

P.L. 2004, c.55
Approved June 29, 2004

ASSEMBLY, No. 3128

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED JUNE 21, 2004

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Requires the payment of estimated gross income tax on sales of real property in this State by nonresidents.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the payment of estimated gross income tax on certain gains of nonresidents on sales of real property, supplementing Title 54A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in P.L.2004, c. (C.) (now pending before the Legislature as this bill):

"Administrative costs" means an amount equal to \$10.00 per estimated gross income tax form filed with a county recording officer, which may be retained by the county treasurer from the estimated gross income tax payment accompanying such form to provide the resources necessary to offset the additional direct expenditures incurred by the county recording officer and the county treasurer for the implementation of their responsibilities under P.L.2004, c. (C.) (now pending before the Legislature as this bill);

"County recording officer" means the register of deeds and mortgages in counties having such an officer and the county clerk in the other counties;

"Date of sale or transfer" means the date the deed affecting the conveyance is delivered by the seller or transferor to the transferee;

"Gain" on the sale or transfer of real property means the amount determined pursuant to section 1001 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1001, as that section applies to the sale or transfer of real property;

"Nonresident taxpayer" means:

a. an individual who qualifies as a nonresident taxpayer as defined in subsection (n) of N.J.S.54A:1-2, and an estate or trust that qualifies as a nonresident estate or trust as defined in subsection (p) of N.J.S.54A:1-2; or

b. An individual who is not domiciled in New Jersey but who may be considered a resident of New Jersey for tax purposes under paragraph (2) of subsection m. of N.J.S.54A:1-2 at the end of a taxable year, by virtue of maintaining a permanent place of abode in New Jersey for substantially all of the taxable year and by spending in aggregate more than 183 days of the taxable year in New Jersey, unless the individual has already qualified as a resident on the date of sale or transfer of real property;

“Sale or transfer of real property” means the change of ownership of a fee simple interest in real property by any method; and

“Seller or transferor” means the individual, estate or trust making the sale or transfer of a fee simple interest in real property.

2. a. A nonresident taxpayer shall estimate and pay the gross income tax liability on the gain, if any, upon the sale or transfer of real property within this State. A nonresident taxpayer shall estimate the gross income tax due on a form prescribed by the director, using an estimated tax rate that is equal to the highest rate of tax for the taxable year provided in N.J.S.54A:2-1. The estimated tax due shall equal the gain, if any, multiplied by that rate. The amount of gain used in the computation shall equal the amount of gain reportable for federal income tax purposes for the taxable year, but may not be less than 2% of the consideration for the sale or transfer stated in the deed affecting the conveyance.

b. If the real property sold or transferred is located partly with and partly without this State, the nonresident taxpayer shall estimate the tax due using only the portion of the gain reasonably attributable to the portion of the real property located within this State.

c. If the nonresident is an estate or trust, the taxpayer shall estimate the tax due based upon the gain, if any, computed without reduction for any distribution of income to the beneficiaries during the taxable year in which the sale or transfer occurred.

3. a. A nonresident taxpayer shall file the estimated tax form with the county recording officer, along with the payment of any estimated tax due, at the time the deed is filed with the county recording officer for recording using the procedures prescribed in such form and accompanying instructions as the director shall prescribe. The nonresident taxpayer shall make that estimated tax payment payable to the Department of the Treasury for the estimated tax which payment shall be separate from any other payment required to be made by the seller or transferor pursuant to law. Except for a nonresident taxpayer who meets one of the exemptions provided in subsection b. of this section, a nonresident taxpayer who is a seller or transferor of real property within this State shall file the estimated tax form, whether or not they have a gain on the sale or transfer.

b. The requirements of this section shall not apply if:

(1) the real property being sold or transferred is used exclusively as the principal residence of the seller or transferor within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.121;

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

c. The principal residence exemption set forth in paragraph (1) of subsection b. of this section, shall apply only if the property sold or transferred was used exclusively as the principal residence of the seller or transferor. If the real property sold or transferred includes both the principal residence and other real property, the taxpayer shall file and pay the estimated tax due based upon the gain on the other real property.

d. A county recording officer shall not record or accept for recording any deed for the sale or transfer of real property subject to P.L.2004, c. (C.) (now pending before the Legislature as this bill), unless accompanied by a form prescribed by the director pursuant to subsection a. of this section and the payment of any estimated tax shown as payable on such form, or unless such form includes a certification by the seller or transferor on the deed who is an individual, estate or trust that this section is not applicable to the sale or transfer. The method for the certification under this subsection shall be set forth in forms and instructions as shall be prescribed by the director.

e. A county recording officer shall act as an agent of the director for purposes of collecting the estimated gross income tax, if any, shown to be payable upon the form prescribed pursuant to subsection a. of this section. The director, by regulation, shall prescribe one or more methods for the county recording officer's collection of such estimated tax. Every county recording officer shall account for and remit to the county treasurer any funds collected and any returns filed with such county recording officer and the county treasurer shall remit those returns and those funds, net of administrative costs, to the director on such days as the director shall set by regulation consistent with the administration of the provisions of P.L.1968, c.49(C.46:15-5 et seq.) as amended and supplemented. Every county recording officer also shall follow such procedures and keep such records in respect to the implementation of this section as the director may prescribe.

f. A county recording officer shall not be liable under this section for any inaccuracy in any statement on the form prescribed pursuant to subsection a. of this section or in the amount of estimated gross income tax a county recording officer shall collect under this section so long the county recording officer shall collect the estimated gross income tax shown as payable on such form.

g. If a deed is recorded notwithstanding an omission or inaccuracy in the form prescribed pursuant to subsection a. of this section or in any certification by the transferor on such form or a deficiency in the payment of estimated gross income tax required by this section, the recording of such deed shall not be invalidated by reason of such omission, inaccuracy, erroneous certification or deficiency nor shall the title founded on such deed be impaired thereby.

h. If there has been an overpayment of tax required to be paid through the estimated tax payments made with the filing of the deed, the overpayment of tax may be refunded prior to the filing of a gross income tax return under such requirements and in a manner as the director shall prescribe, but no interest shall be allowed or paid on such overpayment.

4. This act shall take effect August 1, 2004.

STATEMENT

This bill establishes a new requirement for nonresident taxpayers to pay estimated New Jersey gross income tax on gain on New Jersey real estate transactions. Generally, New Jersey gross income tax is due on any transaction if the gain is recognized for federal income tax purposes and nonresidents must pay New Jersey gross income tax on New Jersey source income. New Jersey source income for nonresident taxpayers includes income from any interest in real or tangible personal property owned or disposed of in this State pursuant to N.J.S.54A:5-8.

Effective for sales or transfers of real property occurring on and after August 1, 2004, nonresident individuals, estates and trusts who sell or transfer certain real property located within New Jersey

will be required to pay estimated gross income tax to the Division of Taxation. The amount of the estimated gross income tax is determined by multiplying the amount of the gain, if any, for federal income tax purposes from the sale or transfer of the real property by the highest applicable rate of New Jersey gross income tax in effect for the taxable year. The estimated tax payment must not be less than 2% of the consideration for the sale or transfer stated in the deed affecting the conveyance.

A nonresident transferor is exempt from the payment of estimated gross income tax on the transfer of real property if:

(1) the real property being sold or transferred is used exclusively as the principal residence of the seller or transferor within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.121;

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

Nonresident transferors may take credit on their personal income tax returns for the estimated tax paid. If the estimated tax paid exceeds the nonresident transferor's actual tax liability for the year, a refund will be issued. Estimated tax payments made with the filing of the deed may be refunded prior to the filing of a gross income tax return in circumstances and in a manner as the Director of the Division of Taxation shall prescribe.

The county recording officers in each county will be the agent of the Director of the Division of Taxation for the filing of the estimated tax form and the collection of the payment. No deed covering applicable sales will be recorded unless accompanied by an estimated tax form and the payment of any estimated tax, or unless such form includes a certification by the seller or transferor on the deed that the estimated tax requirement is not applicable to the sale or transfer. The county treasurers are permitted to retain \$10.00 per tax filing to offset the additional direct expenditures as may be incurred by the county recording officer and the county treasurer for the implementation of their responsibilities under this bill.