

1 HB357
2 96665-2
3 By Representative Lindsey
4 RFD: Education Appropriations
5 First Read: 07-FEB-08



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2 ENROLLED, An Act,

3 To create a new Section 40-18-86 of the Code of
4 Alabama 1975, relating to withholding tax on the sale or
5 transfer of real property and associated tangible property by
6 nonresidents.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. A new Section 40-18-86 is added to the
9 Code of Alabama 1975, to read as follows:

10 §40-18-86.

11 (a) As used in this section, the term nonresident of
12 Alabama shall include individuals, trusts, partnerships,
13 corporations, and unincorporated organizations. Any seller or
14 transferor who meets all of the following conditions and who
15 provides the buyer or transferee with an affidavit signed
16 under oath swearing or affirming that all of the following
17 conditions are met will be deemed a resident for purposes of
18 this section:

19 (1) The seller or transferor has filed Alabama
20 income tax returns or appropriate extensions have been
21 received for the two income tax years immediately preceding
22 the year of sale.

23 (2) The seller or transferor is in business in
24 Alabama and will continue substantially the same business in
25 Alabama after the sale or the seller or transferor has real

1 property remaining in the state at the time of closing of
2 equal or greater value than the withholding tax liability as
3 measured by the 100 percent property tax assessment of such
4 remaining property.

5 (3) The seller or transferor will report the sale on
6 an Alabama income tax return for the current year and file it
7 by the due date.

8 (4) If the seller or transferor is a corporation or
9 limited partnership, it is registered to do business in
10 Alabama.

11 (b) (1) Except as otherwise provided in this section,
12 in the case of any sale or transfer of real property and
13 related tangible personal property located in Alabama by a
14 nonresident of Alabama, the buyer or transferee shall be
15 required to withhold and remit to the Commissioner of Revenue
16 on forms provided by the commissioner a withholding tax for
17 individual buyers or transferees equal to three percent of the
18 purchase price or consideration paid for the sale or transfer,
19 and for corporate, partnership, or unincorporated association
20 buyers or transferees equal to four percent of the purchase
21 price or consideration paid for the sale or transfer;
22 provided, however, that if the amount required to be withheld
23 pursuant to this subsection exceeds the net proceeds payable
24 to the seller or transferor, the buyer or transferee shall
25 withhold and pay over to the commissioner only the net

1 proceeds otherwise payable to the seller or transferor. Any
2 buyer or transferee who fails to withhold such amount shall be
3 personally liable for the amount of the tax.

4 (2) The liability imposed by this subsection shall
5 be paid upon notice and demand by the commissioner or the
6 commissioner's delegate and shall be assessed and collected in
7 the same manner as all other withholding taxes imposed by this
8 article.

9 (c) If the seller or transferor determines that the
10 amount required to be withheld pursuant to subdivision (1) of
11 subsection (b) of this section will result in excess
12 withholding on any gain required to be recognized from the
13 sale, the seller or transferor may provide the buyer or
14 transferee with an affidavit signed under oath swearing or
15 affirming to the amount of the gain required to be recognized
16 from the sale, and any individual buyer or transferee shall
17 withhold three percent of the amount of the gain required to
18 be recognized, if any, and the corporate, partnership, or
19 unincorporated association buyers or transferee shall withhold
20 four percent of the amount of the gain required to be
21 recognized, if any, stated in the affidavit rather than as
22 provided in subdivision (1) of subsection (b) of this section.
23 If, however, the amount required to be withheld pursuant to
24 this subsection exceeds the net proceeds payable to the seller
25 or transferor, the buyer or transferee shall withhold and pay

1 over to the commissioner only the net proceeds otherwise
2 payable to the seller or transferor.

3 (d) Subsection (b) of this section shall not apply
4 where any of the following occur:

5 (1) The real property being sold or transferred is a
6 principal residence of the seller or transferor within the
7 meaning of Section 121 of the Internal Revenue Code.

8 (2) The seller or transferor is a mortgagor
9 conveying the mortgaged property to a mortgagee in foreclosure
10 or in a transfer in lieu of foreclosure with no additional
11 consideration.

12 (3) The transferor or transferee is an agency or
13 authority of the United States of America, an agency or
14 authority of the State of Alabama, the Federal National
15 Mortgage Association, the Federal Home Loan Mortgage
16 Corporation, or the Government National Mortgage Association,
17 or a private mortgage insurance company.

18 The commissioner may by rule set a purchase price
19 amount below which no withholding is required.

20 (e) (1) Unless otherwise provided, if the seller or
21 transferor is a partnership or Subchapter "S" corporation or
22 other unincorporated organization which certifies to the buyer
23 or transferee that a composite return is being filed on behalf
24 of the nonresident partners, shareholders, or members and that
25 the partnership, Subchapter "S" corporation, or unincorporated

1 organization remits the tax on the gain on behalf of the
2 nonresident partners, shareholders, or members, the buyer or
3 transferee shall not be required to withhold as provided in
4 this section. Any nonresident partner, shareholder, or member
5 who falsely certifies that a composite return is being filed
6 on behalf of such partner, shareholder, or member shall be
7 liable for a penalty in the amount of five hundred dollars
8 (\$500) or 10 percent of the amount required to be withheld,
9 whichever is greater.

10 (2) The penalty imposed by this subsection shall be
11 paid upon notice and demand by the commissioner or the
12 commissioner's delegate and shall be assessed and collected in
13 the same manner as the withholding tax imposed by this
14 article.

15 (f) Every buyer or transferee of real property
16 located in Alabama who is required to deduct and withhold the
17 withholding tax imposed by subsection (b) shall file the
18 required return and remit payment to the Department of Revenue
19 on or before the last day of the calendar month following the
20 calendar month within which the sale or transfer giving rise
21 to the withholding tax occurred.

22 Section 2. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.

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Adm. / Hunt

Speaker of the House of Representatives

Jim Folsom

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 04-MAR-08.

Greg Pappas
Clerk

Senate

19-MAY-08

Passed

APPROVED *May 29, 2008*
TIME *4:20 p.m.*
Bob Riley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2008-504
Bill Num....: H-357

Recv'd 05/29/08 05:32pmJJB