
By: ~~Delegate Gordon~~ **Delegates Gordon and Cardin**

Introduced and read first time: February 13, 2004

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 27, 2004

CHAPTER 410

1 AN ACT concerning

2 **Income Tax - Payments - Sale of Property by Nonresidents**

3 FOR the purpose of ~~providing that a certain requirement that certain instruments of~~
4 ~~writing include a description of the total payment to the transferor applies only~~
5 ~~to transfers for which a certain payment is required; altering the circumstances~~
6 ~~under which certain documentation is required to be filed with certain~~
7 ~~instruments of writing effecting a change of ownership of assessment books;~~
8 ~~altering the documentation required to be filed; altering a certain definition and~~
9 defining certain terms for purposes of a requirement that certain payments be
10 made before a deed or other instrument of writing may be recorded under
11 certain circumstances; providing an exemption from the requirement for
12 property transferred pursuant to a deed or other instrument of writing that
13 includes a certain statement; and generally relating to a requirement that for a
14 sale or exchange of certain property owned by a nonresident or nonresident
15 entity certain payments be made before a deed or other instrument of writing
16 may be recorded under certain circumstances.

17 BY repealing and reenacting, with amendments,
18 Article - Tax - General
19 Section 10-912
20 Annotated Code of Maryland
21 (1997 Replacement Volume and 2003 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Tax - General**

2 10-912.

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) (I) ["Net proceeds"] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)
5 OF THIS PARAGRAPH, "NET PROCEEDS" means the total sales price paid to the
6 transferor less:7 [(i)] 1. debts of the transferor secured by a mortgage or other lien
8 on the property being transferred that are being paid upon the sale or exchange of the
9 property; and10 [(ii)] 2. other expenses of the transferor arising out of the sale or
11 exchange of the property and disclosed on a settlement statement prepared in
12 connection with the sale or exchange of the property, NOT INCLUDING ADJUSTMENTS
13 IN FAVOR OF THE TRANSFEREE.14 (II) "NET PROCEEDS" DOES NOT INCLUDE ADJUSTMENTS IN FAVOR
15 OF THE TRANSFEROR THAT ARE DISCLOSED ON A SETTLEMENT STATEMENT
16 PREPARED IN CONNECTION WITH THE SALE OR EXCHANGE OF THE PROPERTY.

17 (3) "Nonresident entity" means an entity that:

18 (i) is not formed under the laws of the State; and

19 (ii) is not qualified by or registered with the Department of
20 Assessments and Taxation to do business in the State.

21 (4) "Resident entity" means an entity that:

22 (i) is formed under the laws of the State; or

23 (ii) is formed under the laws of another state and is qualified by or
24 registered with the Department of Assessments and Taxation to do business in the
25 State.26 (5) "Total payment" means the net proceeds of a sale actually paid to a
27 transferor, including the fair market value of any property transferred to the
28 transferor.29 (6) "TRANSFER PURSUANT TO A DEED IN LIEU OF FORECLOSURE"
30 INCLUDES:

31 (I) A TRANSFER BY THE OWNER OF THE PROPERTY TO:

32 1. WITH RESPECT TO A DEED IN LIEU OF FORECLOSURE OF A
33 MORTGAGE, THE MORTGAGEE, THE ASSIGNEE OF THE MORTGAGE, OR ANY
34 DESIGNEE OR NOMINEE OF THE MORTGAGEE OR ASSIGNEE OF THE MORTGAGE;

1 2. WITH RESPECT TO A DEED IN LIEU OF FORECLOSURE OF A
2 DEED OF TRUST, THE HOLDER OF THE DEBT OR OTHER OBLIGATION SECURED BY
3 THE DEED OF TRUST OR ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF THE HOLDER OF
4 THE DEBT OR OTHER OBLIGATION SECURED BY THE DEED OF TRUST;

5 3. WITH RESPECT TO A DEED IN LIEU OF FORECLOSURE OF
6 ANY OTHER LIEN INSTRUMENT, THE HOLDER OF THE DEBT OR OTHER OBLIGATION
7 SECURED BY THE LIEN INSTRUMENT OR ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF
8 THE HOLDER OF THE DEBT SECURED BY THE LIEN INSTRUMENT; AND

9 (II) A TRANSFER BY ANY OF THE PERSONS DESCRIBED IN ITEM (I)
10 OF THIS PARAGRAPH TO A SUBSEQUENT PURCHASER FOR VALUE.

11 (7) "TRANSFER PURSUANT TO A FORECLOSURE OF A MORTGAGE, DEED
12 OF TRUST, OR OTHER LIEN INSTRUMENT" INCLUDES:

13 (I) WITH RESPECT TO THE FORECLOSURE OF A MORTGAGE:

14 1. A TRANSFER BY THE MORTGAGEE, THE ASSIGNEE OF THE
15 MORTGAGE, ~~OR~~ THE ATTORNEY NAMED IN THE MORTGAGE, OR THE ATTORNEY OR
16 TRUSTEE CONDUCTING A FORECLOSURE SALE PURSUANT TO THE MORTGAGE TO:

17 A. THE MORTGAGEE OR THE ASSIGNEE OF THE MORTGAGE;

18 B. ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF THE
19 MORTGAGEE OR ASSIGNEE OF THE MORTGAGE; OR

20 C. ANY PURCHASER, SUBSTITUTED PURCHASER, OR
21 ASSIGNEE OF ANY PURCHASER OR SUBSTITUTED PURCHASER OF THE FORECLOSED
22 PROPERTY; AND

23 2. A TRANSFER BY ANY OF THE PERSONS DESCRIBED IN
24 ITEM 1 OF THIS SUBPARAGRAPH TO A SUBSEQUENT PURCHASER FOR VALUE;

25 (II) WITH RESPECT TO THE FORECLOSURE OF A DEED OF TRUST:

26 1. A TRANSFER BY THE TRUSTEES, SUCCESSOR TRUSTEES,
27 ~~OR~~ SUBSTITUTED TRUSTEES UNDER THE DEED OF TRUST, OR TRUSTEES
28 CONDUCTING A FORECLOSURE SALE PURSUANT TO THE DEED OF TRUST TO:

29 A. THE HOLDER OF THE DEBT OR OTHER OBLIGATION
30 SECURED BY THE DEED OF TRUST;

31 B. ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF THE HOLDER
32 OF THE DEBT SECURED BY THE DEED OF TRUST; OR

33 C. ANY PURCHASER, SUBSTITUTED PURCHASER, OR
34 ASSIGNEE OF ANY PURCHASER OR SUBSTITUTED PURCHASER OF THE FORECLOSED
35 PROPERTY; AND

1 (c) Except as otherwise provided in this section, in a sale or exchange of real
2 property and associated tangible personal property owned by a nonresident or
3 nonresident entity, the deed or other instrument of writing that effects a change of
4 ownership on the assessment books under the Tax - Property Article may not be
5 recorded with the clerk of the circuit court for a county or filed with the Department
6 of Assessments and Taxation unless payment is made to the clerk of the circuit court
7 for a county or the Department of Assessments and Taxation in an amount equal to:

8 (1) 4.75% of the total payment to a nonresident; or

9 (2) 7% of the total payment to a nonresident entity.

10 (d) Subsection (c) of this section does not apply when:

11 (1) a certification under penalties of perjury that the transferor is a
12 resident of the State or is a resident entity is provided by each transferor in:

13 (i) the recitals or the acknowledgment of the deed or other
14 instrument of writing transferring the property to the transferee; or

15 (ii) an affidavit signed by the transferor or by an agent of the
16 transferor that accompanies and is recorded with the deed or other instrument of
17 writing transferring the property;

18 (2) the transferor presents to the clerk of the circuit court for a county or
19 the Department of Assessments and Taxation a certificate issued by the Comptroller
20 stating that:

21 (i) no tax is due from that transferor in connection with that sale
22 or exchange of property;

23 (ii) a reduced amount of tax is due from that transferor in
24 connection with that sale or exchange of property and stating the reduced amount
25 that should be collected by the clerk of the circuit court for a county or the
26 Department of Assessments and Taxation before recordation or filing; or

27 (iii) the transferor has satisfied the transferor's tax liability
28 described in subsection (c) of this section or has provided adequate security to cover
29 such liability;

30 (3) the property TRANSFER is [transferred pursuant to]:

31 (i) A TRANSFER PURSUANT TO A foreclosure of a mortgage, deed of
32 trust, or other lien instrument; or

33 (ii) A TRANSFER PURSUANT TO a deed in lieu of foreclosure;

34 (4) the property is transferred by the United States, the State, or a unit
35 or political subdivision of the State; [or]

1 (5) a certification under penalties of perjury that the property being
2 transferred is the transferor's principal residence is provided by each transferor in:

3 (i) the recitals or the acknowledgment of the deed or other
4 instrument of writing transferring the property to the transferee; or

5 (ii) an affidavit signed by the transferor or by an agent of the
6 transferor that accompanies and is recorded with the deed or other instrument of
7 writing transferring the property; OR

8 (6) THE PROPERTY IS TRANSFERRED PURSUANT TO A DEED OR OTHER
9 INSTRUMENT OF WRITING THAT INCLUDES A STATEMENT OF CONSIDERATION
10 REQUIRED BY § 12-104 OF THE TAX - PROPERTY ARTICLE INDICATING THAT THE
11 CONSIDERATION PAYABLE IS ZERO.

12 (e) (1) Except as provided in this section, the amounts described in
13 subsection (c) of this section shall be collected by the clerk of the circuit court for a
14 county or the Department of Assessments and Taxation when the deed or other
15 instrument of writing is presented for recordation or filing.

16 (2) Within 30 business days after the date the amount payable under
17 subsection (c) of this section is paid, the clerk of the circuit court for the county or the
18 Department of Assessments and Taxation shall pay over to the Comptroller the
19 amount collected under subsection (c) of this section as prescribed by the Comptroller.

20 (f) (1) Amounts collected under subsection (c) of this section and paid over
21 to the Comptroller under subsection (e) of this section shall be deemed to have been
22 paid to the Comptroller on behalf of the transferor from whom the amounts were
23 withheld.

24 (2) The transferor shall be credited with having paid the amounts for the
25 taxable year in which the transaction that is the subject of the tax occurred.

26 (g) The transferee, title insurance producer, title insurer, settlement agent,
27 closing attorney, lending institution, and real estate agent or broker in any
28 transaction subject to this section are not liable for any amounts required to be
29 collected and paid over to the Comptroller under this section.

30 (h) This section does not:

31 (1) impose any tax on a transferor or affect any liability of the transferor
32 for any tax; or

33 (2) prohibit the Comptroller from collecting any taxes due from a
34 transferor in any other manner authorized by law.

35 (i) (1) The Comptroller shall adopt regulations to administer this section.

36 (2) The Comptroller's regulations shall establish procedures for the
37 issuance of the certificate referred to in subsection (d)(2) of this section.

1 (3) The Comptroller's regulations shall establish a procedure by which a
2 transferor may apply for an early refund of the tax collected under this section if the
3 transferor establishes that no tax will be owed or less tax than collected will be owed.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2004.