



FYI Income 5

Nonresident Real Estate Transactions - Required Withholding

GENERAL INFORMATION

Corporations that do not maintain a permanent place of business in Colorado, and nonresident individuals, estates and trusts are subject to Colorado income tax withholding on the sales of Colorado real estate in excess of \$100,000. 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, its agent, or any other person providing closing and settlement services. 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. [§39-22-604.5 C.R.S.]

HOW TO FILE THE TAX

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.

NOTE: On the DR 1079, 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 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 MUST THE DR 1083 BE FILED?

Except as otherwise specified in the exceptions listed below, a DR 1083 must be completed and filed to report sales of Colorado real property. The form must be filed within 30 days of the date of closing.

WHEN IS THE DR 1083 NOT REQUIRED TO BE FILED?

- The selling price of the property is **less** than \$100,000.
- The seller is an individual, estate, trust, partner or partnership and both the federal Form 1099-S (to report the sales to the Internal Revenue Service) **and** the authorization, if any, for disbursement of funds from the sale show the seller as having a Colorado address.
- The seller is a government agency.
- The seller is a corporation that is incorporated under Colorado law or is currently registered with the Secretary of State's office as qualified to transact business in Colorado.
- The transferee (the buyer of the property) is a bank or a corporate beneficiary under a mortgage or under a deed of trust, and the property was acquired by foreclosure or by deed in lieu of foreclosure.

WHEN MUST THE DR 1083 BE COMPLETED AND SUBMITTED WITHOUT A TAX PAYMENT?

Withholding is not required but the Form 1083 must be completed when:

- the 1099-S shows a non-Colorado address but the individual, estate or trust affirms Colorado residency at the time of the sale, or
- the seller, corporation or partnership signs the affirmation of permanent place of business within Colorado, or
- the seller, who is an individual, signs the affirmation that the property was his/her principal residence immediately prior to the transfer, or
- the seller signs an affirmation that no Colorado income tax will be due on the sale, or
- there would have been withholding, but there were no net proceeds due to the seller, or
- the seller is a partnership, required to file an annual return of income for federal income tax purposes.

By signing the affirmation, the seller assumes responsibility for complying with state income tax laws.

WHEN IS WITHHOLDING REQUIRED?

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.

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.