Department of Revenue: Personal Income Tax

Real Estate Withholding FAQ—General

Oregon Revised Statute 314.258 and Oregon Administrative Rule 150-314.258 provide for withholding of tax on certain real estate transactions of nonresident individuals and on C corporations that do not do business in Oregon. This law and rule apply to conveyances that occur on or after January 1, 2008. Below are answers to frequently asked questions (FAQs) on this topic.

We also have FAQs related to authorized agents at the Authorized agents FAQ.

1. What is real estate withholding?
Real estate withholding is a prepayment of income tax required when an individual nonresident or a C corporation not registered to do business in Oregon sells Oregon property. Authorized agents (escrow agents) are required to withhold the tax unless an exception exists. If you are selling Oregon property, your title company may ask you to provide:

- proof that you are a resident;
- a completed Form WC; or
- other written assurance.

Your escrow agent will be required to withhold tax if they do not have proof that you are an exempt transferor or have an exempt transfer as described below.

2. What is an authorized agent?
An authorized agent is an Oregon licensed escrow agents or an attorney handling funds of the sale if there is no escrow agent.

Read the Authorized agents FAQ for more information.

3. What is a "seller" or "transferor"?
A seller, also known as a transferor, is a person who transfers, sells, deeds, or otherwise conveys real property to another person. If you sold Oregon real estate that you owned, you are the seller and transferor.

4. Is real estate withholding an additional tax on the sale of Oregon real property?
No. The withholding tax is not an additional tax due but instead a prepayment of tax, like estimated payments of a personal or corporate tax based on income. When you file your income tax return to determine your actual tax, the withholding will appear as a credit against any taxes you owe. If you have an overpayment, it will be refunded to you.

Example: Steve had $9,000 withheld on the sale of Oregon rental property. When he filed Oregon Form 40N by the due date, his Oregon tax liability was $7,200. Steve received a refund of the $1,800 overpayment.

5. What is the withholding calculation?
The authorized agent is required to withhold the least of three amounts:

- 4 percent of the consideration (sales price);
- 8 percent of the gain from the sale that is includible in Oregon taxable income for the year; or
- The net proceeds distributed to the transferor (seller).

Example 1: Dee is a nonresident and sold her Oregon property for $350,000. Of this amount, she'll receive $235,000 and the rest will go to a bank loan, taxes, and fees. Dee has an adjusted basis of $160,000 in the property. Her authorized agent will withhold the least of 4 percent of the consideration ($350,000 x 4% = $14,000); 8 percent of the gain includible in Oregon taxable income ($190,000 x 8% = $15,200); or the net proceeds distributed to the transferor ($235,000). Dee will have $14,000 withheld from her proceeds and sent to the Department of Revenue as a prepayment of her Oregon tax.

Example 2: Adam is a nonresident and sold some Oregon property for $150,000. Of this amount, he will receive $3,500 and the rest will go to taxes, fees, and a large bank loan Adam took out against the property. His adjusted basis in the property is $85,000. Adam's authorized agent will withhold the least of 4 percent of the consideration ($150,000 x 4% = $6,000); 8 percent of the gain includible in Oregon taxable income ($65,000 x 8% = $5,200); or the net proceeds distributed to the transferor ($3,500). He won't receive any proceeds because the authorized agent will be required to send the entire $3,500, the least of the three amounts, to the Department of Revenue as a prepayment of his Oregon tax. When Adam files his Oregon return, he will likely owe additional tax on the gain from the sale.

6. When is withholding required?
Generally, authorized agents are required to withhold tax when nonresident individuals or C corporations sell property located in Oregon if the sales price is greater than $100,000. Single member LLCs and grantor trusts are treated as individuals for real estate withholding purposes. Other exemptions to the withholding requirement may apply. See question 18 below.

7. When is withholding not required?
The authorized agent is not required to withhold if the seller is an Oregon resident, a C corporation doing business in Oregon after the property sale, or a pass-through entity. Pass-through entities are partnerships, S corporations, limited liability companies (LLC) with more than one owner, limited liability partnerships (LLP), or certain trusts and estates. These entities, not the authorized agent, are responsible for withholding for their nonresident owners as explained in the instructions for Form OR-19. Withholding is also not required by the authorized agent if the seller meets an exemption (see question 18 below).

8. Is withholding required on a grantor trust?
Yes. A grantor trust is not a recognized entity for tax purposes because the grantor retains substantial control. If you own the property through a grantor trust, the authorized agent will treat you the same as an individual, so if you are not an Oregon resident, you'll need to complete Form WC and give it to your authorized agent at the time of the closing. Otherwise, they will be required to withhold 4 percent of the sales price.

9. How can I get forms and instructions?
Click here for Form OR-18 and instructions. The authorized agent may also provide the necessary form and instructions to you to fill out before the closing. If you're not an exempt transferor, the authorized agent will withhold 4 percent of the sales price unless you complete Form WC showing a different amount. If the sale is an exempt transfer (see question 18 below), fill out Part A of Form WC as indicated in the instructions. Otherwise, fill out Part B to show which amount must be withheld. Do not fill out Form OR-18. The authorized agent will fill out Form OR-18 if withholding is required and they will give you a copy.

If you need help calculating depreciation or taxable gain, contact your tax professional. You may also contact the IRS with questions about calculating taxable gain or qualifying for gain exclusions.

10. If the seller moves into or out of Oregon during the year, is withholding still required?
Yes, if the sale occurred or the proceeds were disbursed during the part of the year that the transferor was not a resident of Oregon. If you moved out of Oregon before your property was sold, you are not an exempt transferor. You must complete Form WC for the authorized agent. If you sold your home, you may qualify to have the gain excluded from tax. Contact the IRS to find out if you qualify for the exclusion of gain on the sale of your home.

If the entire gain is excluded you can complete Form WC, Part A or give the authorized agent a written assurance as described in the instructions for Form OR-18. If only some of the gain is excluded, complete Form WC, Part B, showing the excluded amount on Line 8 under IRC 121.

11. Does the law require withholding on the sale of a principal residence?
Yes, but only on the amount of taxable gain that exceeds the federal exclusion amount, if you qualify. For joint filers, the exclusion is $500,000. For all others, it is $250,000. See the instructions for Form WC. You can refer to IRS Publication 523 for more information about the exclusion, or contact your tax professional or the IRS if you have questions.

12. Can sellers whose withholding payment is more than their tax liability get an early refund?
No. Overpayments of withholding cannot be refunded until the tax return for the year of the sale is filed.

13. Does withholding relieve taxpayers from the requirement to file an Oregon return?
No. The seller is still required to file the Oregon personal income tax return, corporate income tax, or excise tax return, whichever is applicable, by the due date of the return.

14. If the taxpayer is exempt from withholding, does that mean they don't have to file an Oregon return?
No. Each taxpayer must review the filing requirements to see if they are required to file a tax return. A taxpayer who sells property located in Oregon must pay tax to Oregon on the taxable income from the

sale of that property. If the taxpayer is also taxed by another state, they may be eligible for a credit in their state of residence for income taxes paid to Oregon. Special rules apply for residents of California, Arizona, Indiana, and Virginia. See *Part-Year Residents and Nonresident* instructions, Forms 40N or 40P, for more information.

15. Can sellers who have a lower tax liability apply for reduced withholding?
No. You can't offset gain from the sale with other items to reduce the withholding required. You may be eligible for a refund after you file your return.

16. Who is responsible for completing the forms related to this new law?
Each nonresident individual or C corporation transferor (seller) is responsible for completing Form WC and submitting it to the authorized agent. The authorized agent will submit Form WC to the department. If withholding is required, the authorized agent is responsible for completing Form OR-18 and providing a copy to the transferor. The authorized agent is also responsible for completing voucher TPV and sending it to us along with the amount required to be withheld. If withholding is not required, the authorized agent will send us Form WC showing why no tax was withheld.

Even if you are an Oregon resident, the authorized agent may ask you to sign a form certifying that you are not subject to withholding because you are an Oregon resident.

17. Is the real estate escrow person responsible to verify any of the amounts shown on the department forms?
No. The authorized agent (escrow person) is not responsible to verify what the transferor claims on Form WC. The transferor is certifying under penalty of perjury that the statements he or she is making are true. If after reading the instructions, you have questions about filling out Form WC, contact your tax professional or us. Keep a copy of Form WC for your records.

18. What are the exemptions from withholding?
Withholding is not required if:

- The consideration for the property conveyed is $100,000 or less;
- The transferor is an individual and a resident of Oregon;
- The transferor is a C corporation that has a permanent place of business in Oregon;
- The transferor is a pass-through entity not affected by this law (see question 6);
- The transferor intends to defer tax on the gain under Internal Revenue Code (IRC) §1031 or §1033 and, at the time of closing, the property is eligible for such treatment;
- The transferor has received advice from a tax professional that there is no tax estimated to be due because the conveyance is:
    - The sale of a principal residence and all of the gain qualifies for exclusion under IRC §121.
    - A transfer to a corporation controlled by the transferor for purposes of IRC §351.
    - A transfer pursuant to a tax-free reorganization under IRC §361.
    - A transfer by a tax-exempt entity for purposes of IRC §501(a) and the transfer does not give rise to unrelated business taxable income under IRC §512.
    - A transfer to a partnership in exchange for an interest in the partnership such that no gain or loss is recognized under IRC §721.
    - Between spouses or is incident to divorce for purposes of IRC §1041.
    - A transfer where the transferor is conveying the property subject to a mortgage, trust deed or land sale contract to a mortgagee, trust deed beneficiary, or land sale contract vendor as part of a foreclosure action, a non-judicial foreclosure, or forfeiture proceeding, or a transfer by a mortgagor, trust deed grantor, or land sales contract vendee in lieu of a foreclosure, with no additional consideration.
    - A transfer that results in zero gain or a loss and there is expected to be no tax owed on the conveyance.
    - Fully exempt from the recognition of gain under ORS chapter 316, 317, or 318 as explained to the department in writing at the time the transaction is completed (attach explanation to the Form WC).

19. What form do sellers use to certify they are exempt from withholding?
Use Form WC to certify under penalty of perjury that the transferor is exempt from withholding. See the instructions for Form WC part A and list the details regarding your exempt status. Give the completed form to your authorized agent at the closing or before receiving any funds. Keep a copy for your records.
