

P.L. 2004, CHAPTER 55, *approved June 29, 2004*
Assembly, No. 3128

1 **AN ACT** concerning the payment of estimated gross income tax on
2 certain gains of nonresidents on sales of real property,
3 supplementing Title 54A of the New Jersey Statutes.
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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. As used in P.L.2004, c. (C.) (now pending before the
9 Legislature as this bill):

10 "Administrative costs" means an amount equal to \$10.00 per
11 estimated gross income tax form filed with a county recording officer,
12 which may be retained by the county treasurer from the estimated
13 gross income tax payment accompanying such form to provide the
14 resources necessary to offset the additional direct expenditures
15 incurred by the county recording officer and the county treasurer for
16 the implementation of their responsibilities under P.L.2004, c.
17 (C.) (now pending before the Legislature as this bill);

18 "County recording officer" means the register of deeds and
19 mortgages in counties having such an officer and the county clerk in
20 the other counties;

21 "Date of sale or transfer" means the date the deed affecting the
22 conveyance is delivered by the seller or transferor to the transferee;

23 "Gain" on the sale or transfer of real property means the amount
24 determined pursuant to section 1001 of the federal Internal Revenue
25 Code of 1986, 26 U.S.C. s.1001, as that section applies to the sale or
26 transfer of real property;

27 "Nonresident taxpayer" means:

28 a. an individual who qualifies as a nonresident taxpayer as defined
29 in subsection (n) of N.J.S.54A:1-2, and an estate or trust that qualifies
30 as a nonresident estate or trust as defined in subsection (p) of
31 N.J.S.54A:1-2; or

32 b. An individual who is not domiciled in New Jersey but who may
33 be considered a resident of New Jersey for tax purposes under
34 paragraph (2) of subsection m. of N.J.S.54A:1-2 at the end of a
35 taxable year, by virtue of maintaining a permanent place of abode in
36 New Jersey for substantially all of the taxable year and by spending in
37 aggregate more than 183 days of the taxable year in New Jersey,
38 unless the individual has already qualified as a resident on the date of
39 sale or transfer of real property;

40 "Sale or transfer of real property" means the change of ownership
41 of a fee simple interest in real property by any method; and

42 "Seller or transferor" means the individual, estate or trust making

1 the sale or transfer of a fee simple interest in real property.

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3 2. a. A nonresident taxpayer shall estimate and pay the gross
4 income tax liability on the gain, if any, upon the sale or transfer of real
5 property within this State. A nonresident taxpayer shall estimate the
6 gross income tax due on a form prescribed by the director, using an
7 estimated tax rate that is equal to the highest rate of tax for the taxable
8 year provided in N.J.S.54A:2-1. The estimated tax due shall equal the
9 gain, if any, multiplied by that rate. The amount of gain used in the
10 computation shall equal the amount of gain reportable for federal
11 income tax purposes for the taxable year, but may not be less than 2%
12 of the consideration for the sale or transfer stated in the deed affecting
13 the conveyance.

14 b. If the real property sold or transferred is located partly with and
15 partly without this State, the nonresident taxpayer shall estimate the
16 tax due using only the portion of the gain reasonably attributable to
17 the portion of the real property located within this State.

18 c. If the nonresident is an estate or trust, the taxpayer shall
19 estimate the tax due based upon the gain, if any, computed without
20 reduction for any distribution of income to the beneficiaries during the
21 taxable year in which the sale or transfer occurred.

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23 3. a. A nonresident taxpayer shall file the estimated tax form with
24 the county recording officer, along with the payment of any estimated
25 tax due, at the time the deed is filed with the county recording officer
26 for recording using the procedures prescribed in such form and
27 accompanying instructions as the director shall prescribe. The
28 nonresident taxpayer shall make that estimated tax payment payable to
29 the Department of the Treasury for the estimated tax which payment
30 shall be separate from any other payment required to be made by the
31 seller or transferor pursuant to law. Except for a nonresident taxpayer
32 who meets one of the exemptions provided in subsection b. of this
33 section, a nonresident taxpayer who is a seller or transferor of real
34 property within this State shall file the estimated tax form, whether or
35 not they have a gain on the sale or transfer.

36 b. The requirements of this section shall not apply if:

37 (1) the real property being sold or transferred is used exclusively as
38 the principal residence of the seller or transferor within the meaning of
39 section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C.
40 s.121;

41 (2) the seller or transferor is a mortgagor conveying the mortgaged
42 property to a mortgagee in foreclosure or in a transfer in lieu of
43 foreclosure with no additional consideration; or

44 (3) the seller or transferor, or transferee is an agency or authority
45 of the United States of America, an agency or authority of the State
46 of New Jersey, the Federal National Mortgage Association, the

1 Federal Home Loan Mortgage Corporation, the Government National
2 Mortgage Association, or a private mortgage insurance company.

3 c. The principal residence exemption set forth in paragraph (1) of
4 subsection b. of this section, shall apply only if the property sold or
5 transferred was used exclusively as the principal residence of the seller
6 or transferor. If the real property sold or transferred includes both the
7 principal residence and other real property, the taxpayer shall file and
8 pay the estimated tax due based upon the gain on the other real
9 property.

10 d. A county recording officer shall not record or accept for
11 recording any deed for the sale or transfer of real property subject to
12 P.L.2004, c. (C.) (now pending before the Legislature as this
13 bill), unless accompanied by a form prescribed by the director pursuant
14 to subsection a. of this section and the payment of any estimated tax
15 shown as payable on such form, or unless such form includes a
16 certification by the seller or transferor on the deed who is an
17 individual, estate or trust that this section is not applicable to the sale
18 or transfer. The method for the certification under this subsection
19 shall be set forth in forms and instructions as shall be prescribed by the
20 director.

21 e. A county recording officer shall act as an agent of the director
22 for purposes of collecting the estimated gross income tax, if any,
23 shown to be payable upon the form prescribed pursuant to subsection
24 a. of this section. The director, by regulation, shall prescribe one or
25 more methods for the county recording officer's collection of such
26 estimated tax. Every county recording officer shall account for and
27 remit to the county treasurer any funds collected and any returns filed
28 with such county recording officer and the county treasurer shall remit
29 those returns and those funds, net of administrative costs, to the
30 director on such days as the director shall set by regulation consistent
31 with the administration of the provisions of P.L.1968, c.49(C.46:15-5
32 et seq.) as amended and supplemented. Every county recording officer
33 also shall follow such procedures and keep such records in respect to
34 the implementation of this section as the director may prescribe.

35 f. A county recording officer shall not be liable under this section
36 for any inaccuracy in any statement on the form prescribed pursuant
37 to subsection a. of this section or in the amount of estimated gross
38 income tax a county recording officer shall collect under this section
39 so long the county recording officer shall collect the estimated gross
40 income tax shown as payable on such form.

41 g. If a deed is recorded notwithstanding an omission or inaccuracy
42 in the form prescribed pursuant to subsection a. of this section or in
43 any certification by the transferor on such form or a deficiency in the
44 payment of estimated gross income tax required by this section, the
45 recording of such deed shall not be invalidated by reason of such
46 omission, inaccuracy, erroneous certification or deficiency nor shall

1 the title founded on such deed be impaired thereby.

2 h. If there has been an overpayment of tax required to be paid
3 through the estimated tax payments made with the filing of the deed,
4 the overpayment of tax may be refunded prior to the filing of a gross
5 income tax return under such requirements and in a manner as the
6 director shall prescribe, but no interest shall be allowed or paid on
7 such overpayment.

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9 4. This act shall take effect August 1, 2004.

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STATEMENT

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14 This bill establishes a new requirement for nonresident taxpayers to
15 pay estimated New Jersey gross income tax on gain on New Jersey
16 real estate transactions. Generally, New Jersey gross income tax is
17 due on any transaction if the gain is recognized for federal income tax
18 purposes and nonresidents must pay New Jersey gross income tax on
19 New Jersey source income. New Jersey source income for nonresident
20 taxpayers includes income from any interest in real or tangible personal
21 property owned or disposed of in this State pursuant to N.J.S.54A:5-
22 8.

23 Effective for sales or transfers of real property occurring on and
24 after August 1, 2004, nonresident individuals, estates and trusts who
25 sell or transfer certain real property located within New Jersey will be
26 required to pay estimated gross income tax to the Division of
27 Taxation. The amount of the estimated gross income tax is determined
28 by multiplying the amount of the gain, if any, for federal income tax
29 purposes from the sale or transfer of the real property by the highest
30 applicable rate of New Jersey gross income tax in effect for the taxable
31 year. The estimated tax payment must not be less than 2% of the
32 consideration for the sale or transfer stated in the deed affecting the
33 conveyance.

34 A nonresident transferor is exempt from the payment of estimated
35 gross income tax on the transfer of real property if:

36 (1) the real property being sold or transferred is used exclusively as
37 the principal residence of the seller or transferor within the meaning of
38 section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C.
39 s.121;

40 (2) the seller or transferor is a mortgagor conveying the mortgaged
41 property to a mortgagee in foreclosure or in a transfer in lieu of
42 foreclosure with no additional consideration; or

43 (3) the seller or transferor, or transferee is an agency or authority
44 of the United States of America, an agency or authority of the State
45 of New Jersey, the Federal National Mortgage Association, the
46 Federal Home Loan Mortgage Corporation, the Government National

1 Mortgage Association, or a private mortgage insurance company.

2 Nonresident transferors may take credit on their personal income
3 tax returns for the estimated tax paid. If the estimated tax paid
4 exceeds the nonresident transferor's actual tax liability for the year,
5 a refund will be issued. Estimated tax payments made with the filing
6 of the deed may be refunded prior to the filing of a gross income tax
7 return in circumstances and in a manner as the Director of the Division
8 of Taxation shall prescribe.

9 The county recording officers in each county will be the agent of
10 the Director of the Division of Taxation for the filing of the estimated
11 tax form and the collection of the payment. No deed covering
12 applicable sales will be recorded unless accompanied by an estimated
13 tax form and the payment of any estimated tax, or unless such form
14 includes a certification by the seller or transferor on the deed that the
15 estimated tax requirement is not applicable to the sale or transfer. The
16 county treasurers are permitted to retain \$10.00 per tax filing to offset
17 the additional direct expenditures as may be incurred by the county
18 recording officer and the county treasurer for the implementation of
19 their responsibilities under this bill.

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25 Requires the payment of estimated gross income tax on sales of real
property in this State by nonresidents.