

~~State of Rhode Island—Division of Taxation Sale of Real Property by Nonresidents~~

~~Regulation NRW-95-02~~

~~I. SALES/TRANSFERS OF PROPERTY BY EXEMPT ORGANIZATIONS~~

~~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.G.L. 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 subsection 44-30-71.3(c).~~

~~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:~~

~~The Federal Deposit Insurance Corporation
The Resolution Trust Corporation
Rhode Island Housing and Mortgage Finance Corporation
Board of Governors of the Federal Reserve System
Federal Reserve Bank
Federal Home Loan Bank
Comptroller of the Currency
The Office of Thrift Supervision
The National Credit Union Administration Board
The Farm Credit Administration
The Farm Credit System Insurance Corporation
The Small Business Administration
The Federal National Mortgage Association
The Federal Home Loan Mortgage Corporation
The Government National Mortgage Association~~

~~II. GIFTS~~

~~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.G.L. 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.G.L. 44-30-71.3.~~

~~EXAMPLE: Transfer is by gift so that no documentary stamps are required and no withholding is required under R.I.G.L. 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 subsection 44-30-71.3(c).~~

~~III. 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.G.L. 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.G.L. 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 subsection 44-30-71.3(c).~~

~~IV. SALES/TRANSFERS BY BANKS AND INSURANCE COMPANIES~~

~~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 Chapter 19-20 of the Rhode Island General Laws are not subject to the tax imposed on corporations under Chapter 44-11. Insurance companies are likewise exempt from tax imposed on corporations under Chapter 44-11. Therefore, those specific types of lending institutions and insurance companies are not subject to the withholding provisions of R.I.G.L. 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.G.L. 44-30-71.3.~~

~~EXCEPTION—BANK FORECLOSURES/DEEDS IN LIEU OF FORECLOSURE~~

~~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 percent (or nine percent if the mortgagor is a corporation) of the net proceeds resulting from the sale. (Where there are net proceeds and junior lienholders, see section VI below.) 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.G.L. 44-30-71.3. The recording of such deed shall in all instances discharge the lien imposed by subsection 44-30-71.3(c).~~

~~V. 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.G.L. 44-30-71.3(c).~~

~~VI. 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 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 RIGL 44-30-71.3. The recording of such deed shall in all instances discharge the lien imposed by subsection 44-30-71.3(c).~~

~~VII. NAMES 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 subsection 44-30-71.3(c).~~

~~VIII. 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 Section II "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 subsection 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.~~

~~IX. RELOCATION COMPANY SALES~~

~~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.~~

~~I. 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:~~

~~(a) 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 RIGL 44-30-71.3 since the grantor(s) was a resident of the state at the time he/she signed the deed.~~

~~(b) 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 subsection 44-30-71.3 (c).~~

~~(c) 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.~~

~~II. 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 Remittance Form 71.3 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.~~

~~X. SALES/TRANSFERS OF PROPERTY FROM THE US GOVERNMENT, AGENCIES OF THE US 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.G.L. 44-30-71.3. A deed may contain a recital that the sale/transfer is not subject to withholding under R.I.G.L. 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.~~

~~XI. TAX SALE~~

~~The redemption of real property pursuant to Chapter 44-9 shall not be subject to the withholding provisions of R.I.G.L. 44-30-71.3. In the event real property is redeemed pursuant to Chapter 44-9, the deed may contain a recital that no withholding under R.I.G.L. 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 subsection 44-30-71.3(c).~~

~~XII. 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.~~

~~R. GARY CLARK
TAX ADMINISTRATOR~~

~~EFFECTIVE DATE: JANUARY 1, 1995~~

~~THIS REGULATION AMENDS AND SUPERCEDES REGULATION NRW 92-02 PROMULGATED
SEPTEMBER 17, 1992.~~