

# STATE TAX WITHHOLDING

## "SUMMARY OF THE EXEMPTIONS AND RULES"



### Compliments of

Some states impose a mandatory tax withholding requirement on the sale of real property by nonresident individuals or entities. In some cases, an exemption is available for investors performing 1031 exchanges. Below is a brief summary of some state withholding requirements:

#### CALIFORNIA

**Requirement:** 3.33% of the sales price withheld.

**Exemption:** Submit Form 593-C ("Real Estate Withholding Exemption Certificate for Individual Sellers") and certify the sale is part of a 1031 exchange. Non-resident sellers seeking an exemption must submit Form 593-W ("Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers") to the California Franchise Tax Board.

**Information:** [www.ftb.ca.gov](http://www.ftb.ca.gov) or 800-998-3676

#### COLORADO

**Requirement:** 2% of the sales price if the property is over \$100,000.

**Exemption:** If the seller is performing a §1031 exchange, the non-Colorado resident may sign an "Affirmation of No Reasonably Estimated Tax to be Due" per Colorado Department of Revenue Form DR1083.

**Information:** C.R.C. 39-22-604.5; [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax)

#### GEORGIA

**Requirement:** 3% of the sales price if the property is over \$20,000.

**Exemption:** Sellers performing a 1031 exchange and acquiring replacement property in Georgia are exempt and must submit Form IT-AFF3. Nonresident sellers purchasing replacement property out of Georgia are not exempt.

**Information:** [www.etax.dor.ga.gov/inctax/withholding\\_tax\\_forms.aspx](http://www.etax.dor.ga.gov/inctax/withholding_tax_forms.aspx)

#### HAWAII

**Requirement:** 5% of the sales price under the Hawaii Real Property Tax Act.

**Exemption:** Completion of Form N-289 where the seller states they are not required to recognize any gain on the transfer because they are performing a 1031 exchange.

**Information:** H.R.S. §235-68; [www.hawaii.gov/tax](http://www.hawaii.gov/tax)

#### MAINE

**Requirement:** 2.5% of the sales price if the property sold is over \$50,000.

**Exemption:** At least two weeks prior to closing, submitting Form REW-5 ("Request for Exemption or Reduction in Withholding or Maine Income Tax on the Disposition of Maine Real Property").

**Information:** 207-626-8473 M.R.S. Title 36 §5250-A; [www.maine.gov/](http://www.maine.gov/)



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### MARYLAND

**Requirement:** 4.75% by nonresident individual and 7% by nonresident entity.

**Exemption:** At least 21 days prior to closing, submit Form MW506AE to Maryland Comptroller's Office if there is no boot. The state of Maryland also requires a letter from the qualified intermediary stating the amount of boot, if any. The amount of any boot must be stated on the application as the taxable amount.

**Information:** Section 10-912 of the Tax General Article, Annotated Code of Maryland; [www.individuals.marylandtaxes.com/default.asp](http://www.individuals.marylandtaxes.com/default.asp)

### MISSISSIPPI

**Requirement:** 5% of the sales price if property sold is over \$100,000.

**Exemption:** If the seller is performing an exchange, they may provide the buyer with an affidavit stating no gain is to be recognized on the sale because they are performing an exchange and purchasing replacement property in Mississippi.

**Information:** M.R.S. Section 27-7-308; [www.dor.ms.gov](http://www.dor.ms.gov)

### NEW JERSEY

**Requirement:** Pursuant to the bulk sale notification rules which also generally apply in New Jersey, the buyer must file Form C-9000 with the Division of Taxation at least 10 days before closing. Within 10 days, the Division will forward a notice of the amount to be held in escrow at the closing. The escrow amount includes existing tax debts, delinquencies, assessments and tax on gain from the sale of property.

**Exemption:** The seller may file an Asset Transfer Tax Declaration form to assist the Division on calculating the estimated tax on gain. Line 6 on this Form does refer to a 1031 exchange affecting the calculation of estimated tax. The Division has discretion to adjust the escrow amount held. Payment of the taxes is made from the escrow account.

**Information:** [www.state.nj.us/treasury/taxation/faqbulksale.shtml](http://www.state.nj.us/treasury/taxation/faqbulksale.shtml); N.J.S.A. 54:50-38

### NEW YORK

**Requirement:** 7.7% of the capital gain.

**Exemption:** Filing Form IT-2663, checking box 4B, and providing a brief summary of the exchange before closing with the New York State Department of Taxation and Revenue.

**Information:** N.Y.R.S. Tax Law Article 22, Section 663; [www.tax.ny.gov/forms](http://www.tax.ny.gov/forms)

### NORTH CAROLINA

**Requirement:** 4% of the sales price (other requirements may apply). The buyer must file a return with the Secretary of the State of North Carolina within 15 days of the sale closing.

**Information:** NC Section 105-163

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### PENNSYLVANIA

**Requirement:** For individuals and other sellers, Pennsylvania does not recognize the Federal 1031 exchange gain deferral rules and state income taxes must be paid when there is gain on the sale of Pennsylvania property.

**Exemption:** For C-Corporations following GAAP, Pennsylvania does follow the Federal rules and allow for deferral pursuant to Section 1031.

### RHODE ISLAND

**Requirement:** 6% of the sales price for nonresident individuals and 9% for nonresident corporations.

**Exemption:** Completion of RI Form 71.3, Nonresident Election of Gain and Certificate of Withholding Due, and checking the box noting the sale will not be subject to tax because the seller is performing a 1031 exchange.

**Information:** [www.tax.ri.gov](http://www.tax.ri.gov)

### SOUTH CAROLINA

**Requirement:** 7% for individuals and 5% for corporations. Buyers are required to file Form I-290 and estimate the seller's gain based on the Seller's Affidavit. The withhold amount is calculated by multiplying the appropriate percentage by the estimated gain (when Affidavit is received) or multiplying the percentage by the sales prices (when no Affidavit is received).

**Exemption:** Completion of Form I-295 (Affidavit Nonresident Seller Withholding).

**Information:** S.C. Code Section 12-8-580; [www.sctax.org/default.htm](http://www.sctax.org/default.htm)

### WEST VIRGINIA

**Requirement:** 2.5% of the sale proceeds or estimated capital gain.

**Exemption:** File Form WV.NRAE (Application for Full or Partial Exemption) with the State Tax Department no later than 21 days before closing.

**Information:** West Virginia Code 11-21-71b

### VERMONT

**Requirement:** 2.5% of the sales price. The buyer must complete Form RE-171 and submit with the withhold amount to the Vermont Commissioner of Taxes.

**Exemption:** A nonresident seller can request an exemption for performing a 1031 exchange by filing a request for Withholding Certificate and presenting this Certificate to the buyer prior to closing. A separate tax, the Vermont Land Gains tax, exempts only exchanges of Vermont land for Vermont land.

**Information:** [www.state.vt.us/tax/index.shtml](http://www.state.vt.us/tax/index.shtml)

This information is only a very brief overview of some state withholding requirements. Every investor should work with their tax/legal advisor and review all the details of the latest state withholding rules and possible exemptions before closing.