

WITHHOLDING TAX:

Georgia § 48-7-128

Withholding Requirements for Sales or Transfer of Real Property by Non Residents

48-7-128. Withholding tax on sale or transfer of real property and associated tangible personal property by nonresidents

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

(1) The seller or transferor has filed Georgia income tax returns or appropriate extensions have been received for the two income tax years immediately preceding the year of sale;

(2) The seller or transferor is in business in Georgia and will continue substantially the same business in Georgia after the sale or the seller or transferor has real property remaining in the state at the time of closing of equal or greater value than the withholding tax liability as measured by the 100 percent property tax assessment of such remaining property;

(3) The seller or transferor will report the sale on a Georgia income tax return for the current year and file it by its due date; and

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

(b)(1) Except as otherwise provided in this Code section, in the case of any sale or transfer of real property and related tangible personal property located in Georgia by a nonresident of Georgia, the buyer or transferee shall be required to withhold and remit to the commissioner on forms provided by the commissioner a withholding tax equal to 3 percent of the purchase price or consideration paid for the sale or transfer; provided, however, that if the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor. Any buyer or transferee who fails to withhold such amount shall be personally liable for the amount of such tax.

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

(c) If the seller or transferor determines that the amount required to be withheld pursuant to paragraph (1) of subsection (b) of this Code section will result in excess withholding on any gain required to be recognized from the sale, the seller or transferor may provide the buyer or transferee with an affidavit signed under oath swearing or affirming to the amount of the gain required to be recognized from the sale, and the buyer or transferee shall withhold 3 percent of the amount of the gain required to be recognized, if any, stated in the affidavit rather than as provided in paragraph (1) of subsection (b) of this Code section. If, however, the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor.

(d) Subsection (b) of this Code section shall not apply where:

(1) The real property being sold or transferred is a principal residence of the seller or transferor within the meaning of Section 1034 of the Internal Revenue Code;

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

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

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

(e)(1) Unless otherwise provided, if the seller or transferor is a partnership or Subchapter "S" corporation or other unincorporated organization which certifies to the buyer or transferee that a composite return is being filed on behalf of the nonresident partners, shareholders, or members and that the partnership, Subchapter "S" corporation, or unincorporated organization remits the tax on the gain on behalf of the nonresident partners, shareholders, or members, the buyer or transferee shall not be required to withhold as provided in this Code section. Any nonresident partner, shareholder, or member who falsely certifies that a composite return is being filed on behalf of such partner, shareholder, or member shall be liable for a penalty in the amount of \$500.00 or 10 percent of the amount required to be withheld, whichever is greater.

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

(f) Every buyer or transferee of real property located in Georgia who is required to deduct and withhold the withholding tax imposed by subsection (b) of this Code section shall file the required return and remit payment to the department on or before the last day of the calendar month following the calendar month within which the sale or transfer giving rise to the withholding tax occurred.

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Related information at [Georgia Department of Revenue](#)

[Withholding Requirements for Sales or Transfer of Real Property by Non Residents](#)

[Withholding Tax Form G2-RP \(rev. 9/13\)](#)

Georgia State Income Tax on Nonresident Income

If you are not a resident of Georgia but you have certain income from sources in Georgia, you are generally subject to Georgia state income tax on that income and would have to file a Georgia state income tax return.

According to the [Georgia Department of Revenue](#), if you are not a resident but you work in Georgia you would be subject to Georgia state income tax on your salary or wages. This also applies to accrued vacation, sick pay and holidays for the period of time you worked in Georgia. But you would not be required to file a Georgia tax return if your only activity in Georgia was working as an employee and your wages in Georgia are not more than five percent of your total income from performing services inside and outside Georgia, or \$5,000, whichever is less. Also, severance pay received by a nonresident is not taxable in Georgia if no services are required to be performed in order to receive the severance pay.

If you previously worked in Georgia but are now a nonresident and you receive deferred compensation or income from exercising stock options that you previously earned in Georgia, you would be subject to Georgia state tax on that income. But that income would only be taxable in Georgia if your income in the prior year exceeds five percent of your income from all places during the current tax year or \$5,000, whichever is less.

According to the Georgia Department of Revenue, if you receive a pension from Georgia but you have moved to another state, the pension income would not be subject to Georgia state income tax.

Nonresidents are subject to Georgia state income tax on net income from operating a business in Georgia. Income from your business would be allocated between sources in Georgia and sources outside Georgia.

Nonresidents are subject to state income tax on the sale or transfer of real property and the associated tangible personal property in Georgia. These sales or transfers are subject to withholding tax in Georgia. The tax withheld is reported on [Form G-2RP](#). The tax withheld would then be reported on Form 500 on the line for Other Georgia Tax Withheld.

If you have rental property in Georgia you would be subject to Georgia state tax on income from that property.

If you are a nonresident partner in a partnership or a shareholder in an S corporation in Georgia, you are subject to Georgia state tax on your share of the income. You would generally be subject to withholding tax on income sourced in Georgia, whether or not distributed, from partnerships, limited liability companies and S corporations. The tax withheld is reported on [Form G2-A](#). As an alternative to withholding, a partnership, limited liability company or S corporation can file a composite return for nonresident partners, members or shareholders on [Form IT-CR](#).

Interest earned by a nonresident on a savings account in a Georgia bank would generally not be subject to Georgia income tax. Gambling and lottery winnings in Georgia received by a nonresident would be subject to Georgia tax.

According to the Georgia Department of Revenue, military personnel who are stationed in Georgia but whose home of record is not in Georgia are only subject to state income tax on income from Georgia sources other than military pay.

If you are a nonresident who worked in Georgia or received income from sources in Georgia and you are required to file a federal tax return, you would have to file a Georgia income tax return. You would use [Form 500](#) and check the box for nonresident. Schedule 3 must be completed to calculate Georgia taxable income. If you are married and your spouse is a nonresident of Georgia with no Georgia source income, you can file either a separate return claiming only yourself, or file a joint return claiming the total allowable deductions.

Sources:

[Form 500](#), Georgia Individual Income Tax Return

[Form G2-A](#), Georgia Department of Revenue

[Form G-2RP](#), Georgia Department of Revenue

[Form IT-CR](#), Georgia Department of Revenue

[Individual Income Tax 500 and 500EZ Forms and General Instructions](#), Georgia Department of Revenue

Taxpayer Services Division

Withholding Tax Forms

Georgia Tax Tribunal Petition (rev. 12/13)	GTT-1
Protest of Proposed Assessment or Refund Denial (rev. 12/11)	TSD-1
Request for Penalty Waiver (rev. 12/11)	Penalty Waiver
Form GA-9465 Installment Agreement Request Form (rev. 6/12)	GA-9465
Request for Replacement Check (rev. 5/12)	Form IA-81
Form AFF1 Affidavit of Seller's Residence (rev. 12/11)	AFF1
Form AFF2 Affidavit of Seller's Gain (rev. 12/11)	AFF2
Form AFF3 Seller's Certificate of Exemption (rev. 12/11)	AFF3
Form GA-V Fill in Withholding Tax Payment Voucher (rev. 07/13) (Fill in on-line, print and mail)	GA-V
Form G2-A Withholding on Distributions to Non-Resident Members/Shareholders (rev. 09/13)	G2-A
Form G2-FL Allocated Withholding on Employees of Loan-Out Company (rev. 10/12)	G2-FL
Form G2-FP Withholding on Loan-Out Company Payments (rev. 10/12)	G2-FP
Form G-2LP Withholding on Sales or Assignment of Lottery Payments (rev. 07/13)	G-2LP
Form G-2RP Withholding on Sales or Transfers of Real Property and Associated Tangible Personal Property by Nonresidents (rev. 9/13)	G-2RP
Form G-4 Employee's Withholding Allowance Certificate (rev. 1/13)	G-4
Form G-4P Withholding Certificate for Pension or Annuity Payments (rev. 09/08)	G-4P
Form G-5B Withholding Account Change Form (rev. 02/06)	G-5B
Form G-7 Withholding Quarterly Return (For Monthly Payer) (rev. 07/13) Fill in on-line, print and mail	G-7 (M)
Form G-7 Withholding Quarterly Return (For Quarterly Payer) (rev. 07/13) Fill in on-line, print and mail	G-7 (Q)
Form G-7 Schedule B Withholding Quarterly Return (For Semi-Weekly Payer) (rev. 10/12) Fill in on-line, print and mail	G-7 Schedule B
Form G-7NRW Withholding Nonresident Return (rev. 7/13) Fill in on-line, print and mail	G-7NRW
Form G-1003 Income Statement Transmittal Form (Rev. 07/13) Fill in on-line, print and mail	G-1003
2014 Employers Tax Guide (rev. 04/14)	2014 Tax Guide
Form IT-550 Claim for Refund of Georgia Income Tax Erroneously or Illegally Collected (rev. 1/13)	IT-550
Form NRW-Exemption Affidavit by Nonresident of Exemption (rev 7/13)	NRW-Exemption
Form RD-1061 Power of Attorney (rev. 10/13)	RD-1061
Form RD 1062 Disclosure Authorization Form (rev. 8/11) (fill in and print)	RD-1062
Form RET-001 Taxpayer Return Request Form (rev. 4/11)	RET-001
Form TSD-10 Application for Tax Clearance Certificate (eff. 1/1/07)	TSD-10
Information on Georgia's Withholding Requirements for Sales or Transfers of Real Property by Nonresidents (rev. 11/11)	Sale of Real Property