



TITLE COMPANY

of the rockies

Primer on Colorado Real Property Withholding

GENERAL INFORMATION

Nonresident real estate transactions are subject to Colorado income tax withholding on the sales of Colorado real estate in excess of \$100,000 for -

- ✓ Individuals;
- ✓ Estates;
- ✓ Trusts; and
- ✓ Corporations that do not maintain a permanent place of business in Colorado (a corporation will be deemed to have a permanent place of business in Colorado if it is a Colorado domestic corporation, if it is qualified by law to transact business in Colorado, or if it maintains and staffs a permanent office in Colorado).

A nonresident is an individual who did not consider his/her home to be in Colorado at any time during the tax year even though the person may have temporarily resided and/or worked in Colorado.

The withholding tax, if required, will be the smaller of:

- two percent (2%) of the sales price, rounded to the nearest dollar; or
- the net proceeds from the sale ("Net proceeds from the sale" means the net amount that would otherwise be due to the seller on the settlement sheet).

The tax is withheld at the time of closing by the title insurance company or any other person providing the closing and settlement services. ("Closing and settlement services" means providing services for the benefit of all necessary parties in connection with the sale, leasing, encumbering, mortgaging, creating a secured interest in and to the real property, and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust. [see, §10-11-102 (3.5), C.R.S.]).

The tax is submitted to the Colorado Department of Revenue, where it will be credited to the seller's income tax account as an estimated tax payment. The seller can claim credit for the estimated payment against the income tax liability when filing a Colorado income tax return for the year of the sale. Taxpayers must file a Colorado individual income tax return to claim the estimated payment credit. [see, §39-22-604.5, C.R.S.] A transferor who is an individual, estate, or trust will be subject to the withholding tax if either the federal Form 1099-S to be filed with the Internal Revenue Service to report the transaction or the authorization for the disbursement of the funds resulting from the transaction shows a non-Colorado address for the transferor

HOW IS THE TAX FILED?

The form called Information with Respect to a Conveyance of a Colorado Real Property Interest (DR 1083) provides information about the transferor (the person or entity that owned the property and is selling it), details of the transaction, reasons for withholding or not withholding tax, and determination of amount of tax withheld. The reverse side of the form provides affirmations that sellers may sign to claim exemption from the withholding. The form called Payment of Withholding Tax on Certain Colorado Real Property Interest Transfers (DR 1079) is required when remitting Colorado tax withheld. The form must be filed within 30 days of the date of closing. On the DR 1079 form, use the name and Social Security number/Colorado account number of the taxpayer(s) who will claim the withholding tax on the Colorado income tax return. Do not use the name and account number of the real estate company



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acting as an agent of the taxpayer(s) in the property sale. Also, include the Social Security number/Colorado account number on the check to prevent problems associated with crediting the payment to the proper taxpayer.

WHEN IS THE DR 1083 FORM NOT REQUIRED TO BE FILED?

- the selling price of the property is not more than \$100,000; or
- the transferor is an individual, estate, or trust and both the Form 1099-S and the authorization for disbursement of funds show a Colorado address for the transferor; or
- the transferee is a bank or corporate beneficiary under a mortgage or beneficiary under deed of trust, and the Colorado real property is acquired in judicial or nonjudicial foreclosure or by deed in lieu of foreclosure; or
- the transferor is a corporation incorporated under Colorado law or currently registered with the Secretary of State's Office as authorized to transact business in Colorado; or
- the title insurance company or the person providing the closing and settlement services, in good faith, relies upon a written affirmation executed by the transferor, certifying under the penalty of perjury one of the following:
 - ✓ that the transferor, if an individual, estate, or trust, is a resident of Colorado;
 - ✓ that the transferor, if a corporation, has a permanent place of business in Colorado;
 - ✓ that the transferor is a partnership as defined in section 761(a) of the Internal Revenue Code required to file an annual federal return of income under section 6031(a) of the Internal Revenue Code;
 - ✓ that the Colorado real property being conveyed is the principal residence of the transferor which could qualify for the exclusion of gain provisions of section 121 of the Internal Revenue Code (*seek legal counsel and/or tax advice if you have questions about the definition and application of the term "principal residence" immediately above*).
 - ✓ that the transferor will not owe Colorado income tax reasonably estimated to be due from the inclusion of the actual gain required to be recognized on the transaction in the gross income of the transferor.

In all cases other than those listed in the section above, withholding must be made and forms DR 1083 and DR 1079 must be completed and submitted to the Colorado Department of Revenue. By signing the affirmation, the seller assumes responsibility for complying with state income tax laws.

Normally Colorado tax will be due on any transaction upon which gain will be recognized for federal income tax purposes. Gain will normally be recognized for federal income tax purposes any time the selling price of the property exceeds the total of the taxpayer's adjusted basis in the property, plus the expenses incurred in the sale of the property. The taxpayer's adjusted basis of the property will normally be the taxpayer's total investment in the property, minus any depreciation thereon he has previously claimed for federal income tax purposes.

DUE DATE AND PENALTY

The title insurance company must file DR 1083 together with DR 1079 with the Colorado Department of Revenue within 30 days of the closing date of the transaction. Any title insurance company which is required to withhold any amount pursuant to §39-22-604.5, C.R.S. and fails to do so shall be liable for the greater of five hundred dollars or ten percent of the amount required to be withheld, not to exceed twenty-five hundred dollars.