

## Real Estate Withholding

State income tax is due on capital gains realized from the sale of Vermont real property, whether the seller is a resident, part-year resident, or nonresident of Vermont. If the seller is a nonresident, the buyer must withhold and remit 2.5% of the consideration exchanged for property to the Vermont Department of Taxes. Withholding may be reduced or eliminated if the seller obtains a Commissioner's Certificate. This fact sheet explains the correct procedures to use when you are required to pay Real Estate Withholding tax on the sale of Vermont real property.

### When rental or business property is sold

When claiming a real estate withholding credit on Vermont Form IN-111, the seller must send a copy of his or her federal return and all schedules. If the property sold was used for rental or for the production of income, the seller must include:

- a copy of the federal Schedule E, Supplemental Income and Loss, filed for the property for the past three years,
- a copy of the depreciation schedule associated with the property, and
- a proof of basis.

If the seller has never filed a Vermont return, a detailed explanation must be included stating why the rental income was not reported. Please note: the IRS requires that all allowed or *allowable* depreciation be recaptured when a property used for rental, or for the production of income, is sold. See IRS Publication 946. The Department can request up to seven years of non-filed returns. The Department will adjust a refund claimed on a return if depreciation has not been added back to the basis for the sale of Vermont rental property.

### What is proof of basis?

Documentation showing the seller's acquisition cost of the property and the detailed costs of any subsequent improvements is called a proof of basis. Examples of basis documentation include but are not limited to:

- copies of the Property Transfer Tax return or HUD 1
- an estate inventory, judgment order, decree of foreclosure, etc. from when the seller acquired the property
- detailed listing (not estimates) of any improvements to real property

The proof of basis that is required for a Commissioner's Certificate application is the same as the basis documentation needed when rental or business property is sold. For a complete listing of basis documentation and more information on this subject, please visit the Commissioner's Certificate Request page on our website.

### Real Estate Withholding Vouchers

Be sure to fill out Vermont Form RW-171, the Vermont Withholding Tax Return for Transfer of Real Property, with completed Schedule A, for any real estate withholding payments. All forms must be filled out completely and accurately. Processing time increases if all required fields are not completed. Both the seller and the buyer are responsible for obtaining copies of Forms RW-171 and Schedule A from the closing attorney. The Department will not provide copies.

Anyone who earns or receives a gross income of \$1000 or more of Vermont-sourced income is required to file a Vermont tax return. This includes gross rental income from property located in Vermont. See 32 V.S.A. § 5861.

### What is the Commissioner's Certificate?

Under certain circumstances a Commissioner's Certificate may be issued to reduce or exempt a seller from withholding, and consequently reduce or exempt a buyer's requirement to withhold, based on the anticipated capital gain. The seller must meet certain requirements to be eligible for a Certificate. For more information about the circumstances that allows a seller to apply and/or for information about the application process, visit the Commissioner's Certificate Request page on our website.

## What if I claim the federal §121 principal residence exclusion?

A seller can claim the federal §121 exclusion based on having resided in the property transferred as their primary residence two or more of the five years prior to the sale. The seller should visit the Commissioner's Certificate Request page on our website. Follow the instructions to apply for a Commissioner's Certificate based on this reason to exempt or reduce the withholding because of the anticipated capital gain. Please note, the department does not process applications for partial §121 exclusions. This must be done on a seller's personal income tax return after the IRS has processed their claim for the partial federal exclusion.

## Capital Gains Tax on installment sales

When payment for a property takes place over a period of time, this is called an installment sale. Capital gains tax is due to Vermont when a resident, part-year resident, or nonresident individual sells property located in the state whether the payment is all at once or in installments. A seller has two options to file and remit the income tax on the capital gain from a sale paid in installments:

### 1. Pay incrementally

The seller may choose to pay the tax each year until the final installment is paid. The seller reports the capital gain that is included in his or her federal Adjusted Gross Income each tax year until the final payment is made. The real estate withholding a buyer pays for a nonresident seller toward the installment sale is held by the Department and is applied as a credit against the seller's tax liability each year that an installment payment is reported. See 32 V.S.A. § 5847 (h).

### 2. Pay up front

The seller has the option in the year of the sale to report the entire realized gain on Vermont Form IN-111, the Vermont Income Tax Return and pay a 6% "elect out" tax on the reported gain. In this case, the seller must include a letter with the IN-111 stating that he or she opts out of the option to pay the tax each year an installment payment is received. A copy of the federal income tax return must also be attached, along with federal Form 6252, Installment Sale Income. The seller should not include the gain from the sale on Vermont Schedule IN-113, Income Adjustment Calculations.

## Resources

### Vermont form RW-171

[tax.vermont.gov/sites/tax/files/documents/RW-171.pdf](http://tax.vermont.gov/sites/tax/files/documents/RW-171.pdf)

### Individual Income Tax Forms

[tax.vermont.gov/forms](http://tax.vermont.gov/forms)

### Commissioner's Certificate

[tax.vermont.gov/property-owners/real-estate-transaction-taxes/commissioner-certificate/request](http://tax.vermont.gov/property-owners/real-estate-transaction-taxes/commissioner-certificate/request)

### §121 Principal Residence Exclusion

[tax.vermont.gov/property-owners/real-estate-transaction-taxes/commissioner-certificate/checklist](http://tax.vermont.gov/property-owners/real-estate-transaction-taxes/commissioner-certificate/checklist)

### IRS Publication 946

[www.irs.gov/forms-pubs/about-publication-946](http://www.irs.gov/forms-pubs/about-publication-946)

*Save fillable forms to computer before completing.*

To learn more about Vermont real estate taxes, visit [tax.vermont.gov](http://tax.vermont.gov) or contact the Department's Real Estate Transactions Tax Section at [tax.rett@vermont.gov](mailto:tax.rett@vermont.gov) or (802) 828-6851

