

CHAPTER 363
FORMERLY
SENATE BILL NO. 175
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO WITHHOLDING OF INCOME TAX ON SALE OR EXCHANGE OF REAL ESTATE BY NONRESIDENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1126, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1126. Withholding of income tax on sale or exchange of real estate by nonresident individuals.

(a) *Definitions.* -

(4) "Transfer under a deed in lieu of foreclosure" includes all of the following:

a. A transfer by the owner of the property to the following:

1. With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage.

2. With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

b. A transfer by any of the persons described in paragraph (a)(4)a. of this section to a subsequent purchaser for value.

(5) "Transfer under a foreclosure of a mortgage or other lien instrument" includes the following:

a. With respect to the foreclosure of a mortgage, all of the following:

1. A transfer by the sheriff or other party authorized to conduct the foreclosure sale under the mortgage to one of the following:

A. The mortgagee or the assignee of the mortgage.

B. Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraph (a)(5)a.1.A. and (a)(5)a.1.B. of this section to a subsequent purchaser for value.

b. With respect to the foreclosure of any other lien instrument, all of the following:

1. A transfer by the party authorized to make the sale to one of the following:

A. The holder of the debt or other obligation secured by the lien instrument.

B. Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraph (a)(5)b.1.A. and (a)(5)b.1.B. of this section to a subsequent purchaser for value.

(b) *Estimated tax return; alternative forms.* – Every nonresident individual who sells or exchanges Delaware real estate shall file with the Recorder one of the following:

(1) A “Declaration of Estimated Income Tax” for the quarter in which the sale or exchange is settled, applying the highest marginal rate under § 1102 of this title to an estimate of the gain recognized on the sale or ~~exchange, or~~ exchange.

(2) An alternative form prepared by the Director to calculate income tax at the highest marginal rate under § 1102 of this title, applied to the difference between the total amount realized by the transferor and the net balance due at the time of settlement of all recorded liens encumbering the real ~~estate, or~~ estate.

(3)a. An alternative form prepared by the Director to declare under penalties of perjury one of the following:

a. 1. That the sale or exchange of real estate is exempt from recognition of capital gain with respect to the tax year of the sale or ~~exchange, or~~ exchange.

b. 2. That all or a part of the gain realized that may be excluded from income with respect to the tax year of the sale or ~~exchange, or~~ exchange.

3. That the sale or exchange of real estate is one of the following:

A. A transfer under a foreclosure of a mortgage or other lien instrument.

B. A transfer under a deed in lieu of foreclosure.

~~b. with~~ With respect to a claim of exemption or exclusion under paragraph (b)(3)a.1. or (b)(3)a.2. of this section, a statement of the facts and a citation to the provision ~~or provisions~~ of the Internal Revenue Code (Title 26, U.S.C.) relied upon for such exemption or exclusion must also be included in the declaration.

Section 2. Amend § 1606, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1606. Withholding of income tax on sale or exchange of real estate by nonresident pass-through entities.

(a) *Definitions.*-

(4) "Transfer under a deed in lieu of foreclosure" includes all of the following:

a. A transfer by the owner of the property to the following:

1. With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage.

2. With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

b. A transfer by any of the persons described in paragraph (a)(4)a. of this section to a subsequent purchaser for value.

(5) "Transfer under a foreclosure of a mortgage or other lien instrument" includes the following:

a. With respect to the foreclosure of a mortgage, all of the following:

1. A transfer by the sheriff or other party authorized to conduct the foreclosure sale under the mortgage to one of the following:

A. The mortgagee or the assignee of the mortgage.

B. Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraph (a)(5)a.1.A. and (a)(5)a.1.B. of this section to a subsequent purchaser for value.

b. With respect to the foreclosure of any other lien instrument, all of the following:

1. A transfer by the party authorized to make the sale to one of the following:

A. The holder of the debt or other obligation secured by the lien instrument.

B. Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraph (a)(5)b.1.A. and (a)(5)b.1.B. of this section to a subsequent purchaser for value.

(b) *Estimated tax return; alternative forms.* – Every nonresident pass-through entity that sells or exchanges Delaware real estate shall file with the Recorder for and on behalf of each of its nonresident members one of the following:

(1) A “Declaration of Estimated Income Tax” or a “Delaware Corporate Tentative Tax Return” for the quarter in which the sale or exchange is settled, applying the highest marginal rate of each of its nonresident members under § 1102 or § 1902 of this title, as the case may be, to an estimate of the nonresident member's distributive share of the gain recognized on the sale or ~~exchange, or~~ exchange.

(2) An alternative form prepared by the Director to calculate income tax at the highest marginal rate under § 1102 or § 1902 of this title, applied to the nonresident member's distributive share of the difference between the total amount realized by the transferor and the net balance due at the time of settlement of all recorded liens encumbering the real ~~estate, or~~ estate.

(3) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is exempt from recognition of capital gain with respect to the tax year of the sale or exchange, with a statement of the facts and a citation to the provision or provisions of the Internal Revenue Code (Title 26, U.S.C.) relied upon.

(4) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is one of the following:

a. A transfer under a foreclosure of a mortgage or other lien instrument.

b. A transfer under a deed in lieu of foreclosure.

Section 3. Amend § 1909, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1909. Withholding of income tax on sale or exchange of real estate by nonresident corporations.

(a) *Definitions.*-

(4) "Transfer under a deed in lieu of foreclosure" includes all of the following:

a. A transfer by the owner of the property to the following:

1. With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage.

2. With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

b. A transfer by any of the persons described in paragraph (a)(4)a. of this section to a subsequent purchaser for value.

(5) "Transfer under a foreclosure of a mortgage or other lien instrument" includes the following:

a. With respect to the foreclosure of a mortgage, all of the following:

1. A transfer by the sheriff or other party authorized to conduct the foreclosure sale under the mortgage to one of the following:

A. The mortgagee or the assignee of the mortgage.

B. Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraph (a)(5)a.1.A. and (a)(5)a.1.B. of this section to a subsequent purchaser for value.

b. With respect to the foreclosure of any other lien instrument, all of the following:

1. A transfer by the party authorized to make the sale to one of the following:

A. The holder of the debt or other obligation secured by the lien instrument.

B. Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraph (a)(5)b.1.A. and (a)(5)b.1.B. of this section to a subsequent purchaser for value.

(b) *Estimated tax return; alternative forms.* – Every nonresident corporation that sells or exchanges Delaware real estate shall file with the Recorder one of the following:

(1) A “Delaware Corporate Tentative Tax Return” due for the quarter in which the sale or exchange is settled, applying the tax rate provided under § 1902 of this title to an estimate of the gain recognized on the sale or ~~exchange, or~~ exchange.

(2) An alternative form prepared by the Director to calculate income tax at the tax rate provided under § 1902 of this title, applied to the difference between the total amount realized by the transferor and the net balance due at the time of settlement of all recorded liens encumbering the real ~~estate, or~~ estate.

(3) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is exempt from recognition of capital gain with respect to the tax year of the sale or exchange, with a statement of the facts and a citation to the provision or provisions of the Internal Revenue Code (Title 26, U.S.C.) relied upon.

(4) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is one of the following:

a. A transfer under a foreclosure of a mortgage or other lien instrument.

b. A transfer under a deed in lieu of foreclosure.

Section 4. This Act takes effect on July 1, 2018.

Approved July 25, 2018