



SC REVENUE RULING #90-3

- SUBJECT:** Withholding on Sales of Real and Associated Tangible Personal Property by Nonresidents
- CONTACT PERSON:** Jean P. Croft (803) 737-4440
- EFFECTIVE DATE:** June 1, 1990
- SUPERSEDES:** S.C. Revenue Ruling #89-19 and any oral directives in conflict herewith. SC Revenue Ruling #89-19 may be relied upon for any sale made before June 1, 1990.
- REFERENCE:** S.C. Code Ann. Section 12-9-310 (As Amended 1989) Article 6, Chapter 9, Title 12 (Added April 25, 1990)
- 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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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 to provide guidance on the application of Article 6, Chapter 9, Title 12 effective June 1, 1990.

Section 12-9-310 was amended, effective July 1, 1989, to require withholding on the proceeds of sales of real and tangible personal property paid to nonresidents. This section was repealed and replaced with Article 6, Chapter 9 of Title 12 which is similar in concept to the previous law but differs in several respects.

The new law states that, in a sale of real and associated personal property by a nonresident, the buyer is required to withhold seven percent (five percent if the seller is a corporation) of the gain recognized by the nonresident seller. If the seller fails to provide the buyer with the required affidavit stating the amount of gain, the buyer is required to withhold seven percent (five percent for corporations) of the amount realized. If the amount required to be withheld and sent to the Commission exceeds the net proceeds payable to the seller, the buyer will meet his obligation if he remits the entire net proceeds.

If a withholding payment made to the Commission is based on the amount realized, the seller may file for a refund of any over-withheld amount by filing Form I-290X with the Commission stating the amount of the gain required to be recognized.

When the nonresident seller files a South Carolina income tax return for the year of the sale and reports the gain or loss on the sale, the seller will apply the amount withheld against any income tax due and any excess will be refunded.

The following questions and answers (Q&As) are provided to give guidance in complying with this statute.

### Definitions

#### 1. Who is a Nonresident?

Subject to the exception in item g below, the following persons are nonresidents:

- 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 gain or amount realized of the nonresident co-owner or co-owners.
- g) Exception - Any seller who meets all of the following conditions will be considered a resident for purposes of this section:
  - 1) The seller (a) has filed at least one South Carolina income tax return, (b) is not delinquent with respect to filing any South Carolina income tax return, and (c) has been in business in the State during the seller's last two taxable years (including the year of sale); and
  - 2) The seller is in business in South Carolina and will continue substantially the same business in South Carolina after the sale; and

- 3) The seller will report the sale on a South Carolina income tax return for the current year and file it by its due date; and
- 4) If the seller is a corporation or limited partnership, it is registered to do business in South Carolina.

If the seller furnishes an affidavit to the buyer which meets the requirements contained in the answer to Q&A 23 and certifies that the above four requirements are met, the buyer will not be liable for withholding.

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

If the seller furnishes the buyer an affidavit which states that the seller is a resident of South Carolina and meets the requirements in the answer to Q&A 23, the buyer will not be liable for withholding.

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

- a) The sale of any interest in real estate. This includes the sale of time shares, leases, standing timber and minerals in place.

Withholding is not required when a loan which is secured by a mortgage on real estate is assigned. Therefore, where a deed is retained merely as a security interest by a seller who has sold property to a buyer under a "land contract", no withholding is required if the seller assigns his rights under the land contract (including possession of the deed).

- 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.

4. What is a sale?

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. A sale takes place when it takes place for South Carolina income tax purposes. If the seller retains the deed purely as a security device, the sale takes place when the benefits and burdens of ownership are transferred, not when the deed is finally delivered.

A sale does not include tax exempt or tax deferred transactions (other than installment sales). Examples of transactions which are not "sales" include, but are not limited to:

- a. Gifts and inheritances which are tax free under Section 102 of the Internal Revenue Code.
- b. 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.

- c. Tax free exchanges of property for stock in a corporation which qualify under Section 351 of the Internal Revenue Code.
  - d. Tax free exchanges of property for a partnership interest under Section 721 of the Internal Revenue Code.
  - e. Transfers of property as part of a tax free corporate reorganization.
  - f. Transfers of property from the U.S. Government, agencies of the U.S. Government, South Carolina and its agencies and political subdivisions. These transfers include sales by the Resolution Trust Corporation and any other transfer made by a deed signed by a federal or South Carolina judicial or other government official acting in his or her official capacity.
  - g. Transfers of property from organizations exempt from income taxes under Internal Revenue Code Section 501(a) and insurance companies exempt from South Carolina taxes on income.
5. What about the sale of a principal residence where the seller intends to defer his 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 pursuant to Section 121 of the Internal Revenue Code?

The buyer will not be liable for withholding if he obtains an affidavit from the seller which meets the requirements contained in the answer to Q&A 23 and states 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 return for the year of the sale; and
- c) The seller acknowledges his obligation to file an amended South Carolina income tax return for the year of the sale if the seller fails to comply with Section 1034.

Note that the special provisions of Section 1034(h) of the Internal Revenue Code granting an extended replacement period for members of the Armed Forces on extended duty are applicable for South Carolina income tax purposes.

6. What about a sale that qualifies as an involuntary conversion or condemnation and the seller elects nonrecognition of the gain under Internal Revenue Code Section 1033?

The buyer will not be liable for withholding if he obtains an affidavit from the seller which meets the requirements contained in the answer to Q&A 23 and states that:

- a) The sale will not be subject to tax because of Section 1033 of the Internal Revenue Code; and

- b) The seller acknowledges his obligation to file a South Carolina income tax return for the year of the sale; and
  - c) The seller acknowledges his obligation to file an amended South Carolina income tax return for the year of the sale if the seller fails to comply with Section 1033.
7. If the sales price is paid or advanced to an employee by an employer or a relocation service, will the payment to the employee and the ultimate sale of the property be treated as one sale or two separate sales for the purposes of withholding?

When the employee treats the ultimate sale as a sale on his income tax return and neither the employer nor the relocation service is required to treat it as a sale for income tax purposes, then the sale is from the employee to the ultimate purchaser and only it is subject to withholding.

When the employer or relocation service is required to treat the advance and the ultimate sale as a purchase and sale by it, then both transactions, (1) the sale from the employee to the employer or relocation service, and (2) the sale from the employer or relocation service to the ultimate purchaser, may be subject to withholding.

The identity of the seller should not be determined by looking at the deed.

If the buyer obtains an affidavit from the employer or relocation company stating that it is the seller, and stating that (1) the transaction is exempt from withholding or (2) the amount of gain, then the buyer may rely on such an affidavit and withhold based on it.

### Computing Withholding

8. How much should the buyer withhold and send to the Tax Commission?

If the buyer receives an affidavit from the seller which meets the requirements of Q&A 23 and states the amount of gain the seller is required to recognize, the amount which should be withheld is 7% (5% if the seller is a corporation) of the gain.

If the seller does not provide the buyer with the amount of gain, the buyer shall withhold 7% (5% if the seller is a corporation) of the amount realized by the seller on the sale.

The withholding amount for an association or trust that is taxed as a corporation is 5%.

See Q&A 10 for the definitions of gain and amount realized.

Note, however, the amount to be withheld and sent to the Commission will never exceed the net proceeds payable to the seller (as discussed in Q&A 9).

9. What if the amount to be withheld and sent to the Commission (determined in Q&A 8 above) is greater than the net proceeds payable to the seller?

If the amount to be withheld and sent to the Commission is greater than the net proceeds of the sale, the buyer is only responsible for withholding and sending the entire net proceeds to the Commission.

See Q&A 11 for the definition of net proceeds.

10. How are gain and amount realized defined for purposes of determining the amount to be withheld and sent to the Commission?

Gain is computed as provided in Section 1001(a) of the Internal Revenue Code as adopted for South Carolina income tax purposes. Gain recognized is the amount required to be included in the seller's South Carolina gross income.

The amount realized on the sale is defined in Internal Revenue Code Section 1001(b) as adopted for South Carolina income tax purposes. It is the amount used for computing gain before subtracting the basis of the property.

11. If, pursuant to Q&A 9, the amount to be withheld is the entire net proceeds payable to the seller, how are net proceeds payable to the seller defined?

The net proceeds payable to the seller are computed by reducing the total sales price by:

- a. Mortgages and liens

Only mortgages and liens on the property being sold may be deducted from the sales price. Liens, mortgages or advances on credit lines in contemplation of the sale cannot be deducted.

Unless the buyer knows otherwise, the buyer can presume that any liens, mortgages or advances on credit lines made more than one year before the closing are not in contemplation of the sale and may be deducted. If the lien, mortgage or credit line advance is made less than one year prior to the closing, the buyer cannot deduct the mortgage, lien or credit line advance unless the buyer obtains an affidavit from the seller, which states that the loan or advance was not made in contemplation of the sale and meets the requirements contained in the answer to Q&A 23.

A loan or advance made in contemplation of the sale is a loan or advance which has as one of its purposes reducing the amount withheld. It does not include loans or advances where the entire proceeds are used to purchase or improve the property being sold and it does not include loans made prior to July 1, 1989.

- b. Selling expenses, such as:

- 1) real estate commissions
- 2) attorney fees
- 3) deed stamps
- 4) termite, heating & air letter fees.

12. What if the seller wants the withholding computed on his recognized gain but he does not know the exact amount of the gain?

The seller may file an affidavit with the buyer stating the amount of gain required to be recognized on the sale and the buyer will compute the withholding based on this amount. However, in certain circumstances, the seller may not be able to accurately compute the gain at the time of the closing. In these cases, the seller may file an affidavit with the buyer meeting the requirements of Q&A 23 and stating that the gain required to be reported on the seller's income tax return will not exceed a stated amount.

For example, the seller may have bought a building for \$150,000, spent \$10,000 to fix-up the building, and then sold it for \$200,000. The seller may not be sure if the fix-up expenses qualify as additions to basis. Therefore, he may file an affidavit with the buyer stating that the gain on the sale will not exceed \$50,000. If, after consultation with his tax advisor, the seller determines that the expenses do qualify as additions to basis, he may file Form I-290X and receive a refund of the over-withheld amount. (See Q&A 20.)

### Liability

13. Who is liable for the withholding and payment?

The buyer is liable for withholding and paying the money to the Commission.

### Payments

14. When is the payment due?

The tax must be paid on or before the fifteenth day of the month following the month in which the sale took place, except as provided in Q&A 18 for installment sales.

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

15. How is the payment to be made?

The buyer should use Form I-290 (Rev 5/90) when paying the withholding amount. A copy of this form is attached to this ruling.

If there is more than one seller, e.g. tenants in common, a separate Form I-290 should be used for each seller. However, if the seller is a partnership, Subchapter S corporation, estate or trust, the buyer should issue one Form I-290 to the entity, reporting the total amount of withholding. The entity will then allocate the tax withheld to each partner, shareholder or beneficiary in proportion to their percentage ownership in the property sold. This amount should be reported to the taxpayers on the applicable Form K-1 as an "Other credit or expenditure" and designated as "South Carolina Income Tax Withheld on Nonresident Real Estate Sale".

Four copies of Form I-290 should be completed for each sale. The buyer should send one copy to the Tax Commission with payment of the withheld amount. The seller should receive two copies, one to be sent in with his income tax return reporting the sale and one for his records. The buyer should retain one copy for his records.

Send Form I-290 and payment of the amount withheld to:

South Carolina Tax Commission  
Real Estate Withholding  
P.O. Box 125  
Columbia, South Carolina 29214

16. Can the withholding be used by the seller against his estimated income tax liability?

The seller may apply amounts withheld against his estimated income tax liability.

17. How are the payments treated when completing Form SC2210?

The payments should be treated in the same manner as estimated tax payments when completing Form SC2210, Underpayment of Estimated Tax by Individuals. The seller should report amounts withheld as estimated taxes paid during the period in which the withholding was actually withheld from his payments. For example, if a seller is a calendar year taxpayer and payment is made to the seller on April 10th from which an amount is withheld under this statute, the seller will report this as an estimated payment made prior to April 15th. If the payment was made on April 20th, the seller will report this as an estimated payment made after April 15th and before June 30th.

#### Special Rules for Installment Sales

18. What about installment sales?

For sales other than installment sales the amount withheld must be paid over to the Commission by the fifteenth day of the month following the month of sale. (See Q&A 14.) If the seller finances all or part of the transaction, then the buyer is required to withhold as provided below. In general, the buyer must withhold on each payment to the seller.

The buyer must give two copies of Form I-290 to the seller each time a payment is made to the Commission. The amount which must be withheld will depend upon how much, if any, information the seller provides the buyer.

General formula. If the seller does not provide the buyer with an affidavit containing any of the information discussed below, then the buyer must use the following general formula.

$$\frac{\text{Amount Realized}^1 \times 7\%}{\text{Selling Price}^2 \times \text{Payment Amount}} \quad 3$$

<sup>1</sup>Amount Realized is defined in Q&A 10.

<sup>2</sup>Selling Price means the gross selling price without reduction of any selling expenses and without reduction to reflect any existing mortgage or other encumbrance on the property (whether or not assumed or taken subject to by the buyer). It does not include interest or original issue discount. (The term "selling price" is being used as it is used in U.S. Treasury Regulation 15A.453-1(b)(2)(ii).)

<sup>3</sup>"Payment Amount" means the total amount of each payment made by the buyer. It includes interest whether stated or imputed. The total amount of debt assumed or taken subject to by the buyer is deemed to be a payment made at the time of the sale. If at any time the amount of withholding due is greater than the net proceeds payable to the seller, then (1) the net proceeds will be withheld and paid to the Commission, (2) the balance of withholding which is not paid will be carried forward, and (3) the buyer will withhold and pay it to the Commission from his next payment.

Example 1. On January 1, 1990 a seller sells real estate for \$200,000 in cash to be paid over 5 years. In addition, the buyer takes the property subject to a \$50,000 mortgage. The loan giving rise to the mortgage was not made in contemplation of the sale. (See Q&A 11a.) Selling expenses are \$2,000. The buyer will pay the \$200,000 over 5 years with 10% interest by making quarterly payments of \$12,829. The first payment is due April 1, 1990. If the seller does not give the buyer an affidavit, the buyer will withhold based upon the general formula given above.

The first payment requiring withholding is made at closing (the \$50,000 mortgage the buyer is taking the property subject to). --

$$\frac{(\$250,000 - \$2,000) \times 7\%}{\$250,000 \times \$50,000} = \$3,472$$

Thus, \$3,472 is required to be withheld. Since the seller is not receiving any net proceeds at the closing, this amount is carried forward and will be withheld and paid to the Commission out of the funds to be paid the seller on April 1, 1990.

The buyer will determine the withholding on the April 1, 1990 payment in the same manner --

$$\frac{(\$250,000 - \$2,000) \times 7\%}{\$250,000 \times \$12,829} = \$891$$

Therefore, the buyer will withhold \$4,363 (\$3,472 from the mortgage deemed paid on January 1 plus \$891 from the April 1 payment) from his April 1, 1990 payment and send it to the Commission by May 15, 1990.

Similarly on July 1, 1990, the buyer will withhold \$891 and send it to the Commission by August 15, 1990. And on October 1, 1990, the buyer will withhold \$891 and send it to the Commission by November 15, 1990.

Modifications to general formula if the seller provides an affidavit. If the seller provides an affidavit in accordance with Q&A 23, the buyer must make one or more of the following modifications to the general formula, depending upon what the seller provides in his affidavit. In general, the more information the seller provides, the smaller the amount the seller will have withheld.

(1) Affidavit of Corporate Status. If the seller gives the buyer an affidavit stating that it is a corporation (or an association or trust taxed as a corporation,) then the buyer must substitute 5% for 7% in the general formula.

(2) Amortization Schedule. If the seller gives the buyer an amortization schedule stating the principal and interest portion of each payment, then the buyer must substitute the "principal payment amount" for the "payment amount" in the general formula. The "principal payment amount" of each payment is the principal portion of each payment. The total amount of debt assumed or taken subject to by the buyer is deemed to be a principal payment at the time of the sale.

Example 2. The facts are the same as Example 1, but the seller gives the buyer an amortization schedule which states the principal and interest portion of each payment. For the payments due April 1, July 1, and October 1, the schedule designates \$7,829, \$8,025, and \$8,226, respectively, as the principal portions of the payments.

The first payment requiring withholding is made at closing (the \$50,000 mortgage the buyer is taking the property subject to). --

$$\frac{(\$250,000 - \$2,000) \times 7\%}{\$250,000} \times \$50,000 = \$3,472$$

Thus, \$3,472 is required to be withheld. Since the seller is not receiving any net proceeds at the closing, this amount is carried forward and will be withheld and paid to the Commission out of the funds to be paid the seller on April 1, 1990.

The buyer will determine the withholding on the April 1, 1990, payment in the same manner, but using the "principal payment amount" as the "payment amount" --

$$\frac{(\$250,000 - \$2,000) \times 7\%}{\$250,000} \times \$7,829 = \$543$$

Therefore, the buyer will withhold \$4,015 (\$3,472 from the mortgage deemed paid on January 1 plus \$543 from the April 1 payment) from his April 1, 1990 payment and send it to the Commission by May 15, 1990.

Similarly, the buyer will determine the withholding on July 1, 1990 in the same manner --

$$\frac{(\$250,000 - \$2,000) \times 7\%}{\$250,000} \times \$8,025 = \$557$$

The buyer will withhold \$557 and send it to the Commission by August 15, 1990.

Again, on the October 1, 1990 payment, the buyer will determine the withholding in the same manner --

$$\frac{(\$250,000 - \$2,000) \times 7\%}{\$250,000 \times \$8,226} = \$571$$

The buyer will withhold \$571 and send it to the Commission by November 15, 1990.

(3) Affidavit of Gain. If the seller gives the buyer an affidavit stating his total gain to be recognized on the sale, then the buyer must substitute "gain" for the "amount realized" in the general formula.

In addition, if the buyer is given the total gain on the sale and the buyer will assume or take the property subject to a mortgage, the buyer will substitute "total contract price" for "selling price" in the general formula.

"Total contract price" is defined as it is for Internal Revenue Code Section 453; i.e., it is the "selling price" reduced by that portion of any "qualifying indebtedness" assumed or taken subject to by the buyer which does not exceed the seller's basis in the property. For the purposes of determining "total contract price" the seller's basis includes selling expenses. (See U.S. Treasury Temporary Regulation 15A.453-1(b)(2)(iii) and (iv).)

Moreover, the buyer must reduce the "payment amount" at the time of the sale by the amount of qualifying indebtedness which does not exceed the seller's basis in the property. For the purposes of determining the "payment amount", the seller's basis includes selling expenses.

In general, "qualifying indebtedness" means a mortgage or other indebtedness encumbering the property. Buyers may, at their election, use the more detailed definition in U.S. Treasury Temporary Regulation 15A.453-1(b)(2)(iv).

Example 3. The facts are the same as Example 1, but the seller gives the buyer an affidavit stating that his total recognized gain on the sale is \$208,000. The buyer will then substitute this amount for the amount realized in the general formula. The buyer will also use the gain amount to compute the seller's basis in the property. In this example the basis (including selling expenses) will be \$42,000 (\$250,000 sales price less \$208,000 gain).

Given the basis in the property and the fact that the property was transferred subject to a mortgage, the buyer will then deduct from the selling price and the payment amount the amount of the mortgage which does not exceed the seller's basis plus selling expenses or \$42,000. Therefore, the selling price of \$250,000 reduced by this amount becomes the "total contract price" of \$208,000. The "payment amount" now becomes \$8,000 (\$50,000 mortgage reduced by \$42,000 basis plus selling expenses).

The first payment requiring withholding is made at closing --

$$\frac{\$208,000 \times 7\%}{\$208,000 \times \$8,000} = \$560$$

Thus, \$560 is required to be withheld. Since the seller is not receiving any net proceeds at the closing, this amount is carried forward and will be withheld and paid to the Commission out of the funds to be paid the seller on April 1, 1990.

The buyer will determine the withholding on the April 1, 1990 payment in the same manner --

$$\frac{\$208,000 \times 7\%}{\$208,000 \times \$12,829} = \$898$$

Therefore, the buyer will withhold \$1,458 (\$560 from the portion of the mortgage deemed paid on January 1 plus \$898 from the April 1 payment) from his April 1, 1990 payment and send it to the Commission by May 15, 1990.

Similarly on July 1, 1990, the buyer will withhold \$898 and send it to the Commission by August 15, 1990. And on October 1, 1990, the buyer will withhold \$898 and send it to the Commission by November 15, 1990.

Example 4. The facts are the same as Example 3 but the seller also provides the buyer with an amortization schedule stating the principal and interest portions of each payment. For the payments due April 1, July 1, and October 1, the schedule designates \$7,829, \$8,025, and \$8,225, respectively, as the principal portion of the payments.

The first payment requiring withholding is made at closing --

$$\frac{\$208,000 \times 7\%}{\$208,000 \times \$8,000} = \$560$$

Thus, \$560 is required to be withheld. Since the seller is not receiving any net proceeds at the closing, this amount is carried forward and will be withheld and paid to the Commission out of the funds to be paid the seller on April 1, 1990.

The buyer will determine the withholding on April 1, 1990, payment in the same manner but using only the principal portion of the payment as the payment amount --

$$\frac{\$208,000 \times 7\%}{\$208,000 \times \$7,829} = \$548$$

Therefore, the buyer will withhold \$1,108 (\$560 from the portion deemed paid on January 1 plus \$548 from the April 1 payment) from his April 1, 1990 payment and send it to the Commission by May 15, 1990.

Similarly, on July 1, the buyer will compute the withholding in the same manner -  
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$$\frac{\$208,000 \times 7\%}{\$208,000 \times \$8,025} = \$562$$

The buyer will withhold \$562 and send it to the Commission by August 15, 1990.

Again, on October 1, the buyer will determine the withholding in the same manner --

$$\frac{\$208,000 \times 7\%}{\$208,000 \times \$8,226} = \$576$$

The buyer will withhold \$576 and send it to the Commission by November 15, 1990.

Additional Relief for Installment Sales. When the amount to be withheld and paid to the Commission on any payment is less than \$500, the buyer may wait to remit the amounts withheld to the Commission until the 15th day of the month following the month when the amounts withheld equal \$500 or more. However, even if amounts withheld during a calendar year do not equal \$500, they must be remitted to the Commission by January 15th of the following year.

Note: Anything to the contrary notwithstanding, withholding on an installment sale is not required for any year where the total amount to be withheld and paid over to the Commission for the entire year would be less than \$350. Sales to a single buyer or to a related group of buyers are aggregated to determine if this limitation has been exceeded.

If the seller files a tax return reporting a loss on the sale or the entire 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.

### Refunds

19. Can part or all of the withholding be refunded if the amount withheld and sent to the Tax Commission was incorrect?

If the amount withheld and sent to the Tax Commission was incorrect because of an error in computing the amount or the seller and buyer were unaware of the exceptions to the withholding at the time of the closing, then part or all of the withholding may be refunded to the seller.

The seller may submit a request for refund by filing Form I-290X along with 1) a statement explaining the reasons for the correction and 2) the original Form I-290 which would have been filed with his income tax return. Copies of both forms are attached to this ruling. The seller must attach a copy of his Form I-290X to his income tax return reporting the sale.

20. If the seller does not file an affidavit with the buyer stating the amount of gain he is required to recognize or if he overestimated his gain, can he receive a refund from the Commission?

Yes, if the seller has not filed an income tax return claiming the amount withheld as a credit against his income tax liability, he can receive a refund from the Commission by filing Form I-290X on which he will state the correct amount of gain subject to withholding. The difference between the amount originally withheld and the amount shown on the amended form will be refunded to the seller. The seller must attach a copy of his Form I-290X to his income tax return reporting the sale.

The seller must attach the original Form I-290 which would have been filed with his income tax return to the Form I-290X when filing for his refund.

21. Can part or all of the withholding be refunded on sales completed before the effective date of this act?

If amounts withheld on sales of real property and associated personal property completed before the effective date of this act were greater than the amount that would have been withheld under this act, and the seller has not filed an income tax return crediting the withheld amount against his income tax liability, the seller may file for a refund of the amount over-withheld.

The seller may submit a request for refund by filing with the Commission Form I-290X. The seller must attach a copy of his Form I-290X to his income tax return reporting the sale.

The seller must attach the original Form I-290 which would have been filed with his income tax return to the Form I-290X when filing for his refund.

22. Where should the request for refund be mailed?

The requests should be mailed to:

PRO - Real Estate Withholding  
P.O. Box 11189  
Columbia, S.C. 29211-1189

## Affidavits

23. When can the buyer rely on an affidavit referred to in this Revenue Ruling?

A buyer can rely on the facts contained in an affidavit referred to in this Revenue Ruling, if

a) It states under penalty of perjury:

- 1) The seller's name, address and social security number or taxpayer identification number; and
- 2) The closing date of the sale; and
- 3) A description of the property. The description of real property must include the county it is in and its tax map number(s); and,

b) The buyer does not know the affidavit is false.

24. What should the buyer do with an affidavit from the seller?

The buyer should retain the affidavit with his records and produce it if requested during an audit. The buyer should not send the affidavit to the Tax Commission.

25. Where can I get an affidavit?

You can use a copy of the affidavit attached to this ruling or prepare your own.

## Liens

26. 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 an amount was required to be withheld and remitted to the Commission, assesses the tax, and issues a warrant after the buyer fails to pay the assessed tax.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.  
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S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.  
\_\_\_\_\_  
A. Crawford Clarkson, Jr., Commissioner

s/Timothy R. McConnell  
\_\_\_\_\_  
Timothy R. McConnell, Commissioner

Columbia, South Carolina  
June 1, 1990

Seller's Affidavit  
South Carolina Withholding Tax  
S.C. Code Section 12-9-510 et. seq.

THIS IS AN AFFIDAVIT OF FACTS. WHETHER OR NOT THIS AFFIDAVIT IS SUFFICIENT TO RELIEVE THE BUYER OF THE RESPONSIBILITY TO WITHHOLD IS GOVERNED BY SC REVENUE RULING 90-3. PLEASE READ THIS AFFIDAVIT CAREFULLY IN CONJUNCTION WITH THIS RULING.

The undersigned on oath, being first duly sworn, hereby certifies as follows:

1. This affidavit is being given in connection with a sale of real estate pursuant to SC Revenue Ruling #90-3.
2. I have attached to this affidavit a description of the real property and any tangible personal property being sold as part of this sale.  
The real property is located in the county of \_\_\_\_\_ and its tax map number(s) is \_\_\_\_\_.
3. The undersigned is the seller of the property described in the attached description.
4. The closing date of this sale is \_\_\_\_\_.
5. The Seller's name is \_\_\_\_\_.
6. The Seller's address is  
(number, street or rural route)  
\_\_\_\_\_  
(city, state and zip code)
7. The Seller's social security number or taxpayer identification number is \_\_\_\_\_.
8.  Corporations. The seller is a corporation or an association or trust that is taxed as a corporation and is subject to withholding at 5%.
9.  Gain. I affirm pursuant to Section 12-9-510(B) that the amount of gain I am required to recognize on this transaction and on which Buyer is to make the requisite withholding will not exceed \$ \_\_\_\_\_.
10.  Installment Sale. The seller will report this sale on the installment method for South Carolina income tax purposes, and has attached an amortization schedule correctly designating the principal and interest portions of the payments.
11.  Resident. The seller is a resident of South Carolina, as that term is defined in the South Carolina income tax laws (S.C. Code Section 12-1-10 et seq. as amended) and in SC Revenue Ruling 90-3.
12.  Deemed Resident. Pursuant to SC Revenue Ruling #90-3 the seller is deemed to be a resident of South Carolina because:

- 1) The seller (a) has filed at least one South Carolina income tax return, (b) is not delinquent with respect to filing any South Carolina income tax return, and (c) has been in business in the State during the seller's last two taxable years (including the year of sale); and
- 2) The seller is in business in South Carolina and will continue substantially the same business in South Carolina after the sale; and
- 3) The seller will report the sale on a South Carolina income tax return for the current year and file it by its due date; and
- 4) If the seller is a corporation or limited partnership, it is registered to do business in South Carolina.

13.  Employee Relocation. The transaction involves the sale of an employee's property which is being sold by an employer or Relocation company in connection with the employee's transfer. For income tax purposes the sale is treated as a sale by the employer or relocation company.

14.  Nonrecognition of Gain. The sale of the property will not be Subject to taxes because of Section 1033, 1034 or 121 of the Internal Revenue Code. The seller acknowledges his obligation to file a South Carolina income tax return for the year of the sale. If the seller fails to comply with Section 1033 or 1034, the seller acknowledges an obligation to file an amended South Carolina income tax return for the year of the sale.

15.  Tax-Exempt Organizations. The seller is an organization exempt from income taxes under Internal Revenue Code Section 501(a) or is an insurance company exempt from South Carolina taxes on income.

16.  Withholding Amount Equals Entire Net Proceeds. If the withholding amount is limited to the entire net proceeds, any lien, mortgage or credit line advance which was made within one year prior to the closing was not made in contemplation of the sale as that phrase is defined in SC Revenue Ruling #90-3.

The undersigned understands that this affidavit may be disclosed to the South Carolina Tax Commission and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this Affidavit and, to the best of my knowledge and belief, it is true, correct and Complete.

\_\_\_\_\_ (Signature)

SUBSCRIBED AND SWORN to  
before me this \_\_ day  
of \_\_\_\_\_, 1990. (Name - please print)

Notary Public  
My Commission Expires: