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

~~Regulation NRW 91-01~~

~~Withholding on Sale of Real Property by Nonresidents~~

~~I. GENERAL~~

~~A. Effective January 1, 1992, when Rhode Island realty and associated tangible personalty 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 nine percent (9%) 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 of the recording of the instrument of transfer or within thirty (30) days after date of closing whichever is earlier.~~

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

~~II. DEFINITIONS~~

~~A. Nonresident corporation for purposes of this regulation, means 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.G.L. 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 44-30-71.3 only.~~

~~C. Nonresident partnership means a partnership which has as any one of its partners, a nonresident individual, estate, trust or corporation.~~

~~D. Nonresident estate or trust shall be determined in accordance with the provisions of Title 44, Chapter 30, Section 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 and 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 (RI 71.3 Election form) to have withholding based on gain but also has received a Certificate of Withholding Due (RI 71.3 Certificate) from the Division of Taxation for presentation at the closing. Refer to Compliance provisions below.~~

~~I. Tax-exempt organizations. The seller is considered a tax exempt organization if 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.G.L. 44-30-71.3.~~

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

~~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.~~

~~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. Partnerships: In the case of a partnership-seller, the buyer may rely on each seller-partner's determination of residency only if each seller-partner furnishes the buyer with a notarized seller's residency affidavit under penalties of perjury. For each nonresident partner, the buyer must withhold and remit for each such partner based on the partner's share. it is assumed that the partners share equally unless otherwise specifically provided. The nonresident partnership-seller must furnish the buyer with the names, addresses and social security or Federal employer identification numbers for each nonresident partner. In the event that all the partners 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 (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.~~

~~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.~~

~~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.~~

~~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 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.~~

~~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.~~

~~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 (One-Time Exclusion - Over 55 Principal Residents); 721 (Tax Free Exchanges - Partnership Interest); 1031 (Like Kind Exchanges); 1033 (Involuntary Conversions), or 1034 (Rollover of Gain on Sale of Principal Residence) 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.~~

~~IV. 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 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 partnership must comply and either obtain seller's residency affidavits from each partner or, for each nonresident partner, withhold and remit for such nonresident partner based on the partner's share. It is assumed that the partners share equally unless otherwise specifically provided.~~

~~V. 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 nine percent (9%) 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.~~

~~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 x $170,000 or $85,000 @6% = $5,100.~~

~~2. Gain Method: 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~~

~~Since all of the gain is being taxed in the year of the sale for Federal purposes, the withholding indicated was 6% x $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 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.~~

~~(b) 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 (one Time Exclusion Over 55 Principal Residence), 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:~~

~~Gain Percentage = 12%~~
~~Principal Payment Received during year of sale = $21,000~~
~~Gain to be recognized during year of sale = $21,000 x 12%=$2,520 The amount of nonrecognized gain to be entered on Line 6 = $42,000 - $2,520 = $39,480~~
~~Thus, the amount to be withheld is 6% x $2,520 = $151.20~~

~~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 of High Ridge did 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.~~

~~VI. PAYMENT~~

~~1. The buyer must remit amounts withheld from the seller or sellers within three (3) banking days after the recording of the instrument of transfer or within thirty (30) days after date of closing whichever is earlier.~~

~~2. The buyer must remit to the Rhode Island Division of Taxation using the RI 71.3 Remittance form.~~

~~3. In the event of nonpayment or late payment, interest will be computed in accordance with R.I.G.L. 44-1-7 and added to the amount due.~~

~~4. Filing and paying the amount of withholding due will automatically discharge the lien under 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.~~

~~VII. LIABILITY~~

~~1. 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.~~

~~2. 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.~~

~~3. The closing attorney, lending institution, and real estate agent/broker in a transaction governed by 44-30-71.3 and these regulations is not subject to the withholding and payment provisions.~~

~~VIII. DOCUMENT SUBMISSION AND RETENTION~~

~~1. 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.~~

~~2. 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.~~

~~3. 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 paragraph III, F.~~

~~4. 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.~~

~~5. 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.~~

~~R. GARY CLARK~~
~~TAX ADMINISTRATOR~~

~~EFFECTIVE DATE: January 1, 1992~~

~~FORMS: RI 71.3 Resident Affidavit; RI 71.3 Election; RI 71.3 Certificate; RI 71.3 Remittance; and RI 71.3 Acknowledgement~~