repay Amounts Withheld Improperly. – A buyer may refund to a  
43 person any amount the buyer withheld improperly from the person under this section if the  
44 refund is made before the end of the calendar year, before the buyer furnishes the person the  
45 statement required by subsection (d) of this section, and before the buyer submits the payment  
46 and return to the Secretary. An amount is withheld improperly if it is withheld from a payment  
47 to a person who is not a nonresident individual or nonresident entity, if it is withheld from a  
48 payment that is not compensation, or if it is in excess of the amount required to be withheld  
49 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 is effective for taxable years beginning on or after January 1,  
5 2011.