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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 125

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PASS-THROUGH ENTITIES,
ESTATES, AND TRUSTS.

1 WHEREAS, §1606, Title 30 of the Delaware Code requires the payment of all taxes due on the sale or exchange
2 of Delaware real estate by certain entities that are involved in the sale or exchange of Delaware real estate on a high volume
3 basis prior to the recording of the deed of sale; and

4 WHEREAS, payment of such taxes also involves the filing of certain documents with, and the processing of these
5 documents by, the Division of Revenue; and

6 WHEREAS, time and personnel efficiencies within the Division of Revenue are maximized by continuing the
7 current practice of high volume entities filing all such documents for processing by the Division of Revenue, and paying
8 taxes due with respect thereto, on a quarterly basis;

9 NOW, THEREFORE:

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

11 Section 1. Amend §1606, Title 30 of the Delaware Code by making deletions as shown by strike through and
12 insertions as shown by underline as follows and by redesignating accordingly:

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

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

19 (c) Exemption. —

20 (1) The Director will create an application process through which a nonresident pass-through entity
21 involved in the sale or exchange of an average of five (5) or more residential homes or residential lots in Delaware
22 per quarter can apply for an exemption from the requirements of subsection (d).

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

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

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

37 (5) Except to the extent inconsistent with the specific provisions of this section, the provisions of Chapter
38 5 of Title 30 shall govern the review and appeal of such proposed revocation.

39 ~~(e)~~ (d) *Due date of estimated tax return, payment.* — The return or form provided for in subsection (b) of this
40 section, and, unless the taxpayer is exempt as provided in subsection (c) of this section, the estimated tax reported due shall
41 be remitted with the deed to the Recorder before the deed shall be recorded.

SYNOPSIS

Currently, non-resident pass-through entities, trusts, and estates are required to pay estimated income taxes anticipated to be due as a result of real estate transactions before each deed is recorded. The payment of estimated income taxes before each deed is recorded has become a burden on entities that transfer multiple parcels and on the Division of Revenue. In order to maximize time and improve personnel efficiencies within the Division of Revenue, this Act provides the Director with the ability to exempt nonresident pass-through entities involved in the sale or exchange of Delaware real estate from the requirement of remitting estimated income taxes due with each deed to the Recorder before the deed is recorded. This act only allows the Director to grant exemptions as to the timing of the payment of estimated income taxes; it does not allow the Director to grant exemptions from paying income taxes.

Author: Senator Hansen