
By: **Delegates Elmore, Bartlett, Boschert, Boteler, Bozman, Cane, Cardin, Cryor, C. Davis, DeBoy, Dwyer, Frank, Impallaria, Kach, Kaiser, Leopold, McKee, Myers, Ramirez, Redmer, Ross, Rudolph, Schisler, Smigiel, and Sossi**

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Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 21, 2003

CHAPTER _____

1 AN ACT concerning

2 **Income Tax - Sales of Property by Nonresidents**

3 FOR the purpose of ~~requiring the transferee of certain property to withhold and remit~~
4 ~~to the Comptroller a certain part of the total payment for property that is sold or~~
5 ~~exchanged by certain nonresidents of the State or certain out-of-state entities;~~
6 ~~providing that the amounts required to be withheld on the sale or exchange of~~
7 ~~certain property by certain nonresidents and certain out-of-state entities are a~~
8 ~~personal liability of the transferee of the property and a lien on the property of~~
9 ~~the transferee for a certain period of time; requiring that certain instruments of~~
10 ~~writing include a description of the total payment for the property in the recitals~~
11 ~~or the acknowledgment of the instrument or in a certain affidavit; prohibiting~~
12 ~~certain instruments of writing from being recorded unless a certain part of the~~
13 ~~total payment is paid to the clerk of the circuit court or the Department of~~
14 ~~Assessments and Taxation; requiring the clerks and the Department of~~
15 ~~Assessments and Taxation to collect the amounts and pay over those amounts to~~
16 ~~the Comptroller; providing that amounts collected and paid over are deemed~~
17 ~~paid to the Comptroller on behalf of the transferor; providing that certain~~
18 ~~persons are not liable for certain amounts collected and paid over to the~~
19 ~~Comptroller under this Act; requiring the Comptroller to adopt certain~~
20 ~~regulations and conduct a certain study; defining certain terms; and generally~~
21 ~~relating to requiring certain income tax withholding on sales of certain property~~
22 ~~by nonresidents of the State or certain out-of-state entities.~~

23 BY adding to

1 Article - Tax - General
 2 Section 10-912
 3 Annotated Code of Maryland
 4 (1997 Replacement Volume and 2002 Supplement)

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

7 **Article - Tax - General**

8 10-912.

9 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 10 INDICATED.

11 (2) "NET PROCEEDS" MEANS THE TOTAL SALES PRICE PAID TO THE
 12 TRANSFEROR LESS:

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

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

20 (2) (3) "NONRESIDENT CORPORATION ENTITY" MEANS A AN
 21 CORPORATION ENTITY THAT:

22 (I) IS NOT INCORPORATED IN FORMED UNDER THE LAWS OF THE
 23 STATE; AND

24 (II) IS NOT QUALIFIED BY OR REGISTERED WITH THE DEPARTMENT
 25 OF ASSESSMENTS AND TAXATION TO DO BUSINESS IN THE STATE.

26 (4) "RESIDENT ENTITY" MEANS AN ENTITY THAT:

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

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

31 (3) (5) "TOTAL PAYMENT" MEANS THE NET PROCEEDS OF A SALE
 32 ACTUALLY PAID TO A NONRESIDENT OR NONRESIDENT CORPORATION TRANSFEROR
 33 TRANSFEROR IF THE TRANSFEROR IS A NONRESIDENT OR NONRESIDENT ENTITY,
 34 INCLUDING THE FAIR MARKET VALUE OF ANY PROPERTY TO BE TRANSFERRED TO
 35 THE TRANSFEROR.

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

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

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

9 ~~(B) IN A SALE OR EXCHANGE OF REAL PROPERTY AND ASSOCIATED TANGIBLE~~
10 ~~PERSONAL PROPERTY OWNED BY A NONRESIDENT OR NONRESIDENT CORPORATION,~~
11 ~~THE TRANSFEREE OF THE PROPERTY SHALL DEDUCT AND WITHHOLD FROM THE~~
12 ~~PAYMENT TO THE TRANSFEROR AN AMOUNT EQUAL TO 3% OF THE TOTAL PAYMENT.~~

13 ~~(C) (1) A TRANSFEREE SUBJECT TO THE WITHHOLDING, DEDUCTION, AND~~
14 ~~PAYMENT PROVISIONS OF THIS SECTION IS PERSONALLY LIABLE FOR ALL AMOUNTS~~
15 ~~WITHHELD OR REQUIRED TO BE WITHHELD.~~

16 ~~(2) THE AMOUNT REQUIRED TO BE WITHHELD UNDER THE PROVISIONS~~
17 ~~OF THIS SECTION SHALL, UNTIL REMITTED, CONSTITUTE A LIEN ON THE PROPERTY~~
18 ~~OF THE TRANSFEREE.~~

19 ~~(D) WITHIN 3 BUSINESS DAYS AFTER THE DATE OF CLOSING ON THE SALE OR~~
20 ~~EXCHANGE OF THE PROPERTY, THE TRANSFEREE SHALL PAY OVER TO THE~~
21 ~~COMPTROLLER THE AMOUNT DEDUCTED AND WITHHELD UNDER SUBSECTION (B) OF~~
22 ~~THIS SECTION, USING FORMS PRESCRIBED BY THE COMPTROLLER.~~

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

32 (1) 4.75% OF THE TOTAL PAYMENT TO A NONRESIDENT; OR

33 (2) 7% OF THE TOTAL PAYMENT TO A NONRESIDENT ENTITY.

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

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

1 (I) THE RECITALS OR THE ACKNOWLEDGMENT OF THE DEED OR
2 OTHER INSTRUMENT OF WRITING TRANSFERRING THE PROPERTY TO THE
3 TRANSFEEE; OR

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

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

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

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

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

20 (3) THE PROPERTY IS TRANSFERRED PURSUANT TO:

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

23 (II) A DEED IN LIEU OF FORECLOSURE;

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

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

29 (I) THE RECITALS OR THE ACKNOWLEDGMENT OF THE DEED OR
30 OTHER INSTRUMENT OF WRITING TRANSFERRING THE PROPERTY TO THE
31 TRANSFEEE; OR

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

35 (E) (1) EXCEPT AS PROVIDED IN THIS SECTION, THE AMOUNTS DESCRIBED
36 IN SUBSECTION (C) OF THIS SECTION SHALL BE COLLECTED BY THE CLERK OF THE
37 CIRCUIT COURT FOR A COUNTY OR THE DEPARTMENT OF ASSESSMENTS AND

1 TAXATION WHEN THE DEED OR OTHER INSTRUMENT OF WRITING IS PRESENTED FOR
2 RECORDATION OR FILING.

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

8 ~~(E)~~ (F) (1) AMOUNTS DEDUCTED AND WITHHELD COLLECTED UNDER
9 SUBSECTION ~~(B)~~ (C) OF THIS SECTION AND PAID OVER TO THE COMPTROLLER UNDER
10 SUBSECTION ~~(D)~~ (E) OF THIS SECTION SHALL BE DEEMED TO HAVE BEEN PAID TO
11 THE COMPTROLLER ON BEHALF OF THE TRANSFEROR FROM WHOM THE AMOUNTS
12 WERE WITHHELD.

13 (2) THE TRANSFEROR SHALL BE CREDITED WITH HAVING PAID THE
14 AMOUNTS FOR THE TAXABLE YEAR IN WHICH THE TRANSACTION THAT IS THE
15 SUBJECT OF THE TAX OCCURRED.

16 ~~(F)~~ (G) THE TRANSFeree, TITLE INSURANCE PRODUCER, TITLE INSURER,
17 SETTLEMENT AGENT, CLOSING ATTORNEY, LENDING INSTITUTION, AND REAL
18 ESTATE AGENT OR BROKER IN ANY TRANSACTION SUBJECT TO THIS SECTION ARE
19 NOT LIABLE FOR ANY AMOUNTS REQUIRED TO BE ~~DEDUCTED, WITHHELD,~~
20 COLLECTED AND PAID OVER TO THE COMPTROLLER UNDER THIS SECTION.

21 (G) ~~NOTWITHSTANDING SUBSECTION (C)(2) OF THIS SECTION, A LIEN~~
22 ~~CREATED UNDER THIS SECTION SHALL CEASE TO BE A LIEN ON OR ENFORCEABLE~~
23 ~~AGAINST REAL ESTATE 10 YEARS AFTER THE DATE OF THE SALE OF REAL PROPERTY~~
24 ~~AND ASSOCIATED TANGIBLE PERSONAL PROPERTY THAT GAVE RISE TO THE LIEN.~~

25 (H) THIS SECTION DOES NOT:

26 (1) IMPOSE ANY TAX ON A TRANSFEROR OR AFFECT ANY LIABILITY OF
27 THE TRANSFEROR FOR ANY TAX; OR

28 (2) PROHIBIT THE COMPTROLLER FROM COLLECTING ANY TAXES DUE
29 FROM A TRANSFEROR IN ANY OTHER MANNER AUTHORIZED BY LAW.

30 (I) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS TO ADMINISTER
31 THIS SECTION.

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

37 (3) THE COMPTROLLER'S REGULATIONS SHALL ESTABLISH A
38 PROCEDURE BY WHICH A TRANSFEROR MAY APPLY FOR AN EARLY REFUND OF THE

1 TAX COLLECTED UNDER THIS SECTION IF THE TRANSFEROR ESTABLISHES THAT NO
2 TAX WILL BE OWED OR LESS TAX THAN COLLECTED WILL BE OWED.

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

9 SECTION ~~2-3~~. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect ~~July~~ October 1, 2003.