



SC REVENUE RULING #89-15

- SUBJECT:** Withholding on Sales of Real and Tangible Personal Property to Nonresident
- EFFECTIVE DATE:** July 1, 1989 until 30 days after a permanent ruling or regulation is issued.
- REFERENCE:** S.C. Code Section 12-9-310 (As Amended 1989)
- AUTHORITY:** S.C. Code Ann. Section 12-3-170 (1976)
S.C. Revenue Procedure #87-3
- SCOPE:** A Revenue Ruling is the commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.
- PURPOSE:** This ruling is being issued in question and answer format on an emergency basis to provide guidance on the application of 12-9-310 as amended in the 1989 Appropriations Bill.

Section 12-9-310 has been amended, effective July 1, 1989, to require withholding on the proceeds of sales of real and tangible personal property paid to nonresidents. It requires anyone making payment (the "payor") to a nonresident of the proceeds of the sale of real property and tangible personal property to deduct and withhold on the payments an amount equal to seven percent of the total payment to individuals and five percent of the total payment to corporations.

The following questions and answers are provided to give guidance in complying with this statute.

1. Who is a Nonresident?
 - a) Individual - Any individual having his or her fixed or permanent home outside of South Carolina at the time of the closing.
 - b) Corporation - Any corporation which is not incorporated in S.C., unless 1) it does no business in its state of incorporation and 2) its principal place of business is South Carolina.

- c) Partnership - Any partnership whose principal place of business is located outside of South Carolina.
- d) Trust - Any trust that is being administered outside of South Carolina.
- e) Estate - Any estate of a decedent who at death had his or her fixed or permanent home outside of South Carolina.
- f) Co-ownership - If two or more persons sell property which they own as joint tenants with right of survivorship or as tenants in common, their respective residencies will be determined separately. Withholding is only required on the payments made to the nonresident co-owner or co-owners.

2. Can the buyer rely on the seller's determination of residency?

If the seller furnishes the buyer an affidavit stating, under penalty of perjury, the seller's social security or taxpayer identification number and that the seller is a resident of South Carolina, the buyer will not be liable for withholding.

3. What is a sale?

- a) A sale is any transfer where gain or loss for South Carolina income tax purposes would be computed in accordance with Section 1001 of the Internal Revenue Code; i.e. any taxable sale or exchange.
- b) It does not include tax exempt or tax deferred transactions. Examples of transactions which are not "Sales" include, but are not limited to:
 - 1. Gifts and inheritances which are tax free under Section 102 of the Internal Revenue Code.
 - 2. Those like - kind exchanges which are tax deferred under Section 1031 of the Internal Revenue Code provided the property received in the exchange is located in South Carolina.
 - 3. Tax free exchanges of property for stock in a corporation which qualifies under Section 351 of the Internal Revenue Code.
 - 4. Tax free exchanges of property for a partnership interest under Section 721 of the Internal Revenue Code.
 - 5. Transfers of property as part of a tax free corporate reorganization.
 - 6. Transfers of property from the U.S. Government, agencies of the U.S. Government, South Carolina and its agencies and political subdivisions, and other organizations not subject to tax on their income.

4. What about the sale of a principal residence where the seller intends to defer his or her taxes by rolling over the proceeds into a new principal residence pursuant to Section 1034 of the Internal Revenue Code or intends to use his one-time exclusion of up to \$125,000 of Section 121 of the Internal Revenue Code.

1. If the buyer obtains an affidavit under penalty of perjury from the seller stating that:

a) The sale will not be subject to taxes because of Section 1034 or 121 of the Internal Revenue Code; and

b) The seller acknowledges his obligation to file a South Carolina income tax for the year of the sale and if the seller fails to comply with Section 1034 an amended return, the buyer will not be liable for withholding.

5. The sale of what type of property will require withholding?

a) The sale of any interest in real estate.

b) The sale of tangible personal property will also require withholding, but only if it is sold as part of a transaction involving the sale of an interest in real estate.

6. What is the total payment subject to withholding?

The net proceeds of the sale actually paid to the nonresident seller including the fair market value of any property to be transferred to the seller. If a HUD-1 Settlement Statement is prepared and the seller does not receive any property in the transaction, the net proceeds will be equal to the cash to be paid to the seller as stated on line 603 of the HUD-1. This would be computed by reducing the sales price by:

a. Mortgages and liens

b. Selling expenses, such as:

- 1) real estate commission
- 2) attorney fees
- 3) deed stamps
- 4) pro rata share of real property taxes
- 5) termite, heating & air letters

If the seller finances all or part of the transaction, the buyer would be required to withhold on each payment he makes to the seller. Withholding only applies to principal, nothing should be withheld on interest paid to the seller. If the seller files a tax return reporting a loss on the sale or all of the gain on the sale, the seller may apply to the Commission for a letter exempting future principal payments from withholding. The Commission will forward a copy of the exemption to the seller and the buyer. Upon receipt of the exemption letter, the buyer is relieved from withholding on any future payments.

7. What is the withholding amount?

The withholding amount is 7% of the net proceeds computed in item 6, except when the nonresident seller is a corporation on the withholding amount is 5% of the net proceeds.

8. Who is liable for the withholding and payment?

The buyer has the ultimate liability for withholding and paying the tax to the Commission. In certain instances a payor other than the buyer may be held liable.

If an escrow agent holds money after the closing he is responsible and secondarily liable for withholding all payments made to the seller.

9. When is the payment due?

If the withholding amount is \$500 or more, the tax must be paid on or before the fifteenth day of the month following the month in which the sale took place.

If the withholding amount is less than \$500, the tax must be paid on or before the last day of the month following the calendar quarter in which the sale took place.

Although payment is not required before the time provided above, the buyer or escrow agent may pay the withholding amount to the Commission as soon after the closing as desired.

10. How is the payment to be made?

The Commission is designing a form to use when paying the withholding amount. In the interim, the amount withheld may be paid with a letter which includes all of the information in the attached interim form.

Send Information and Payments To:

PRO - Real Estate Withholding
P.O. Box 11189
Columbia, South Carolina 29211-1189

11. Does the failure to withhold create a lien which takes priority over mortgages on the property?

Any lien on the property will have priority over the obligation to withhold as long as it is filed before the Tax Commission files a lien on the property. The Tax Commission will not file a lien on the property until it establishes that the withholding tax was due, assesses the tax, and issues a warrant after the buyer fails to pay the assessed tax.

12. Can the withholding be used by the seller against estimated tax payments?

The seller may apply amounts withheld against any estimated payments.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina

July 7 1989

Interim Information Required for Nonresident Real Property Sales

Social Security or Federal

Name Address Identification #

1. Seller

2. Buyer

3. Payor

4. Date of Sale

5. Property information:
 - a. Street Address
 - b. County
 - c. Tax Map Number

6. Computation of amount subject to withholding:
 - a. Gross Sales Price
 - b. Less; Mortgages Paid or Assumed
 - c. Less; Selling Expenses
 - d. Net Proceeds to Seller

7. Amount withheld:
(7% or 5% multiplied by the Net Proceeds to Seller (item 6.d.))

8. Send Information and Payments To:
 PRO - Real Estate Withholding
 P.O. Box 11189
 Columbia, S.C. 29211-1189