

SOUTH CAROLINA WITHHOLDING TAX FOR NONRESIDENT SELLERS OF REAL PROPERTY

7% of Gain Withholding

South Carolina Code Section 12-8-580 mandates that anyone purchasing real property in South Carolina from a nonresident Seller must withhold seven percent (7%) of the gain recognized on the sale by the nonresident Seller. If the nonresident Seller is a partnership, trust, or estate, the purchaser is also obligated to withhold seven percent (7%) of the recognized gain. If the nonresident Seller is a corporation, the purchaser must withhold five percent (5%) of the nonresident corporation's recognized gain.

Seller's Affidavit

The purchaser may rely on an affidavit stating the amount of the gain signed by the Seller to satisfy the South Carolina Withholding requirements. The affidavit must be signed, witnessed, and notarized under penalty of perjury stating: the Seller's name, address and social security number, the date of the sale, a brief description of the property, and the amount of the nonresident Seller's gain on the property. If the Seller does not provide the purchaser with such an affidavit, the entire net sale proceeds payable to the nonresident Seller must be withheld and submitted to the South Carolina Department of Revenue.

Nonresident Definition

For the purposes of this South Carolina law, a nonresident is defined as any individual whose permanent home is outside of South Carolina. Additionally, corporations incorporated outside of South Carolina and partnerships whose principal place of business is located outside of South Carolina are defined as nonresidents for withholding purposes. There are some exceptions. If the nonresident Seller has filed at least one South Carolina income tax return, is not delinquent in filing South Carolina income tax returns, and has been doing business in the State for the past two taxable years, including the year of the sale, then the Seller is a "deemed" resident and may be exempt from the withholding requirements.

Gains in General

For specific information in calculating the amount of gain, if any, to be recognized on the sale of real property, consult IRS Publication 551 Basis of Assets. Generally, the Seller of real property may increase the cost basis of that property by including the cost of any improvements having a useful life of more than one year. Also some of the settlement charges incurred in purchasing the property may be added to the property cost basis. Those settlement charges include legal fees, recording fees, survey costs, transfer taxes, and owner's title insurance. On the other hand, depreciation decreases a Seller's adjusted basis in real property. Before completing the S.C. Withholding Affidavit, a Seller should carefully calculate the property's gain.