

BY: Committee on Ways and Means

AMENDMENTS TO HOUSE BILL NO. 1045

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “requiring” in line 3 down through “time;” in line 9 and substitute “requiring that certain instruments of writing include a description of the total payment for the property in the recitals or the acknowledgment of the instrument or in a certain affidavit; prohibiting certain instruments of writing from being recorded unless a certain part of the total payment is paid to the clerk of the circuit court or the Department of Assessments and Taxation; requiring the clerks and the Department of Assessments and Taxation to collect the amounts and pay over those amounts to the Comptroller; providing that amounts collected and paid over are deemed paid to the Comptroller on behalf of the transferor; providing that certain persons are not liable for certain amounts collected and paid over to the Comptroller under this Act; requiring the Comptroller to adopt certain regulations and conduct a certain study; defining certain terms;”.

AMENDMENT NO. 2

On page 1, after line 22, insert:

“(2) “NET PROCEEDS” MEANS THE TOTAL SALES PRICE PAID TO THE TRANSFEROR LESS:

(I) DEBTS OF THE TRANSFEROR SECURED BY A MORTGAGE OR OTHER LIEN ON THE PROPERTY BEING TRANSFERRED THAT ARE BEING PAID UPON THE SALE OR EXCHANGE OF THE PROPERTY; AND

(II) OTHER EXPENSES OF THE TRANSFEROR ARISING OUT OF THE SALE OR EXCHANGE OF THE PROPERTY AND DISCLOSED ON A SETTLEMENT STATEMENT PREPARED IN CONNECTION WITH THE SALE OR EXCHANGE OF THE PROPERTY.”;

(Over)

in line 23, strike “(2)” and substitute “(3)”; in the same line, in each instance, strike “CORPORATION” and substitute “ENTITY”; in the same line, strike “A” and substitute “AN”; and in line 24, strike “INCORPORATED IN” and substitute “FORMED UNDER THE LAWS OF”.

On page 2, in line 1, after “BY” insert “OR REGISTERED WITH”.

AMENDMENT NO. 3

On page 2, after line 2, insert:

“(4) “RESIDENT ENTITY” MEANS AN ENTITY THAT:

(I) IS FORMED UNDER THE LAWS OF THE STATE; OR

(II) IS FORMED UNDER THE LAWS OF ANOTHER STATE AND IS QUALIFIED BY OR REGISTERED WITH THE DEPARTMENT OF ASSESSMENTS AND TAXATION TO DO BUSINESS IN THE STATE.”;

in line 3, strike “(3)” and substitute “(5)”; and in line 4, strike “NONRESIDENT OR NONRESIDENT CORPORATION TRANSFEROR” and substitute “TRANSFEROR IF THE TRANSFEROR IS A NONRESIDENT OR NONRESIDENT ENTITY,”.

AMENDMENT NO. 4

On page 2, after line 6, insert:

“(B) IN EVERY DEED OR OTHER INSTRUMENT OF WRITING THAT EFFECTS A CHANGE OF OWNERSHIP ON THE ASSESSMENT BOOKS UNDER THE TAX - PROPERTY ARTICLE, THE TOTAL PAYMENT SHALL BE DESCRIBED IN:

(1) THE RECITALS OR THE ACKNOWLEDGMENT OF THE DEED OR OTHER INSTRUMENT; OR

(2) AN AFFIDAVIT UNDER OATH THAT ACCOMPANIES THE DEED OR OTHER INSTRUMENT AND THAT IS SIGNED BY THE TRANSFEROR OF THE PROPERTY OR BY AN AGENT OF THE TRANSFEROR.”.

AMENDMENT NO. 5

On page 2, strike in their entirety lines 7 through 20, inclusive, and substitute:

“(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN A SALE OR EXCHANGE OF REAL PROPERTY AND ASSOCIATED TANGIBLE PERSONAL PROPERTY OWNED BY A NONRESIDENT OR NONRESIDENT ENTITY, THE DEED OR OTHER INSTRUMENT OF WRITING THAT EFFECTS A CHANGE OF OWNERSHIP ON THE ASSESSMENT BOOKS UNDER THE TAX - PROPERTY ARTICLE MAY NOT BE RECORDED WITH THE CLERK OF THE CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT OF ASSESSMENTS AND TAXATION UNLESS PAYMENT IS MADE TO THE CLERK OF THE CIRCUIT COURT FOR A COUNTY OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION IN AN AMOUNT EQUAL TO:

(1) 4.75% OF THE TOTAL PAYMENT TO A NONRESIDENT; OR

(2) 7% OF THE TOTAL PAYMENT TO A NONRESIDENT ENTITY.

(D) SUBSECTION (C) OF THIS SECTION DOES NOT APPLY WHEN:

(1) A CERTIFICATION UNDER PENALTIES OF PERJURY THAT THE TRANSFEROR IS A RESIDENT OF THE STATE OR IS A RESIDENT ENTITY IS PROVIDED BY EACH TRANSFEROR IN:

(I) THE RECITALS OR THE ACKNOWLEDGMENT OF THE DEED OR OTHER INSTRUMENT OF WRITING TRANSFERRING THE PROPERTY TO THE TRANSFEREE; OR

(II) AN AFFIDAVIT SIGNED BY THE TRANSFEROR OR BY AN AGENT OF THE TRANSFEROR THAT ACCOMPANIES AND IS RECORDED WITH THE DEED OR OTHER INSTRUMENT OF WRITING TRANSFERRING THE PROPERTY; OR

(2) THE TRANSFEROR PRESENTS TO THE CLERK OF THE CIRCUIT COURT FOR A COUNTY OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION A CERTIFICATE ISSUED BY THE COMPTROLLER STATING THAT:

(Over)

(I) NO TAX IS DUE FROM THAT TRANSFEROR IN CONNECTION WITH THAT SALE OR EXCHANGE OF PROPERTY;

(II) A REDUCED AMOUNT OF TAX IS DUE FROM THAT TRANSFEROR IN CONNECTION WITH THAT SALE OR EXCHANGE OF PROPERTY AND STATING THE REDUCED AMOUNT THAT SHOULD BE COLLECTED BY THE CLERK OF THE CIRCUIT COURT FOR A COUNTY OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION BEFORE RECORDATION OR FILING; OR

(III) THE TRANSFEROR HAS SATISFIED THE TRANSFEROR'S TAX LIABILITY DESCRIBED IN SUBSECTION (C) OF THIS SECTION OR HAS PROVIDED ADEQUATE SECURITY TO COVER SUCH LIABILITY;

(3) THE PROPERTY IS TRANSFERRED PURSUANT TO:

(I) FORECLOSURE OF A MORTGAGE, DEED OF TRUST, OR OTHER LIEN INSTRUMENT; OR

(II) A DEED IN LIEU OF FORECLOSURE;

(4) THE PROPERTY IS TRANSFERRED BY THE UNITED STATES, THE STATE, OR A UNIT OR POLITICAL SUBDIVISION OF THE STATE; OR

(5) A CERTIFICATION UNDER PENALTIES OF PERJURY THAT THE PROPERTY BEING TRANSFERRED IS THE TRANSFEROR'S PRINCIPAL RESIDENCE IS PROVIDED BY EACH TRANSFEROR IN:

(I) THE RECITALS OR THE ACKNOWLEDGMENT OF THE DEED OR OTHER INSTRUMENT OF WRITING TRANSFERRING THE PROPERTY TO THE TRANSFEREE; OR

(II) AN AFFIDAVIT SIGNED BY THE TRANSFEROR OR BY AN AGENT OF THE TRANSFEROR THAT ACCOMPANIES AND IS RECORDED WITH THE DEED OR OTHER INSTRUMENT OF WRITING TRANSFERRING THE PROPERTY.

(E) (1) EXCEPT AS PROVIDED IN THIS SECTION, THE AMOUNTS DESCRIBED IN SUBSECTION (C) OF THIS SECTION SHALL BE COLLECTED BY THE CLERK OF THE CIRCUIT COURT FOR A COUNTY OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION WHEN THE DEED OR OTHER INSTRUMENT OF WRITING IS PRESENTED FOR RECORDATION OR FILING.

(2) WITHIN 3 BUSINESS DAYS AFTER THE DATE THE AMOUNT PAYABLE UNDER SUBSECTION (C) OF THIS SECTION IS PAID, THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OR THE DEPARTMENT OF ASSESSMENTS AND TAXATION SHALL PAY OVER TO THE COMPTROLLER THE AMOUNT COLLECTED UNDER SUBSECTION (C) OF THIS SECTION AS PRESCRIBED BY THE COMPTROLLER.”;

in line 21, strike “(E)” and substitute “(F)”; in the same line, strike “DEDUCTED AND WITHHELD” and substitute “COLLECTED”; in the same line, strike “(B)” and substitute “(C)”; in line 22, strike “(D)” and substitute “(E)”; in line 28, strike “(F)” and substitute “(G)”; in the same line, after “THE” insert “TRANSFEEE, TITLE INSURANCE PRODUCER, TITLE INSURER, SETTLEMENT AGENT,”; in line 30, strike “DEDUCTED, WITHHELD,” and substitute “COLLECTED”; and strike in their entirety lines 32 through 35, inclusive.

AMENDMENT NO. 6

On page 3, in line 3, after “(I)” insert “(1)”; and after line 4, insert:

“(2) THE COMPTROLLER’S REGULATIONS SHALL ESTABLISH PROCEDURES FOR ISSUANCE OF THE CERTIFICATE REFERRED TO IN SUBSECTION (D)(2) OF THIS SECTION, WHICH SHALL INCLUDE A REQUIREMENT THAT A DECISION ON THE REQUEST FOR ISSUANCE OF A CERTIFICATE BE MADE BY THE COMPTROLLER WITHIN 10 BUSINESS DAYS AFTER THE REQUEST IS RECEIVED.

(3) THE COMPTROLLER’S REGULATIONS SHALL ESTABLISH A PROCEDURE BY WHICH A TRANSFEROR MAY APPLY FOR AN EARLY REFUND OF THE TAX COLLECTED UNDER THIS SECTION IF THE TRANSFEROR ESTABLISHES THAT NO TAX WILL BE OWED OR LESS TAX THAN COLLECTED WILL BE OWED.

(Over)

SECTION 2. AND BE IT FURTHER ENACTED, That the Comptroller of the Treasury shall study the fiscal, regulatory, and administrative effects of income tax withholding on sales of property by nonresidents and nonresident entities and report its findings to the Governor and, subject to § 2-1246 of the State Government Article, to the Senate Budget and Taxation Committee and the House Committee on Ways and Means on or before December 1, 2004.”.

AMENDMENT NO. 7

On page 3, in line 5, strike “2.” and substitute “3.”; and in line 6, strike “July” and substitute “October”.