

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1990

H

1

HOUSE BILL 444

Short Title: Nonresident Sales Withholding.

(Public)

Sponsors: Representative Brawley.

Referred to: Finance.

April 1, 1991

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

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 105 of the General Statutes is amended by adding a new  
7 Article to read:

8 **"ARTICLE 4D.**  
9 **"WITHHOLDING OF INCOME TAXES FROM SALES OF REAL PROPERTY**  
10 **AND**  
11 **ASSOCIATED TANGIBLE PERSONAL PROPERTY BY NONRESIDENTS.**

12 **"§ 105-163.50. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Buyer. – A person making payment to a nonresident seller of the  
15 proceeds of the sale of real property and its associated tangible  
16 personal property located within this State.  
17 (2) Code. – Defined in G.S. 105-134.1.  
18 (3) Fiduciary. – A guardian, a trustee, an executor, an administrator, a  
19 receiver, a conservator, or another person acting in a fiduciary capacity  
20 for another.  
21 (4) Gain. – The excess of the amount realized from the sale of real  
22 property and its associated tangible personal property located in this  
23 State over the adjusted basis of the property, to the extent included in  
24 gross income under the Code.

- 1           (5) Individual. – A human being.
- 2           (6) Nonresident. – Not a resident of this State.
- 3           (7) Person. – An individual, a fiduciary, a partnership, a corporation, or a
- 4           unit of government. The term includes an officer or employee of a
- 5           corporation, a member or employee of a partnership, and an employee
- 6           of an individual proprietorship who, as officer, employee, or member,
- 7           is under a duty to perform an act in meeting the requirements of this
- 8           Article.
- 9           (8) Seller. – A nonresident individual or a nonresident partnership
- 10           receiving payment of the proceeds of the sale of real property and its
- 11           associated tangible personal property located in this State.
- 12           (9) This State. – The State of North Carolina.
- 13           (10) Taxable year. – Defined in section 441(b) of the Code.
- 14           (11) Secretary. – The Secretary of Revenue.

15 **§ 105-163.51. Withholding income taxes on sales of real property by a**

16 **nonresident seller.**

17       (a) Every buyer making payment to a nonresident seller of the proceeds from the

18 sale of real property and its associated tangible personal property shall deduct and

19 withhold income tax from the payment equal to six percent (6%) of the gain up to

20 twelve thousand seven hundred fifty dollars (\$12,750) and seven percent (7%) of the

21 gain in excess of twelve thousand seven hundred fifty dollars (\$12,750) that the seller is

22 required to report in federal gross income under the Code in the taxable year of the

23 payment.

24       (b) The seller at the time of the sale shall provide the buyer an affidavit signed

25 under penalties of perjury stating the amount of gain required to be recognized from

26 which the buyer shall deduct and withhold the tax prescribed in this section. The

27 affidavit shall contain information showing the seller's basis in the property and the

28 calculation of the gain. If the seller fails to provide the affidavit required by this

29 subsection to the buyer, then the buyer shall deduct and withhold the tax based on the

30 amount realized by the seller on the sale. The affidavit required by this subsection shall

31 be filed with the Secretary at the time of the payment of the amount withheld required

32 under G.S. 105-163.51.

33 **§ 105-163.52. Payment of amounts withheld; personal liability for failure to**

34 **withhold.**

35       (a) Every buyer required to withhold tax under this Article shall make return and

36 pay over to the Secretary the amounts required to be withheld within 15 days after the

37 date the sale was completed.

38       (b) On seller-financed sales where the seller reports the gain from the sale by the

39 installment method as provided under section 453 of the Code, the buyer shall deduct

40 and withhold from each installment payment to the seller the tax based on the amount of

41 income recognized under section 453(c) of the Code. The buyer shall pay over to the

42 Secretary the amounts required to be withheld under this section within 15 days after the

43 date the installment payment is made.

1 (c) A buyer who withholds the proper amount of income taxes under this Article  
2 and pays the withheld amount to the Secretary is not liable to any person for the amount  
3 paid. A buyer who fails to withhold the amount of income taxes required by this Article  
4 or who fails to pay withheld taxes by the due date for paying the taxes becomes liable  
5 for the tax and, in addition, is subject to a penalty equal to twenty-five percent (25%) of  
6 the amount of taxes not withheld or of timely paid to the Secretary.

7 **"§ 105-163.53. Statement to sellers; information to Secretary.**

8 (a) Every buyer required to deduct and withhold from payments to a seller under  
9 G.S. 105-163.51 shall furnish to each seller with respect to the payments paid to the  
10 seller during the calendar year on or before January 31 of the succeeding year or within  
11 30 days after the date of final payment a written statement showing the following:

12 (1) The name, address, and social security number of the buyer.

13 (2) The name, address, and social security or taxpayer identification  
14 number of the seller.

15 (3) The total payments during the year.

16 (4) The total amount deducted and withheld under G.S. 105-163.51.

17 (5) Any other information required by the Secretary.

18 (b) The buyer shall furnish a copy of the statement required by subsection (a) to  
19 the Secretary at the time prescribed in subsection (a) in lieu of any returns required  
20 under G.S. 105-154 that would furnish identical information.

21 **"§ 105-163.54. Withheld amounts credited to nonresident sellers for calendar year.**

22 Amounts paid to the Secretary under G.S. 105-163.51 and G.S. 105-163.52 shall  
23 constitute payments on behalf of the seller of the income taxes imposed on them under  
24 Divisions I and II of Article 4 of this Chapter.

25 **"§ 105-163.55. Administration.**

26 The provisions of Article 9 of this Chapter apply to the amount of income taxes this  
27 Article requires a buyer to withhold and pay to the Secretary of Revenue."

28 Sec. 2. This act becomes effective January 1, 1992, and applies to sales made  
29 on or after that date.