

**Vermont Department of Taxes
TECHNICAL BULLETIN**

TAX: INCOME

TB-10

**SUBJECT: INSTALLMENT SALES OF
REAL ESTATE**

ISSUED: 6/19/98

For purposes of this bulletin "resident" means a resident of Vermont and "nonresident" means one who is not a resident of Vermont.

A. Sales of Vermont Real Property by Resident. A resident individual who sells Vermont property and elects to treat the sale as an installment sale for federal income tax purposes, for example over a five year period, is taxed on an installment sale basis for Vermont purposes as well. This result follows from 32 V.S.A. § 5823(a) which provides that "For any taxable year, the Vermont income of a resident individual estate or trust is the adjusted gross income of the taxpayer for that taxable year..." (emphasis added). A person's adjusted gross income will include only as much of the gain from the sale as was received in that taxable year. Because the Vermont individual income tax is imposed on federal income tax liability, with only minor variations not relevant here, the federal tax base is the Vermont tax base. See 32 V.S.A. § 5822.

B. Sale of Vermont Real Property by Nonresident. A nonresident individual who sells real estate located in Vermont is subject to tax on the gain from the sale is Vermont income as provided in 32 V.S.A. § 5823(b)(2):

(b) For any taxable year, the Vermont income of a nonresident individual, estate or trust is the sum of the following items of income to the extent they are required to be included in the adjusted gross income of the taxpayer for the taxable year:

(2) Gains from the sale or exchange of property located within this state;

If the individual elects to treat the sale as an installment sale for federal income tax purposes, for example, by receiving the payments over a five-year period, it will also be treated as an installment sale for Vermont purposes. This is because under 32 V.S.A. § 5823(b) gains from the sale or exchange of property located within Vermont constitute Vermont income of a nonresident "to the extent that they are required to be included in the adjusted gross income of the taxpayer for the taxable year." Therefore, only as much of the total gain as is included in the

federal adjusted gross income for a taxable year is Vermont income for that year.

Interest received by the seller on the balance due on an installment sale is not Vermont income. It is income of a non-resident from an intangible (a promissory note). Vermont is not entitled to tax this interest income any more than it could tax interest income if the out-of-state seller received the entire purchase price at the time of sale and invested it in a New Jersey bank account.

C. Sale of Out-of-State Real Property by Nonresident Who Later Becomes a Resident. A nonresident individual sells property located in that state on a five-year installment basis. However, that state taxes her entire gain from the sale in the year of sale and does not recognize the installment basis for reporting the gain.

The individual then moves to Vermont. She has to include in her Vermont income every year as much of the gain from the five-year installment sale as is reported on her federal income tax return.

Although 32 V.S.A. § 5825 provides a credit to a Vermont resident against her Vermont income tax for taxes paid to other states for income earned or received from sources within that state, in this case, the credit is not available against Vermont income tax for the years in which the installment sale must be reported on Vermont returns under 32 V.S.A. § 5823(a). This is because § 5825 limits the Vermont credit to taxes paid to the other state for the taxable year in which the tax was paid to the other state. Because the other state taxes her on the entire gain in the year of sale, and Vermont taxes the gain on an installment basis after the taxpayer moved to Vermont, the taxpayer pays tax to both states on some of the gain. However, to avoid this situation would require Vermont to abandon federal conformity to accommodate a minority of states that do not recognize federal treatment of installment sales. Such a change would add complexity to Vermont's relatively simple income tax law. The policy of preventing resident individuals from having to pay taxes to two states on the same income in the same year is effectuated by the credit provision in its current form.

This technical bulletin supersedes all prior Department statements regarding tax treatment of installment sales.

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