

Vermont Department of Taxes
TECHNICAL BULLETIN

TAX: INCOME TB-15
SUBJECT: REAL ESTATE WITHHOLDING TAX, ISSUED: 2/1/99
INSTALLMENT SALES OF REAL
ESTATE

A. General. Transferees of Vermont real property sold or exchanged by Vermont nonresidents must withhold and transmit to the commissioner, within 30 days of the transfer, 2 ½ percent of the consideration paid, except as otherwise provided in 32 V.S.A. § 5847. 32 V.S.A. § 5847(a). This Bulletin discusses the Vermont real estate withholding tax procedures which are applicable when a nonresident reports gain on the sale of Vermont real estate under the installment sale method on or after June 26, 1997.

Withholding provisions applicable to installment sales are set forth in 32 V.S.A. § 5847(h):

(h) In the case of an installment sale, the seller may elect for Vermont purposes, to report the entire gain in the year of the sale and to pay a tax equal to six percent of that gain. If the seller does not make this election, the real estate withholding will be retained by the department and applied as a credit against the seller's tax liability in each year that an installment is received.

These provisions apply to sales and exchanges which occur on or after June 26, 1997. 1997, No. 50, § 48.

B. Transferee's withholding obligation. The transferee must withhold 2 ½ percent of the consideration paid for the transfer. Exceptions to the withholding requirements are described in 32 V.S.A. § 5847(b), and reduced withholding may be allowed if the commissioner determines reduction will not jeopardize income tax collection, as provided in 32 V.S.A. § 5847(c).

1. "Consideration paid" means the total consideration required to be paid by the transferee in exchange for the property. The transferee must thus withhold 2 ½ percent of all consideration, not just 2 ½ percent of the down payment or 2 ½ percent of an installment.

2. The transferee reports withholding on Vermont Department of Taxes Form REW-1. This return must be filed with the Department within 30 days of the sale or exchange, accompanied by payment of the amount withheld. The transferee must give a copy of this form to each transferor at the same time.

C. Reporting gain on the sale or exchange. As a general rule, transferors who report gain on the sale or exchange under the installment sale method for federal income tax purposes must also report the gain under the installment sale method for Vermont income tax purposes. See TB-10. However, under an exception to this rule, nonresident transferors may elect to report the entire gain and pay a 6% tax thereon in the year of sale for Vermont income tax purposes. 32 V.S.A. § 5847(h). Election procedures are detailed in the Vermont income tax return instructions.

D. Application of amount withheld. The amount withheld will be applied by the Department against the transferor's Vermont income tax liability. 32 V.S.A. § 5847(f). The amount withheld will be applied to the transferor's entire income tax liability, not just that portion attributable to gain on the sale of the real estate. The Department will refund to the transferor any unused withholding after all of the gain on the sale or exchange of the real estate has been reported (if the transferor is at that time in good standing with respect to all of his Vermont tax obligations.) 32 V.S.A. § 5847(h). If the transferor has elected to report the entire gain in the year of sale, the Department will refund the amount withheld when the transferor has reported and paid tax on the entire gain as provided in Section 5847(h) (provided the transferor is in good standing.)

E. Section 5847(g) does not apply to installment sales. Certain early refund and alternative security provisions are specified in 32 V.S.A. § 5847(g). These provisions are superceded by Section 5847(h) with respect to installment sales made on or after June 26, 1997.

Approved:

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