

GENERAL ASSEMBLY OF NORTH CAROLINA
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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.