



## Bulletin: Important Information for Your Customers

### Information for Sellers New Oregon Law: Tax Withholding Requirement for Sellers

#### **When?**

Effective January 1, 2008

#### **Who?**

Sellers that are non-Oregon residents or will not remain an Oregon resident after closing

#### **What?**

Oregon Law (House Bill 2592) requires an escrow agent to withhold a portion of seller proceeds at closing. The withholding amount, specified by law, will be remitted by the escrow agent to Oregon Department of Revenue.

#### **How?**

Sellers required to notify escrow agent, identify the withholding amount and submit required Oregon Department of Revenue forms in advance of closing to avoid potential delays.

Forms are not yet available from the Department of Revenue. Out of state sellers and those moving from the state should talk to their accountant prior to closing for the appropriate instructions to give escrow.

## **Oregon Withholding on Certain Transfers of Real Property Interests Information for Sellers**

Oregon law (Ore. Rev. Statutes 314.258) requires that an escrow agent or other third party closing a transaction for the transfer of certain Oregon real property interests withhold from the transferor's (seller's) proceeds an amount specified by law. After withholding, the agent must remit the withholding to the Oregon Department of Revenue (DOR).

Withholding does not apply in all circumstances, so it is important that the transferor (seller) identify whether an exemption to withholding applies. Perhaps the most frequently applicable exemption is the exemption for a seller who will remain an Oregon resident after closing. Some exemptions must be demonstrated solely to the closing agent. Others, including the exemption for Oregon residents, must be affirmed under penalty of perjury on a DOR form. Some exemptions may require advice of a tax professional. Some may require review of the Internal Revenue Code (IRC) and its regulations. Some may require reference to Oregon statutes.

When no exemption applies, the transferor (seller) must identify the withholding amount, using a DOR form. Completion of the form may require reference to the transferor's records for such facts as tax basis and costs of sale.

Failure to make timely delivery to the closing agent of an affirmation of exemption or certificate of withholding amount may delay closing or cause withholding of a greater amount than otherwise would be necessary.

The withholding requirements apply separately to each transferor (seller) when a transaction has more than one transferor.

If you will not reside in Oregon after closing, please inform your escrow officer immediately. Each seller will be required to provide the escrow officer with the applicable form or forms from the following list at or before closing. You may request copies at any time.

- (1) Preliminary Statement regarding Exempt Status. A transferor (seller) who checks an exempt status on this form need not complete either of the following two DOR forms.
- (2) DOR Form 40-WE: Affirmation of Exemption from Withholding. A transferor (seller) who initials an exemption as applying on this form need not complete the next form. One exemption on this form is the exemption for an Oregon resident. A seller who is not exempt under either the Preliminary Statement form or DOR Form 40-CW must turn to the next form.
- (3) DOR Form 40-CW: Transferor's Certificate of Oregon Withholding Amount. Using this form, a transferor (seller) identifies the amount of withholding. Failure to submit this form timely to the closing agent may result in an amount of withholding greater than otherwise would be required.

You may need to consult with your professional tax advisor in order to complete these forms. The closing agent will be unable to advise you in the event you have questions.

When withholding applies, the closing agent will prepare a DOR withholding transmittal form. The closing agent will send the form with its remittance of withholding, so that the transferor (seller) may claim a credit for the withholding on its Oregon tax return. The closing agent will send a copy to the transferor to enclose with the transferor's Oregon tax return, along with a second copy for the transferor's records. The closing agent will retain a copy for its records.

When a transferor (seller) claims an exemption using DOR Form 40-WE (Affirmation of Exemption), the closing agent must send a copy of the form to DOR when certain circumstances apply. In all other circumstances, the closing agent must retain the form for possible inspection by DOR.