



SPONSOR: Rep. Bolden & Sen. Gay

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 171

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATED TO TAX ADMINISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

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

3 § 1126 Withholding of income tax on sale or exchange of real estate by nonresident individuals.

4 (b) Estimated tax return; alternative forms. — Every nonresident individual who sells or exchanges Delaware real
5 estate shall file with the Recorder 1 of the following:

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

8 (2) An alternative form prepared by the Director to calculate income tax at the highest marginal rate under §
9 1102 of this title, applied to the difference between the total amount realized by the transferor and the net balance due
10 at the time of settlement of all recorded liens encumbering the real estate.

11 (3) a. An alternative form prepared by the Director to declare under penalties of perjury 1 of the following:

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

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

16 3. That the sale or exchange of real estate is 1 of the following:

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

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

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

22 (c) Due date of estimated tax return, payment. — The return or form provided for in subsection (b) of this section,
23 and the estimated tax reported due on such return or form, shall be remitted with the deed to the Recorder before the deed
24 shall be recorded. Such payment shall be withheld from the net proceeds of the sale. To the extent that the sale does not
25 result in net proceeds being available for the payment of the estimated tax, the Recorder may accept the form without
26 payment, upon receipt of confirmation from the closing attorney that no funds are available for payment of the tax and that
27 no funds were distributed to the seller.

28 Section 2. Amend § 1154, Title 30 of the Delaware Code by making deletions as shown by strike through and
29 insertions as shown by underline as follows and by redesignating accordingly:

30 § 1154 ~~Employer's return~~ Information returns and payment of tax withheld.

31 (a) Every employer required to deduct and withhold tax under this chapter shall file a withholding return as
32 prescribed by the Division of Revenue and pay over such tax to the Division of Revenue, or to a depository designated by
33 the Division of Revenue, at a frequency to be determined as follows:

34 (1) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld
35 during the lookback period did not exceed the applicable threshold of \$4,500 shall be a quarterly filer;

36 (2) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld
37 during the lookback period exceeded the applicable threshold of \$4,500 but did not exceed the applicable threshold of
38 \$25,000 or which had no employees within Delaware during the lookback period shall be a monthly filer; and

39 (3) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld
40 during the lookback period exceeded the applicable threshold of \$25,000 shall be an eighth-monthly filer.

41 The levels of the applicable thresholds in this subsection are subject to annual adjustment as more fully set forth in
42 § 515 of this title.

43 (b) The Division of Revenue may modify the filing frequency defined in subsections (a)(1)-(3) for any taxpayer, in
44 response to a request from the taxpayer, upon a showing by the taxpayer that they would suffer a hardship if required to
45 comply with the statutory filing frequency.

46 (h_) Information returns. — Any person (1) required to withhold, account for, and pay over taxes under this
47 chapter for which federal information return form W-2 is required, (2) making any payment of salary, fee, commission or
48 other compensation for services to any Delaware resident individual or to any individual nonresident for work done or
49 services performed or rendered within Delaware for which federal information returns form 1099 MISC or successor form
50 is required, ~~or~~ (3) otherwise withholding Delaware taxes from payment of any wage, pension, distribution or other
51 remuneration, or (4) making any payment of any other remuneration to any Delaware resident individual for which any

52 other federal information return is required, shall also file with the Division of Revenue information returns with respect to
53 each such individual to whom such federal forms are required to be issued. If a person is required to make and return such
54 information reports to the Internal Revenue Service on magnetic media or in other machine-readable form under Internal
55 Revenue Code § 6011 (26 U.S.C. § 6011) and regulations thereunder or successor provision, then the information returns
56 required to be made under this section shall, unless excepted by the Director, also be made on magnetic media or in other
57 machine-readable form. All returns required to be filed under this section shall be filed with the Division of Revenue on or
58 before the date on which such returns are required to be filed with the Internal Revenue Service.

59 Section 3. Amend § 1192, Title 30 of the Delaware Code by making deletions as shown by strike through and
60 insertions as shown by underline as follows:

61 § 1192 The Delaware Ovarian Cancer Foundation ~~Fund at the Delaware Community Foundation~~.

62 (a) To honor and memorialize the lives of Cynthia Waterman and Sidney DeSmyter and all other women who
63 have fought valiantly against the ravages of ovarian cancer, but lost, the Delaware Ovarian Cancer Foundation ~~Fund at the~~
64 ~~Delaware Community Foundation~~ is hereby established. Individuals who claim an overpayment of taxes may designate an
65 amount to be deposited in the Delaware Ovarian Cancer Foundation ~~Fund at the Delaware Community Foundation~~, and
66 individuals who have an income tax liability may designate an amount to be paid to the Delaware Ovarian Cancer
67 Foundation ~~Fund at the Delaware Community Foundation~~, pursuant to subsections (b) and (c) of this section.

68 (b) An individual who claims an overpayment of taxes on an income tax return may designate that \$1.00 or more
69 be deducted from the refund that would otherwise be payable to the individual, and, instead, be paid to the Delaware
70 Ovarian Cancer Foundation ~~Fund at the Delaware Community Foundation~~. The Division of Revenue shall forward the
71 designated amounts to the Delaware Ovarian Cancer Foundation ~~Fund at the Delaware Community Foundation~~ who, in
72 turn, shall deposit them to the credit of the Delaware Ovarian Cancer Foundation ~~Fund~~ to be used for ovarian cancer
73 research, with emphasis on early detection, education, and awareness.

74 (c) An individual who has an income tax liability may, in addition to the liability, include a donation of \$1.00 or
75 more to be paid to the Delaware Ovarian Cancer Foundation ~~Fund at the Delaware Community Foundation~~. The Division
76 of Revenue shall forward the designated amounts to the Delaware Ovarian Cancer Foundation ~~Fund at the Delaware~~
77 ~~Community Foundation~~ who, in turn, shall deposit them to the credit of the Delaware Ovarian Cancer Foundation ~~Fund~~ to
78 be used for ovarian cancer research, with emphasis on early detection, education and awareness.

79 (d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule where an
80 individual may voluntarily designate a contribution of an amount of \$1.00 or more to the Delaware Ovarian Cancer
81 Foundation ~~Fund at the Delaware Community Foundation~~.

82 (e) An amount designated for the Delaware Ovarian Cancer Foundation ~~Fund at the Delaware Community~~
83 ~~Foundation~~ on the income tax return form must be deducted from the tax refund to which the individual is entitled, or an
84 amount designated may be added to the individual's payment of taxes due. In neither case may those amounts be included
85 in the general revenue of the State.

86 (f) From time to time as determined by the Delaware State Clearinghouse Committee, the custodians of the
87 Delaware Ovarian Cancer Foundation ~~Fund at the Delaware Community Foundation~~ shall submit a detailed report to
88 members of the Committee of revenues, expenditures, and program measures for the fiscal period in question. The report
89 must be descriptive in nature, as well as concise and informative. The Committee may cause any person employed by or
90 associated with the Delaware Ovarian Cancer Foundation ~~Fund at the Delaware Community Foundation~~ to appear before
91 the Committee and answer questions that the Committee may require.

92 Section 4. Amend § 1606, Title 30 of the Delaware Code by making deletions as shown by strike through and
93 insertions as shown by underline as follows:

94 § 1606 Withholding of income tax on sale or exchange of real estate by nonresident pass-through entities.

95 (b) Estimated tax return; alternative forms. — Every nonresident pass-through entity that sells or exchanges
96 Delaware real estate shall file with the Recorder for and on behalf of each of its nonresident members 1 of the following:

97 (1) A “Declaration of Estimated Income Tax” or a “Delaware Corporate Tentative Tax Return” for the quarter
98 in which the sale or exchange is settled, applying the highest marginal rate of each of its nonresident members under §
99 1102 or § 1902 of this title, as the case may be, to an estimate of the nonresident member's distributive share of the
100 gain recognized on the sale or exchange.

101 (2) An alternative form prepared by the Director to calculate income tax at the highest marginal rate under §
102 1102 or § 1902 of this title, applied to the nonresident member's distributive share of the difference between the total
103 amount realized by the transferor and the net balance due at the time of settlement of all recorded liens encumbering
104 the real estate.

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

109 (4) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange
110 of real estate is 1 of the following:

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

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

113 (5) An alternative form prepared by the Director to declare under penalties of perjury that the nonresident
114 pass-through entity that is selling or exchanging Delaware real estate is exempt from the requirements of subsection (d)
115 of this section and is not required to remit any tax due with the deed to the Recorder before the deed shall be recorded.

116 (c) Exemption. — (1) The Director will create an application process through which a nonresident pass-through
117 entity involved in the sale or exchange of an average of 5 or more residential homes or residential lots in Delaware per
118 quarter can apply for an exemption from the requirements of subsection (d) of this section.

119 (2) Subject to paragraph (c)(3) of this section, if an exemption is granted in accordance with paragraph (c)(1)
120 of this section, such nonresident pass-through entity will be exempt from the requirements of subsection (d) of this
121 section and will not be required to remit any tax due with the deed to the Recorder before the deed shall be recorded.

122 (3) If an exemption is granted in accordance with paragraph (c)(1) of this section and the Director
123 subsequently determines that such nonresident pass-through entity or any member of such nonresident pass-through
124 entity has failed to comply with its tax filing and payment obligations, the Director may revoke the exemption granted
125 to such nonresident pass-through entity in accordance with paragraph (c)(1) of this section by providing written notice
126 of such revocation to such nonresident pass-through entity.

127 (4) Within 60 days after the date of the mailing of a notice of revocation under paragraph (c)(3) of this
128 section, the nonresident pass-through entity may file with the Director a written protest challenging the proposed
129 revocation, in which the nonresident pass-through entity shall set forth the grounds upon which the protest is based. If
130 such protest is filed, the Director will reconsider the proposed revocation and, if requested, may grant the taxpayer or
131 the taxpayer's authorized representative an oral hearing.

132 (5) Except to the extent inconsistent with the specific provisions of this section, the provisions of Chapter 5 of
133 this title shall govern the review and appeal of such proposed revocation.

134 (d) Due date of estimated tax return, payment. — The return or form provided for in subsection (b) of this section,
135 and, unless the taxpayer is exempt as provided in subsection (c) of this section the estimated tax reported due on such return
136 or form, shall be remitted with the deed to the Recorder before the deed shall be recorded. Such payment shall be withheld
137 from the net proceeds of the sale. To the extent that the sale does not result in net proceeds being available for the payment
138 of the estimated tax, the Recorder may accept the form without payment, upon receipt of confirmation from the closing
139 attorney that no funds are available for payment of the tax and that no funds were distributed to the seller.

140 Section 5. Amend § 1903, Title 30 of the Delaware Code by making deletions as shown by strike through and
141 insertions as shown by underline as follows:

142 § 1903 Computation of taxable income.

143 (a) The “entire net income” of a corporation for any income year means the amount of its federal taxable income
144 for such year as computed for purposes of the federal income tax increased by:

145 (2) The amount of any deduction allowed for purposes of the federal income tax pursuant to § 164 of the
146 Internal Revenue Code (26 U.S.C. § 164) for taxes paid on, or according to or measured by, in whole or in part, such
147 corporation’s net income or profits, to any state (including this State), territory, county or political subdivision thereof,
148 or any tax paid in lieu of such income tax, and its federal taxable income shall be further adjusted by eliminating:

149 i. Any deduction for a net operating loss carryforward calculated in accordance with the provisions of the
150 Internal Revenue Code, provided however that the deduction may not exceed the amount claimed on the federal
151 return filed for the taxable year in which the taxpayer was included as a party.

152 Section 6. Amend § 1909(c), Title 30 of the Delaware Code by making deletions as shown by strike through and
153 insertions as shown by underline as follows:

154 § 1909 Withholding of income tax on sale or exchange of real estate by nonresident corporations.

155 (b) Estimated tax return; alternative forms. — Every nonresident corporation that sells or exchanges Delaware real
156 estate shall file with the Recorder 1 of the following:

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

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

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

166 (4) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange
167 of real estate is 1 of the following:

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

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

170 (c) Due date of estimated tax return; payment. — The return or form provided for in subsection (b) of this section,
171 and the estimated tax reported due on such return or form, shall be remitted with the deed to the Recorder before the deed

172 shall be recorded. Such payment shall be withheld from the net proceeds of the sale. To the extent that the sale does not
173 result in net proceeds being available for the payment of the estimated tax, the Recorder may accept the form without
174 payment, upon receipt of confirmation from the closing attorney that no funds are available for payment of the tax and that
175 no funds were distributed to the seller.

176 Section 7. Amend § 2102, Title 30 of the Delaware Code by making deletions as shown by strike through and
177 insertions as shown by underline as follows and by redesignating accordingly:

178 § 2102 Term of licenses.

179 ~~(e) Alignment of renewal periods. Persons electing an optional 3-year renewal must elect such option for all units~~
180 ~~and locations of each licensable activity.~~

181 Section 8. Amend § 2301, Title 30 of the Delaware Code by making deletions as shown by strike through and
182 insertions as shown by underline as follows:

183 § 2301. Occupations requiring licenses; definitions; fees; exemptions

184 (a) "Persons" as defined in § 2701 of this title engaged in the occupations listed and defined in this section shall
185 pay annual license taxes at the rates specified below. In addition to the license fee indicated below, each such person shall
186 pay a fee of \$25 for each additional branch or business location, except that a finance or small loan agency as defined in
187 this section shall pay the basic annual fee for each place of business.

188 (11) Mercantile agency or collection agency, \$75. "Mercantile agency" or "collection agency" includes every
189 person operating a business of investigation of financial ratings and credit and/or the collection of commercial or
190 consumer accounts for other persons, except attorneys-at-law having a license to practice such profession in this State.

191 Section 9. Amend § 5401, Title 30 of the Delaware Code by making deletions as shown by strike through and
192 insertions as shown by underline as follows:

193 § 5401. Definitions.

194 As used in this subchapter, except where the context clearly indicates a different meaning:

195 (1) "Document" means any deed, instrument or writing whereby any real estate within this State, or any
196 interest therein, shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, but shall not
197 include the following:

198 k. Any conveyance between a parent ~~corporation~~ entity and a wholly-owned subsidiary ~~corporation~~
199 entity; provided such conveyance is without actual consideration;

200 n. Any conveyance to or from a ~~corporation, or a partnership~~ an entity, where the grantor or grantee owns
201 ~~stock of the corporation or an interest in the partnership~~ an equity interest in the entity in the same proportion as

202 the grantor's or grantee's interest in, or ownership of, the real estate being conveyed; provided, however, that this
203 paragraph shall not apply to any distribution in liquidation or other conveyance resulting from the partial or
204 complete liquidation of ~~a corporation~~ an entity, unless the ~~stock of the corporation~~ equity interest of the entity
205 being liquidated has been held by the grantor or grantee for more than 3 years; ~~provided, further, this paragraph~~
206 ~~shall not apply to any conveyance from a partnership to its partners unless the partners' interest in the partnership~~
207 ~~has been held for more than 3 years;~~

208 Section 10. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,
209 the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given
210 effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

SYNOPSIS

Sections 1, 4, and 6 clarify that the funds to satisfy income tax withholding on a sale of real estate by a non-resident shall be derived from the net proceeds of the real estate sale and permit the filing of the deed if the closing attorney can establish that the non-resident seller did not receive any proceeds from the sale.

Section 2 allows the Division of Revenue to use its discretion to adjust the filing frequency of employers if the taxpayer can demonstrate that complying with the statute would result in a hardship. Section 2 also broadens the requirements for filing of information returns with the Delaware Division of Revenue to include any information return required to be filed with the Internal Revenue Service for payments of any type of remuneration made to Delaware resident individuals. This will provide the Division of Revenue with greater information about income received by Delaware residents to ensure that all taxable income is reported and taxed.

Section 3 corrects the recipient for donations to the Delaware Ovarian Cancer Foundation, which is now its own separate 501(c)(3) organization, allowing donations to be forwarded to them directly.

Section 5 codifies the long-standing practice of the Division of Revenue to limit Net Operating Loss deductions to those deductions that were claimed on a federal return. Because Delaware tax law starts with the income reported and deductions available at the federal level, any net operating loss that exceeds that claimed on a federal return is not permitted in the calculation of Delaware tax.

Section 7 eliminates the requirement that multiple business licenses for the same licensee be on the same licensing schedule, which will reduce the burden for both licensees and the Division of Revenue.

Section 8 clarifies the definition of "Mercantile agency or collection agency" to include those agencies involved in the collection of both commercial and consumer debt, which removes a potential ambiguity from existing language.

Section 9 provides that the sections of this act are severable in the event that one is determined to be invalid, and section 10 establishes the effective date of the legislation.