



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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. 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.

(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 1 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.

(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.

(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 1 of the following:

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:

§ 1903 Computation of taxable income.

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

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

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

Section 6. Amend § 1909(c), 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.

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

(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.

(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 1 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.

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

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

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

§ 2102 Term of licenses.

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

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

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

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

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

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

§ 5401. Definitions.

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

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

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

n. Any conveyance to or from ~~a corporation, or a partnership~~ an entity, where the grantor or grantee owns ~~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.