

Enrolled
House Bill 2592

Sponsored by Representative BUCKLEY; Representatives BERGER, MACPHERSON

CHAPTER

AN ACT

Relating to tax compliance; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

NOTE: Sections 1 and 2 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS chapter 314.

SECTION 4. (1) As used in this section:

(a) "Authorized agent" means an agent who is responsible for closing and settlement services in a conveyance of a real property interest.

(b) "Closing and settlement services" means services that are provided for the benefit of a transferor or a transferee in connection with a conveyance of a real property interest, and the receipt or disbursement of moneys in connection with a sale, lease, encumbrance, mortgage or deed of trust in or related to real property.

(c) "Conveyance" means a sale, lease, encumbrance, mortgage or creation of a secured interest in real property.

(d) "Real property interest" means a United States real property interest, as defined in section 897(c) of the Internal Revenue Code, that is located in the State of Oregon.

(2)(a) If there is a conveyance of a real property interest, the authorized agent providing closing and settlement services is required to withhold an amount equal to the least of:

- (A) Four percent of the consideration for the real property interest being conveyed;
- (B) Four percent of the net proceeds resulting from the conveyance; or
- (C) Ten percent of the gain includable in taxable income.

(b) For purposes of this subsection, a transferor is:

(A) An individual who is not a resident of this state at the time of both the closing date of the conveyance and the date on which proceeds of the conveyance are disbursed; or

(B) A C corporation that, immediately after the conveyance of the real property interest, is not doing business in this state.

(3)(a) Notwithstanding subsection (2) of this section, an authorized agent is not required to withhold amounts under this section if the authorized agent obtains a written affirmation executed by the transferor on a form prescribed by the Department of Revenue certifying under penalty of perjury that:

- (A) The consideration for the conveyance does not exceed \$100,000;
- (B) The transferee is acquiring the real property interest through foreclosure; or
- (C) The transferor:

(i) If an individual, is a resident of this state;

(ii) If a corporation, has a permanent place of business in this state; or

(iii) Has professionally competent knowledge or advice that the transferor will not owe tax under ORS chapter 316, 317 or 318 for the tax year because the conveyance is an exchange that qualifies for deferral under section 1031 or 1033 of the Internal Revenue Code or is a nontaxable transaction under Oregon tax law.

(b) If withholding is not retained and remitted to the department pursuant to this section, the authorized agent shall retain the written affirmation described in this subsection for six years from the date of the closing of the conveyance transaction and shall present the written affirmation to the department immediately upon request in writing from the department.

(4) For purposes of this section, a corporation is not doing business in this state if:

(a) The corporation has not been issued a certificate of existence or a certificate of authorization by the Secretary of State as described in ORS 60.027; and

(b) The corporation does not maintain a permanent office with a staff of at least one employee in this state or does not own or lease property in this state other than the property that is the subject of the conveyance.

(5)(a) Amounts withheld pursuant to this section are held in trust for the State of Oregon and shall be paid to the department in the time and manner prescribed by the department by rule.

(b) If an authorized agent fails to remit an amount withheld or required to be withheld by the agent under this section by the time remittance is required, the department may enforce collection in the same manner as the department enforces the collection of amounts withheld by employers under ORS 316.162 to 316.221.

(c) Notwithstanding paragraph (b) of this subsection, the department may not proceed with collection actions against the authorized agent if the authorized agent:

(A) Presents the department with the written affirmation described in subsection (3) of this section; and

(B) Demonstrates to the department that the authorized agent obtained the written affirmation prior to disbursal of funds due the transferor resulting from the conveyance.

SECTION 5. Section 4 of this 2007 Act applies to conveyances of real property interests occurring on or after January 1, 2008.

SECTION 6. If a political subdivision of this state imposes a tax on or measured by income as determined under ORS chapter 316, 317 or 318, the Department of Revenue shall provide to the political subdivision, at the request of the political subdivision, collection, enforcement, administration and distribution services for the tax in the manner provided in ORS 305.620.

SECTION 7. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by House June 21, 2007

Repassed by House June 25, 2007

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 24, 2007

.....
President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State