

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 10 – PERSONAL INCOME TAX

PART 1 – Withholding Tax on the Sale of Real Property by Nonresidents

1.1 Purpose

The purpose of this Part is to implement R.I. Gen. Laws § 44-30-71.3 which provides for withholding of income tax on the sale of real estate by nonresidents.

1.2 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 44-1-4 and 44-30-95. The rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws §§ 42-35-1 *et seq.* of the Rhode Island Administrative Procedures Act.

1.3 Application

These rules and regulation shall be liberally construed so as to permit the Division of Taxation the authority to effectuate the purpose of R.I. Gen. Title 44 and other applicable state laws and regulations.

1.4 Severability

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be impaired or affected thereby.

1.5 Definitions

- A. “Nonresident corporation” means, for purposes of this regulation, a corporation that is neither incorporated in this state nor authorized by the Secretary of State,

Board of Bank Incorporation or Insurance Division of the Department of Business Regulation to do business in this state.

- B. "Nonresident individual" means an individual who does not meet the definition of "resident individual" under R.I. Gen. Laws § 44-30-5. That section defines "resident individual" as one who is domiciled in this state or as one who is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty three (183) days of the taxable year, unless the individual is in the Armed Forces of the United States. If up to and including the closing date of sale an individual is a resident of this state but intends to move to another state immediately after the closing, that individual shall be deemed a resident individual for purposes of R.I. Gen. Laws § 44-30-71.3 only.
- C. "Nonresident partnership" means a partnership in which any one of its partners is a nonresident individual, estate, trust or corporation.
- D. "Nonresident estate or trust" shall be determined in accordance with the provisions of R.I. Gen. Laws § 44-30-5.
- E. "Total amount paid" means the net proceeds of the sale actually paid to the nonresident seller including the fair market value of any property transferred to the seller.
- F. "Net proceeds" means the amount actually paid to the seller at the closing, i.e., the total sales price less mortgages, liens and selling expenses such as real estate commissions, attorney's fees, real estate conveyance tax stamps and termite, heating, radon, or other inspection fees required of the seller. Only mortgages and liens on the property being sold may be deducted from the sales price.
- G. "Gain" means, in general, the excess of sales price over the seller's cost or other basis as determined in accordance with the Internal Revenue Code sections and applicable Rhode Island tax law and pertaining to the seller and to the seller's tax year in which the sale occurs.
- H. "Gain method" means that special method by which withholding is made for a nonresident seller when the nonresident seller has not only filed an election with the Division of Taxation (Form RI 71.3 Election) to have withholding based on gain but also has received a Certificate of Withholding Due (Form RI 71.3

Certificate) from the Division of Taxation for presentation at the closing. Refer to the Compliance provisions below.

- I. "Tax-exempt organization" means the seller is exempt from taxation by Rhode Island charter or by specific authorization as a tax-exempt organization under Internal Revenue Code section 501(c). Nonresident organizations holding IRC 501(c) status but which have unrelated business income tax due for this transaction, are subject to the provisions of R.I. Gen. Laws § 44-30-71.3.

1.6 GENERAL

- A. Effective January 1, 1992, when Rhode Island realty and associated tangible personality is sold by a nonresident, the buyer must deduct and withhold six percent (6%) of the total amount paid or gain to the seller if the seller is a nonresident individual, estate, partnership or trust and seven percent (7%) of the total amount paid or gain if the seller is a nonresident corporation. The buyer then must pay the amount withheld to the Division of Taxation within three (3) banking days after the date closing.
- B. Every buyer subject to these provisions is liable for the amount withheld or required to be withheld and the amount shall, until paid, constitute a lien on the property. Said lien shall be subordinate to any mortgage of any lender other than the seller granted in connection with the purchase of the property. Filing and paying the amount of withholding due will automatically discharge the lien under R.I. Gen. Laws § 44-30-71.3.

1.7 Compliance

- A. Residency affidavit: The buyer may rely on the seller's determination of residency only if the seller furnishes the buyer with a notarized seller's residency affidavit under penalties of perjury. A recitation of the seller's residency may be contained on the deed. If a deed contains a recitation of residency by the seller, the recording of such deed shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c).
 1. If a buyer has actual knowledge that a seller's residency affidavit is false and the buyer fails to withhold the prescribed amount, the buyer is liable for an amount equal to the amount which should have been withheld, together with penalty and interest and a lien shall arise upon the recording

of a notice of lien by the Division of Taxation. Provided, however, notice of lien may only be filed if title to said property remains in the name of the buyer.

2. If, upon examination of title during a subsequent sale of the property, a recital of residency is not found in the deed and the affidavit of residency cannot be obtained from the prior seller, the prospective buyer or examining attorney may petition the tax administrator for a discharge of the lien based upon other indicia of residency or no tax due.
- B. Nonresident corporation: If the seller is a nonresident corporation, the buyer is deemed to be in compliance with remittance requirements if the seller provides the buyer with a letter of good standing issued by the Tax Administrator for the purposes of the sale. If a letter of good standing was provided the buyer should complete the remittance form, indicate the appropriate information on the form and return the form to the Division of Taxation even though no tax is withheld.
- C. Pass-through entity: In the case of a pass-through entity-seller, the buyer may rely on each seller member's determination of residency only if each seller-member furnishes the buyer with a notarized seller's residency affidavit under penalties of perjury. For each nonresident member, the buyer must withhold and remit for each such member based on the member's share. It is assumed that the members share equally unless otherwise specifically provided. The nonresident pass-through entity-seller must furnish the buyer with the names, addresses and Social Security or Federal employer identification numbers for each nonresident member. In the event that all the members are residents, a single seller's residency affidavit may be filed using the special area provided on that form.
- D. Compliance using "gain" method: The buyer must withhold for the nonresident seller using the net proceeds unless, at the closing, the seller provides a Certificate of Withholding Due (Form RI 71.3 Certificate) at the closing. This certificate allows the buyer to withhold based on the nonresident seller's election of the gain method.
1. In order to use the gain method, the nonresident seller must first make the election by completing RI Form 71.3 Election and submit the completed form to the Division of Taxation for review at least twenty (20) days prior to

the closing date. An approved Certificate of Withholding Due shall be sent to the seller or designee.

2. Election of gain method is binding upon seller. Failure to make the election at least twenty (20) days prior to the closing will result in withholding based on net proceeds. In the event of multiple sellers, all sellers must agree and elect the gain method or the net proceeds will be used for remittance.
 3. Election of gain method allows the seller to recognize all the gain in the year of the sale or to allow the seller to recognize the gain on the installment method. Recognition of gain under either method may only be elected by the seller if, for the same transaction and tax year, the seller will be recognizing the gain by the same method for Federal tax purposes.
- E. Remittance limited to net proceeds: If the withholding due under the gain method approved by the Division of Taxation on the Certificate of Withholding Due is more than the net proceeds payable to the seller, the buyer need only remit the net proceeds to the Division of Taxation.
- F. Information to be submitted for installment sales method of gain election: If the seller elects the installment sale method for R.I. Gen. Laws § 44-71.3 withholding, the installment sale method must also be the method used by the seller for gain recognition for Federal tax purposes. The information which must be supplied as part of the form RI 71-3 Election for the installment sales method must be supplied under penalties of perjury by the seller, the seller's certified public accountant, licensed public accountant or attorney and must include the following:
1. Name, address and number (FEI # or SS#) of each seller; and
 2. Description of the property involved (including street address, city/town and plat and lot numbers); and
 3. Calculation of gain for the property including the gross sales price of the real estate and related personal property, expenses of sale, the net sales price, the seller's cost or other basis and the resultant gain; and
 4. A statement that the seller will be recognizing the gain from the sale of the stated property on the installment method for Federal tax purposes; and

5. An amortization schedule for the term of the installment sale itemizing the amount and timing of each installment payment (monthly, quarterly, etc.), the interest rate (if financed), the term of the installment sale, and the amount of each payment which represents interest (if any), return of basis and gain; and
 6. A calculation of the amount of gain which will not be recognized by the seller for the year of the sale to be entered on Line 6 of the RI 71.3 Election form.
 7. Withholding using the installment method must be calculated to include the gain portions of all installments payments to be received for the year of the sale as well as the gain portion of the payment received at the closing.
 8. By election of the installment method the seller agrees to make such estimated payments and to file all appropriate Rhode Island tax returns for years following the year of sale during which any installment payments from this transaction are received.
- G. Compliance for special cases: In the event that the sale of the property by a nonresident will not be subject to tax under Sections 121 (Sale of Principal Residence); 721 (Tax Free Exchanges - Partnership Interest); 1031 (Like Kind Exchanges); 1033 (Involuntary Conversions), or 408 (Individual Retirement Account) of the Internal Revenue Code, the nonresident seller must make the gain election and file the RI Form 71.3 Election even though no withholding need be made. If the seller later fails to comply with the above sections of the Internal Revenue Code, the seller acknowledges obligation to file an original or amended Rhode Island tax return for the year of the sale.
- H. Zero withholding: A nonresident real estate withholding remittance form (RI 71.3 Remittance) must be completed for the nonresident and sent to the Division even though the results of the withholding calculation are that no withholding is to be made for the nonresident seller.

1.8 Multiple Sellers

- A. No matter how the sellers hold their interests in the property, if there is more than one name on the deed, there are multiple sellers. Thus, forms of ownership such

as tenancy by the entirety; tenancy in common and joint tenancy all indicate multiple sellers.

- B. The buyer must either obtain seller's residency affidavits from each of the multiple sellers, or for each nonresident seller, withhold and remit for each nonresident seller separately. If sellers are married and will file a joint RI income tax return, they should so indicate on Form RI 71.3 Remittance and Form RI 71.3 Election.
- C. Unless otherwise provided, it is assumed that each of the multiple sellers share equally in the net proceeds for the purposes of calculating amounts to be withheld.
- D. A pass-through entity must comply and either obtain seller's residency affidavits from each member or, for each nonresident member, withhold and remit for such nonresident member based on the member's share. It is assumed that the members share equally unless otherwise specifically provided.

1.9 Computation

- A. General: In accordance with the above, the buyer must deduct and withhold six percent (6%) of the net proceeds or gain to the seller if the seller is a nonresident individual, estate, partnership or trust and seven percent (7%) of the net proceeds or gain if the seller is a nonresident corporation. If there are multiple sellers, the buyer must compute and withhold for each seller separately.
- B. EXAMPLES:
 - 1. Net Proceeds Method:
 - a. Joseph Smith and Andrew David (both nonresidents) are selling a summer house in Rhode Island for \$175,000, the proceeds to be shared equally, and they have not elected withholding based on gain. At the closing, cash at settlement to the nonresident sellers is \$170,000 and the buyer withholds six percent (6%) or \$10,200. The buyer then remits to the Division of Taxation using form RI-71.3 Remittance. Since there are multiple sellers, the buyer attaches a schedule listing both nonresidents' names, addresses and social security numbers so that the nonresidents may take proper credit

for the amounts withheld when they file their Rhode Island personal income tax returns for the year of the sale.

- b. In the example above, if Joseph was a resident and gave a residency affidavit to the buyer at the closing, the buyer would only withhold and remit \$5,100 to the Division of Taxation calculated as $1/2 \times \$170,000$ or $\$85,000 @ 6\% = \$5,100$.

2. Gain Method:

- a. Martha Martinez (a nonresident) is selling property in Rhode Island and, 20 days before the closing, elects the gain method of withholding by computing the RI 71.3 Election form and sending it to the Division of Taxation. The form, when reviewed by the Division of Taxation lists the following:

Sales Price	\$ 200,000
Less Expenses of Sale	\$ 21,000
Net Sales Price	\$ 179,000
Less Cost/Basis	\$ 71,000
GAIN	\$ 108,000

- b. Since all of the gain is being taxed in the year of the sale for Federal purposes, the withholding indicated was $6\% \times \$108,000 = \$6,480$. The Division reviewed the Election, indicated the \$6,480 as the amount to be withheld on the RI 71.3 Certificate and returned the certificate to Martha. At the closing, the certificate was presented, \$6,480 was withheld and remitted by the buyer using the form RI 71.3 Remittance. The original copy of the approved certificate of withholding due (RI 71.3 certificate) should be attached to the form RI 71.3 Remittance when filed.
- c. If the property Martha was selling was her residence and if she otherwise qualified and intends to treat the sale under Section 121 of the Internal Revenue Code, she would still have to file the

election form 20 days before the closing but would complete the election form and use the special types of transactions area on the back. The Division would review the election and, when approved, would send a certificate of withholding due (RI 71.3 certificate) indicating \$0 to be withheld at the closing.

3. Installment sales method:

- a. High Ridge Properties is a nonresident partnership selling property in Rhode Island. More than twenty (20) days prior to the closing the partnership elects to have the withholding based on gain by completing the RI 71.3 Election form. Additionally, the partnership will be treating the gain from the sale on the installment method for Federal purposes and, therefore, the partnership prepared and furnished a complete installment sale schedule with the Election form. The installment sale schedule showed total gain of \$42,000 that 12% of each principal payment in Rhode Island received from the buyer was the gain to be recognized that High Ridge expects to receive \$20,000 at the closing and that two (2) payments are to be received in the year of sale. In these two (2) payments, the principal portions total \$1,000. The installment sale schedule's calculation then indicated the amount of gain to be recognized in the year of sale to be:

- (1) Gain Percentage = 12%

Principal Payment Received during year of sale = \$21,000.

Gain to be recognized during year of sale = $\$21,000 \times 12\% = \$2,520$.

The amount of non-recognized gain to be entered on Line 6
= $\$42,000 - \$2,520 = \$39,480$

Thus, the amount to be withheld is $6\% \times \$2,520 = \151.20 .

- (2) High Ridge also sends a calculation of how much withholding is to be made for each nonresident partner. After review, the Division of Taxation returns an approved certificate of withholding due (RI 71.3 Certificate) to the

seller for use at the closing. The buyer uses the certificate to complete the remittance form (RI 71.3 Remittance) and sends the remittance, the approved original of the Certificate of Withholding Due, the check and, since High Ridge is a partnership, a list of High Ridge's nonresident partners' names, addresses, social security or Federal employer identification numbers and withholding so that the partners may take appropriate credit when they file their Rhode Island tax returns.

- b. If all the partners/members/shareholder of an entity do not agree to the election of the gain method, the net proceeds method would be used.
- c. If the amount to be withheld under the gain/installment sale method is more than the cash settlement at the closing, the remittance is limited to the cash settlement at the closing.

1.10 Payment

- A. The buyer must remit amounts withheld from the seller or sellers within three (3) banking days after the date closing.
- B. The buyer must remit to the Rhode Island Division of Taxation using the RI 71.3 Remittance Form.
- C. In the event of nonpayment or late payment, interest will be computed in accordance with R.I. Gen. Laws § 44-1-7 and added to the amount due.
- D. Filing and paying the amount of withholding due will automatically discharge the lien under R.I. Gen. Laws § 44-30-71.3. For an acknowledgement of the lien discharge, the buyer should complete the reverse side of the remittance form and provide a pre-addressed envelope. The Division of Taxation will acknowledge the lien discharge and send it to the buyer or designee.

1.11 Liability

- A. Every buyer subject to withholding is liable for the amounts withheld or required to be withheld. If there is more than one buyer's name on the deed, the buyers are jointly and severally liable for compliance and remittance.

- B. If a seller gives the buyer a fraudulent residency affidavit taken in good faith by the buyer the seller remains liable for any tax due resulting from the sale of the property.
- C. The closing attorney, lending institution, and real estate agent/broker in a transaction governed by R.I. Gen. Laws § 44-30-71.3 and these regulations is not subject to the withholding and payment provisions.

1.12 Document submission and Retention

- A. Seller's residency affidavit: The buyer should retain the original affidavit with the other records pertaining to the closing and must produce it for the Division of Taxation, if requested. One copy of the affidavit should be given to the seller. The buyer should not send the affidavit to the Division of Taxation. If there are multiple sellers, there should be one affidavit and copies for each nonresident seller.
- B. Election to have withholding based on gain: The seller makes this election by completing one RI Form 71-3 Election and submitting the completed form (and any attachments) to the Division of Taxation at least twenty (20) days prior to the closing date. The seller should retain a copy of the election for matching with Certificate of Withholding Due which will be returned by the Division of Taxation.
- C. Installment sale schedule: The information which must be supplied as part of the Form RI 71.3 Election for the installment sale method must be supplied under penalties of perjury by the seller, the seller's certified public accountant, licensed public accountant or attorney and must include all the information contained in § 1.7 (F) of this Part
- D. Certificate of withholding due: The Division of Taxation shall review the election (Form RI 71.3 Election) and send the approved Certificate of Withholding Due (Form RI 71.3 Certificate) to the seller or designee. The seller must present the certificate to the buyer at the closing and the buyer, using the certificate, completes the remittance form and attaches the original certificate for submission to the Division of Taxation. The buyer and seller should each retain one copy of the certificate with the documents of the sale.
- E. Real estate withholding remittance: The buyer should retain one copy of the remittance form with the other records pertaining to the closing, one copy of the

remittance form should be given to the seller and the original is sent to the Rhode Island Division of Taxation with the payment indicated. If the remittance is being made for multiple nonresident sellers, a schedule must be attached giving the names, addresses, Federal employer identification numbers (FEI #) or social security numbers (SS#) and the amount being withheld attributable to each nonresident seller. Copies of the remittance form and supplemental schedule should be provided for each nonresident seller in order that appropriate credit can be taken on the nonresident seller's tax return.

1.13 Sales/Transfers of Property by Exempt Organizations

- A. Sales/transfers of property by organizations which are exempt from taxation under provisions of the Internal Revenue Code, or by their charter, are exempt from the withholding provisions of R.I. Gen. Laws § 44-30-71.3. The buyer may rely on the seller's determination of exempt status only if seller furnishes the buyer with a notarized Affidavit of Exempt Seller (NRWXMPT) signed under penalties of perjury. If a deed contains a recitation of exempt status by the seller, the recording of such deed shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c).
- B. Provided, however, that when property is sold/transferred by the following named organizations only, no Affidavit of Exempt Seller need be executed nor is a recital of exempt status required in the deed so long as said exempted entities are fully identified in the granting clause of the deed in question. Such entities include:
 - 1. The Federal Deposit Insurance Corporation
 - 2. The Resolution Trust Corporation
 - 3. Rhode Island Housing and Mortgage Finance Corporation
 - 4. Board of Governors of the Federal Reserve System
 - 5. Federal Reserve Bank
 - 6. Federal Home Loan Bank
 - 7. Comptroller of the Currency
 - 8. The Office of Thrift Supervision

9. The National Credit Union Administration Board
10. The Farm Credit Administration
11. The Farm Credit System Insurance Corporation
12. The Small Business Administration
13. The Federal National Mortgage Association
14. The Federal Home Loan Mortgage Corporation
15. The Government National Mortgage Association

1.14 Gifts

- A. Bona fide gifts of property (e.g. transfers where there is no consideration and no gain attributed to the transferor) do not fall within the purview of R.I. Gen. Laws § 44-30-71.3 and therefore no withholding is required. In transfers by way of gifts the transferor may combine language in the deed stating that no documentary stamps are required with language stating that this transfer is by way of gift and no withholding is required under R.I. Gen. Laws § 44-30-71.3.
 1. **EXAMPLE:** Transfer is by gift so that no documentary stamps are required and no withholding is required under R.I. Gen. Laws § 44-30-71.3. If a deed contains a recitation of gift by the seller, the recording of such deed shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c).

1.15 Intercompany Transfers/Transfers among Affiliated Companies

Intercompany transfers or transfers among affiliated companies which do not entail consideration and in which no gain is recognized by the transferor or transferee are not sales and as such do not fall within the purview of R.I. Gen. Laws § 44-30-71.3. In such transfers the transferor may combine language in the deed stating that no documentary stamps are required with language that this intercompany transfer or transfer among affiliated companies is such that no withholding is required under R.I. Gen. Laws § 44-30-71.3. If a deed contains such a recital, the recording of such deed shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c).

1.16 Sales/Transfers by Banks and Insurance Companies

- A. State banks, mutual savings banks, federal savings banks, trust companies, national banking associations, building and loan associations and credit unions, whether or not such entities are chartered in, or have a place of business in Rhode Island and loan and investment companies organized under R.I. Gen. Laws Chapter 19-20 are not subject to the tax imposed on corporations under R.I. Gen. Laws Chapter 44-11. Insurance companies are likewise exempt from tax imposed on corporations under R.I. Gen. Laws Chapter 44-11. Therefore, those specific types of lending institutions and insurance companies are not subject to the withholding provisions of R.I. Gen. Laws § 44-30-71.3 when they sell real estate that they own. Any description in the granting clause of the deed which sufficiently identifies those entities as one of the entities mentioned herein is sufficient to discharge any lien imposed pursuant to R.I. Gen. Laws § 44-30-71.3.
- B. Exception – Bank Foreclosure/deeds in Lieu of Foreclosure
 - 1. The purchaser at a foreclosure sale under power of sale takes, not as grantee of the mortgagee, but as a grantee of the mortgagor. Therefore, when a bank forecloses on a defaulting nonresident mortgagor and a third party purchases at the foreclosure sale for an amount in excess of the sums legally due on the mortgage, the purchaser must withhold six (6) percent (or seven (7) percent if the mortgagor is a corporation) of the net proceeds resulting from the sale. (Where there are net proceeds and junior lienholders, see § 1.7 of this Part.) Provided, however, no withholding is required if there are no net proceeds disbursed to the mortgagor as a result of the foreclosure or deed given in lieu of foreclosure. In those instances the foreclosure deed or deed in lieu of foreclosure may contain a recital that the transfer of the property was the subject of foreclosure and there were no net proceeds subject to the withholding provisions of R.I. Gen. Laws § 44-30-71.3. The recording of such deed shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c).

1.17 Receivership/Bankruptcy

In a sale by a court appointed receiver or trustee in bankruptcy where all the proceeds of the sale are placed in the receivership estate or bankruptcy estate

and where no proceeds are given to the nonresident debtor, no withholding is required. A recital in the deed that the sale is by a receiver or trustee in bankruptcy shall be sufficient to discharge any lien under R.I. Gen. Laws § 44-30-71.3(c).

1.18 Bills of Interpleader

Where there is a foreclosure sale on property of a defaulting nonresident mortgagor and the mortgagee has proceeds in excess of its mortgage and there are junior lienholders, the buyer is not required to withhold on the net proceeds if the mortgagee intends to file a bill of interpleader naming the Division of Taxation as a party thereto. Receipt of the Bill of Interpleader complaint naming the Division of Taxation as a party therein shall be sufficient to grant the buyer a discharge of the lien imposed under R.I. Gen. Laws § 44-30-71.3(c). Provided however, where the net proceeds accruing to the junior lienholders are of such a nominal amount that the filing of a bill of interpleader is not practicable and the mortgagee turns over said nominal sum to the second mortgagee and obtains a release and indemnification agreement from the second mortgagee, no withholding is required. In that instance the foreclosure deed or deed in lieu of foreclosure may contain a recital that the transfer of the property was subject to foreclosure and there were no net proceeds subject to withholding under R.I. Gen. Laws § 44-30-71.3. The recording of such deed shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c).

1.19 Name on Deed for Convenience Purpose

Where an individual claims that his/her name is on a deed merely for convenience and will not share in any way with the proceeds from a sale, that person may file an affidavit to that fact under penalties of perjury. That affidavit must contain a statement as to who is the true owner of the property in question; why the affiant's name appears on the deed; and the name and social security number of the person(s) who will be responsible for claiming any gain from the sale of the property. A copy of said affidavit must be filed with the Division of Taxation and a copy should be given to the buyer. A recital in the deed that the Grantor "_____'s" name was on the deed for convenience purposes only and that an affidavit to that effect has been filed with the Division of Taxation shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c).

1.20 Transfers of Property Incident to Divorce

Generally, no gain or loss is recognized on a transfer of property from an individual to (or in a trust for the benefit of) a spouse, or a former spouse if incident to a divorce. Any transfer of property to a spouse or former spouse on which gain or loss is not recognized is treated by the transferee as acquired by gift and is not considered as a sale or exchange. In that instance, no withholding is required. See § 1.14 of this Part "Gifts." A recital in the deed that the property was transferred incident to divorce or by way of gift shall in all instances discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3(c). A transfer of property is incident to a divorce if the transfer occurs within one year after the date on which the marriage ends, or if the transfer is related to the ending of the marriage.

1.21 Relocation Company Sales

- A. In the ordinary course a relocation company does not take legal title to real property but merely acts as a conduit to transfer title pursuant to a contract with the employer of the seller of the property. This regulation pertains to situations in which the relocation company does not take legal title. If a relocation company takes title from the grantor the general rules for nonresident withholding apply.
- B. If the sales price on real and associated tangible property is paid or advanced to an employee by a relocation company, withholding will be required as follows:
 - 1. If the employee(s)/grantor(s) is a resident of this state at the time he/she signs the deed in blank, the relocation company may take a residency affidavit from the employee(s) and no withholding is required from that transaction. A recitation of residency of the grantor(s) may be inserted in the deed stating that no withholding is required under R.I. Gen. Laws § 44-30-71.3, since the grantor(s) was a resident of the state at the time he/she signed the deed.
 - 2. The buyer(s) of the property who receives the deed through the relocation company must receive before or simultaneously with the delivery of the deed an affidavit from the relocation company of its intention to file a Notice of Sale with the Division of Taxation. Said buyer(s) of the property who receive the deed through the relocation company and all subsequent buyers may rely upon the recitation of residency in the deed by the

employee(s)/grantor(s) and the recording of the deed containing such recital, shall in all instances, discharge the lien imposed by R.I. Gen. Laws § 44-30-71.3 (c).

3. In every transaction in which a relocation company holds a deed executed by the grantor(s) in blank, the relocation company shall file a notice of sale with the division of taxation within five (5) working days of the transfer of title to the buyer. That notice shall include the name and FEIN of the relocation company; the name and FEI Number of the company which contracted its services; the names and addresses of the buyer(s) and seller(s) and location of the property sold; the sales price paid to the grantor(s) by the relocation company or employer and the sales price of the property at the time title passes. The relocation company must present the buyer with an affidavit of intent to file a notice of sale with the Division of Taxation.

- C. If the employee/grantor is not a resident of this state at the time the deed is executed in blank, the relocation company must follow the withholding rules relating to nonresidents. Upon the filing of Form 71.3 Remittance with the remittance of the proper amount due thereunder and submitting a completed acknowledgement of discharge form with the grantee(s) name left blank, the acknowledgement of discharge will be issued to the relocation company with the grantee's name left blank. Upon the subsequent transfer of title the relocation company may insert the name of the grantee on the discharge and give the acknowledgement of discharge to the grantee for recording.

1.22 Sales/Transfers of Property from the U.S. Government, Agencies of the U.S. Government, the State of Rhode Island, its Agencies, or Political Subdivisions

Transfers/sales of property by the above-mentioned instrumentalities are exempt from the withholding provisions of R.I. Gen. Laws § 44-30-71.3. A deed may contain a recital that the sale/transfer is not subject to withholding under R.I. Gen. Laws § 44-30-71.3 since the transfer is made by the U.S. Government, an agency of the U.S. Government, the State of Rhode Island, or an agency or political subdivision thereof, whichever is applicable.

1.23 Tax Sales

The redemption of real property pursuant to R.I. Gen. Laws Chapter 44-9 shall not be subject to the withholding provisions of R.I. Gen. Laws § 44-30-71.3. In the event real property is redeemed pursuant to R.I. Gen. Laws Chapter 44- 9, the deed may contain a recital that no withholding under R.I. Gen. Laws § 44-30-71.3 is required because title is transferred pursuant to statutory redemption. Said recital shall in all instances discharge the lien imposed by R.I. Gen. Laws § sub 44-30-71.3(c).

1.24 Remittance Limited to Cash Paid at Closing

In no event shall the buyer be required to remit any amount in excess of the amount of the cash settlement received by the seller.

1.25 Limited Liability Companies

- A. A limited liability company is required by law to declare in its articles of organization whether it is to be treated as a corporation or as a partnership for purposes of taxation.
 - 1. Taxed as Corporation: If a limited liability company has declared to be taxed as a corporation, and either
 - a. the limited liability company is formed pursuant to R.I. Gen. Laws Chapter 7-16; or
 - b. the limited liability company is registered with this state as a foreign limited liability company pursuant to R.I. Gen. Laws § 7-16-49, the limited liability is considered a resident limited liability company and no withholding is required and a buyer may accept a residency affidavit from the limited liability company.
 - c. If a limited liability company is deemed to be a nonresident the buyer must withhold at seven percent (7%) unless the nonresident limited liability company produces a letter of good standing issued by the Division of Taxation for purposes of the sale. See § 1.7 (B) of this Part.

2. Taxed as Partnership: If a limited liability company has declared to be taxed as a partnership, the provisions of § 1.7(C) of this Part applies whether or not the limited liability company is formed pursuant to R.I. Gen. Laws Chapter 7-16 Laws or is registered with this state pursuant to R.I. Gen. Laws § 7-16-49.
3. Single Member Limited Liability Company (SMLLC) is a disregarded entity and the withholding requirements apply to the single member of such an entity.

280-RICR-20-10-1

TITLE 280 - DEPARTMENT OF REVENUE

CHAPTER 20 - DIVISION OF TAXATION

SUBCHAPTER 10 - WITHHOLDING TAX

PART 1 - Withholding Tax on the Sale of Real Property by Nonresidents (280-RICR-20-10-1)

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