

# 54A:8-8

## LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

**LAWS OF:** 2004                    **CHAPTER:** 55  
**NJSA:** 54A:8-8                (Estimated tax on sales of real property by nonresidents)  
**BILL NO:** A3128                (Substituted for S1775)  
**SPONSOR(S):** Cohen

**DATE INTRODUCED:** June 21, 2004

**COMMITTEE:**            **ASSEMBLY:** Budget

**SENATE**                ----

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**            **ASSEMBLY:** June 24, 2004

**SENATE:** June 24, 2004

**DATE OF APPROVAL:** June 29, 2004

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

**A3128**

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                    [ASSEMBLY:](#) [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**S1775**

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A3128

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2004, CHAPTER 55, *approved June 29, 2004*  
Assembly, No. 3128

1 AN ACT concerning the payment of estimated gross income tax on  
2 certain gains of nonresidents on sales of real property,  
3 supplementing Title 54A of the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. As used in P.L.2004, c. (C. ) (now pending before the  
9 Legislature as this bill):

10 "Administrative costs" means an amount equal to \$10.00 per  
11 estimated gross income tax form filed with a county recording officer,  
12 which may be retained by the county treasurer from the estimated  
13 gross income tax payment accompanying such form to provide the  
14 resources necessary to offset the additional direct expenditures  
15 incurred by the county recording officer and the county treasurer for  
16 the implementation of their responsibilities under P.L.2004, c.  
17 (C. ) (now pending before the Legislature as this bill);

18 "County recording officer" means the register of deeds and  
19 mortgages in counties having such an officer and the county clerk in  
20 the other counties;

21 "Date of sale or transfer" means the date the deed affecting the  
22 conveyance is delivered by the seller or transferor to the transferee;

23 "Gain" on the sale or transfer of real property means the amount  
24 determined pursuant to section 1001 of the federal Internal Revenue  
25 Code of 1986, 26 U.S.C. s.1001, as that section applies to the sale or  
26 transfer of real property;

27 "Nonresident taxpayer" means:

28 a. an individual who qualifies as a nonresident taxpayer as defined  
29 in subsection (n) of N.J.S.54A:1-2, and an estate or trust that qualifies  
30 as a nonresident estate or trust as defined in subsection (p) of  
31 N.J.S.54A:1-2; or

32 b. An individual who is not domiciled in New Jersey but who may  
33 be considered a resident of New Jersey for tax purposes under  
34 paragraph (2) of subsection m. of N.J.S.54A:1-2 at the end of a  
35 taxable year, by virtue of maintaining a permanent place of abode in  
36 New Jersey for substantially all of the taxable year and by spending in  
37 aggregate more than 183 days of the taxable year in New Jersey,  
38 unless the individual has already qualified as a resident on the date of  
39 sale or transfer of real property;

40 "Sale or transfer of real property" means the change of ownership  
41 of a fee simple interest in real property by any method; and

42 "Seller or transferor" means the individual, estate or trust making

1 the sale or transfer of a fee simple interest in real property.

2

3 2. a. A nonresident taxpayer shall estimate and pay the gross  
4 income tax liability on the gain, if any, upon the sale or transfer of real  
5 property within this State. A nonresident taxpayer shall estimate the  
6 gross income tax due on a form prescribed by the director, using an  
7 estimated tax rate that is equal to the highest rate of tax for the taxable  
8 year provided in N.J.S.54A:2-1. The estimated tax due shall equal the  
9 gain, if any, multiplied by that rate. The amount of gain used in the  
10 computation shall equal the amount of gain reportable for federal  
11 income tax purposes for the taxable year, but may not be less than 2%  
12 of the consideration for the sale or transfer stated in the deed affecting  
13 the conveyance.

14 b. If the real property sold or transferred is located partly with and  
15 partly without this State, the nonresident taxpayer shall estimate the  
16 tax due using only the portion of the gain reasonably attributable to  
17 the portion of the real property located within this State.

18 c. If the nonresident is an estate or trust, the taxpayer shall  
19 estimate the tax due based upon the gain, if any, computed without  
20 reduction for any distribution of income to the beneficiaries during the  
21 taxable year in which the sale or transfer occurred.

22

23 3. a. A nonresident taxpayer shall file the estimated tax form with  
24 the county recording officer, along with the payment of any estimated  
25 tax due, at the time the deed is filed with the county recording officer  
26 for recording using the procedures prescribed in such form and  
27 accompanying instructions as the director shall prescribe. The  
28 nonresident taxpayer shall make that estimated tax payment payable to  
29 the Department of the Treasury for the estimated tax which payment  
30 shall be separate from any other payment required to be made by the  
31 seller or transferor pursuant to law. Except for a nonresident taxpayer  
32 who meets one of the exemptions provided in subsection b. of this  
33 section, a nonresident taxpayer who is a seller or transferor of real  
34 property within this State shall file the estimated tax form, whether or  
35 not they have a gain on the sale or transfer.

36 b. The requirements of this section shall not apply if:

37 (1) the real property being sold or transferred is used exclusively as  
38 the principal residence of the seller or transferor within the meaning of  
39 section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
40 s.121;

41 (2) the seller or transferor is a mortgagor conveying the mortgaged  
42 property to a mortgagee in foreclosure or in a transfer in lieu of  
43 foreclosure with no additional consideration; or

44 (3) the seller or transferor, or transferee is an agency or authority  
45 of the United States of America, an agency or authority of the State  
46 of New Jersey, the Federal National Mortgage Association, the

1 Federal Home Loan Mortgage Corporation, the Government National  
2 Mortgage Association, or a private mortgage insurance company.

3 c. The principal residence exemption set forth in paragraph (1) of  
4 subsection b. of this section, shall apply only if the property sold or  
5 transferred was used exclusively as the principal residence of the seller  
6 or transferor. If the real property sold or transferred includes both the  
7 principal residence and other real property, the taxpayer shall file and  
8 pay the estimated tax due based upon the gain on the other real  
9 property.

10 d. A county recording officer shall not record or accept for  
11 recording any deed for the sale or transfer of real property subject to  
12 P.L.2004, c. (C. ) (now pending before the Legislature as this  
13 bill), unless accompanied by a form prescribed by the director pursuant  
14 to subsection a. of this section and the payment of any estimated tax  
15 shown as payable on such form, or unless such form includes a  
16 certification by the seller or transferor on the deed who is an  
17 individual, estate or trust that this section is not applicable to the sale  
18 or transfer. The method for the certification under this subsection  
19 shall be set forth in forms and instructions as shall be prescribed by the  
20 director.

21 e. A county recording officer shall act as an agent of the director  
22 for purposes of collecting the estimated gross income tax, if any,  
23 shown to be payable upon the form prescribed pursuant to subsection  
24 a. of this section. The director, by regulation, shall prescribe one or  
25 more methods for the county recording officer's collection of such  
26 estimated tax. Every county recording officer shall account for and  
27 remit to the county treasurer any funds collected and any returns filed  
28 with such county recording officer and the county treasurer shall remit  
29 those returns and those funds, net of administrative costs, to the  
30 director on such days as the director shall set by regulation consistent  
31 with the administration of the provisions of P.L.1968, c.49(C.46:15-5  
32 et seq.) as amended and supplemented. Every county recording officer  
33 also shall follow such procedures and keep such records in respect to  
34 the implementation of this section as the director may prescribe.

35 f. A county recording officer shall not be liable under this section  
36 for any inaccuracy in any statement on the form prescribed pursuant  
37 to subsection a. of this section or in the amount of estimated gross  
38 income tax a county recording officer shall collect under this section  
39 so long the county recording officer shall collect the estimated gross  
40 income tax shown as payable on such form.

41 g. If a deed is recorded notwithstanding an omission or inaccuracy  
42 in the form prescribed pursuant to subsection a. of this section or in  
43 any certification by the transferor on such form or a deficiency in the  
44 payment of estimated gross income tax required by this section, the  
45 recording of such deed shall not be invalidated by reason of such  
46 omission, inaccuracy, erroneous certification or deficiency nor shall

1 the title founded on such deed be impaired thereby.

2 h. If there has been an overpayment of tax required to be paid  
3 through the estimated tax payments made with the filing of the deed,  
4 the overpayment of tax may be refunded prior to the filing of a gross  
5 income tax return under such requirements and in a manner as the  
6 director shall prescribe, but no interest shall be allowed or paid on  
7 such overpayment.

8

9 4. This act shall take effect August 1, 2004.

10

11

12

### STATEMENT

13

14 This bill establishes a new requirement for nonresident taxpayers to  
15 pay estimated New Jersey gross income tax on gain on New Jersey  
16 real estate transactions. Generally, New Jersey gross income tax is  
17 due on any transaction if the gain is recognized for federal income tax  
18 purposes and nonresidents must pay New Jersey gross income tax on  
19 New Jersey source income. New Jersey source income for nonresident  
20 taxpayers includes income from any interest in real or tangible personal  
21 property owned or disposed of in this State pursuant to N.J.S.54A:5-  
22 8.

23 Effective for sales or transfers of real property occurring on and  
24 after August 1, 2004, nonresident individuals, estates and trusts who  
25 sell or transfer certain real property located within New Jersey will be  
26 required to pay estimated gross income tax to the Division of  
27 Taxation. The amount of the estimated gross income tax is determined  
28 by multiplying the amount of the gain, if any, for federal income tax  
29 purposes from the sale or transfer of the real property by the highest  
30 applicable rate of New Jersey gross income tax in effect for the taxable  
31 year. The estimated tax payment must not be less than 2% of the  
32 consideration for the sale or transfer stated in the deed affecting the  
33 conveyance.

34 A nonresident transferor is exempt from the payment of estimated  
35 gross income tax on the transfer of real property if:

36 (1) the real property being sold or transferred is used exclusively as  
37 the principal residence of the seller or transferor within the meaning of  
38 section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
39 s.121;

40 (2) the seller or transferor is a mortgagor conveying the mortgaged  
41 property to a mortgagee in foreclosure or in a transfer in lieu of  
42 foreclosure with no additional consideration; or

43 (3) the seller or transferor, or transferee is an agency or authority  
44 of the United States of America, an agency or authority of the State  
45 of New Jersey, the Federal National Mortgage Association, the  
46 Federal Home Loan Mortgage Corporation, the Government National

1 Mortgage Association, or a private mortgage insurance company.

2 Nonresident transferors may take credit on their personal income  
3 tax returns for the estimated tax paid. If the estimated tax paid  
4 exceeds the nonresident transferor's actual tax liability for the year,  
5 a refund will be issued. Estimated tax payments made with the filing  
6 of the deed may be refunded prior to the filing of a gross income tax  
7 return in circumstances and in a manner as the Director of the Division  
8 of Taxation shall prescribe.

9 The county recording officers in each county will be the agent of  
10 the Director of the Division of Taxation for the filing of the estimated  
11 tax form and the collection of the payment. No deed covering  
12 applicable sales will be recorded unless accompanied by an estimated  
13 tax form and the payment of any estimated tax, or unless such form  
14 includes a certification by the seller or transferor on the deed that the  
15 estimated tax requirement is not applicable to the sale or transfer. The  
16 county treasurers are permitted to retain \$10.00 per tax filing to offset  
17 the additional direct expenditures as may be incurred by the county  
18 recording officer and the county treasurer for the implementation of  
19 their responsibilities under this bill.

20

21

22

23

24 \_\_\_\_\_  
25 Requires the payment of estimated gross income tax on sales of real  
property in this State by nonresidents.

# ASSEMBLY, No. 3128

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Co-Sponsored by:**

**Senator Bryant**

**SYNOPSIS**

Requires the payment of estimated gross income tax on sales of real property in this State by nonresidents.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/25/2004)**



1 AN ACT concerning the payment of estimated gross income tax on  
2 certain gains of nonresidents on sales of real property,  
3 supplementing Title 54A of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in P.L.2004, c. (C. ) (now pending before the  
9 Legislature as this bill):

10 "Administrative costs" means an amount equal to \$10.00 per  
11 estimated gross income tax form filed with a county recording officer,  
12 which may be retained by the county treasurer from the estimated  
13 gross income tax payment accompanying such form to provide the  
14 resources necessary to offset the additional direct expenditures  
15 incurred by the county recording officer and the county treasurer for  
16 the implementation of their responsibilities under P.L.2004, c.  
17 (C. ) (now pending before the Legislature as this bill);

18 "County recording officer" means the register of deeds and  
19 mortgages in counties having such an officer and the county clerk in  
20 the other counties;

21 "Date of sale or transfer" means the date the deed affecting the  
22 conveyance is delivered by the seller or transferor to the transferee;

23 "Gain" on the sale or transfer of real property means the amount  
24 determined pursuant to section 1001 of the federal Internal Revenue  
25 Code of 1986, 26 U.S.C. s.1001, as that section applies to the sale or  
26 transfer of real property;

27 "Nonresident taxpayer" means:

28 a. an individual who qualifies as a nonresident taxpayer as defined  
29 in subsection (n) of N.J.S.54A:1-2, and an estate or trust that qualifies  
30 as a nonresident estate or trust as defined in subsection (p) of  
31 N.J.S.54A:1-2; or

32 b. An individual who is not domiciled in New Jersey but who may  
33 be considered a resident of New Jersey for tax purposes under  
34 paragraph (2) of subsection m. of N.J.S.54A:1-2 at the end of a  
35 taxable year, by virtue of maintaining a permanent place of abode in  
36 New Jersey for substantially all of the taxable year and by spending in  
37 aggregate more than 183 days of the taxable year in New Jersey,  
38 unless the individual has already qualified as a resident on the date of  
39 sale or transfer of real property;

40 "Sale or transfer of real property" means the change of ownership  
41 of a fee simple interest in real property by any method; and

42 "Seller or transferor" means the individual, estate or trust making  
43 the sale or transfer of a fee simple interest in real property.

44

45 2. a. A nonresident taxpayer shall estimate and pay the gross  
46 income tax liability on the gain, if any, upon the sale or transfer of real

1 property within this State. A nonresident taxpayer shall estimate the  
2 gross income tax due on a form prescribed by the director, using an  
3 estimated tax rate that is equal to the highest rate of tax for the taxable  
4 year provided in N.J.S.54A:2-1. The estimated tax due shall equal the  
5 gain, if any, multiplied by that rate. The amount of gain used in the  
6 computation shall equal the amount of gain reportable for federal  
7 income tax purposes for the taxable year, but may not be less than 2%  
8 of the consideration for the sale of transfer stated in the deed affecting  
9 the conveyance.

10 b. If the real property sold or transferred is located partly with and  
11 partly without this State, the nonresident taxpayer shall estimate the  
12 tax due using only the portion of the gain reasonably attributable to  
13 the portion of the real property located within this State.

14 c. If the nonresident is an estate or trust, the taxpayer shall  
15 estimate the tax due based upon the gain, if any, computed without  
16 reduction for any distribution of income to the beneficiaries during the  
17 taxable year in which the sale or transfer occurred.

18

19 3. a. A nonresident taxpayer shall file the estimated tax form with  
20 the county recording officer, along with the payment of any estimated  
21 tax due, at the time the deed is filed with the county recording officer  
22 for recording using the procedures prescribed in such form and  
23 accompanying instructions as the director shall prescribe. The  
24 nonresident taxpayer shall make that estimated tax payment payable to  
25 the Department of the Treasury for the estimated tax which payment  
26 shall be separate from any other payment required to be made by the  
27 seller or transferor pursuant to law. Except for a nonresident taxpayer  
28 who meets one of the exemptions provided in subsection b. of this  
29 section, a nonresident taxpayer who is a seller or transferor of real  
30 property within this State shall file the estimated tax form, whether or  
31 not they have a gain on the sale or transfer.

32 b. The requirements of this section shall not apply if:

33 (1) the real property being sold or transferred is used exclusively as  
34 the principal residence of the seller or transferor within the meaning of  
35 section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
36 s.121;

37 (2) the seller or transferor is a mortgagor conveying the mortgaged  
38 property to a mortgagee in foreclosure or in a transfer in lieu of  
39 foreclosure with no additional consideration; or

40 (3) the seller or transferor, or transferee is an agency or authority  
41 of the United States of America, an agency or authority of the State  
42 of New Jersey, the Federal National Mortgage Association, the  
43 Federal Home Loan Mortgage Corporation, the Government National  
44 Mortgage Association, or a private mortgage insurance company.

45 c. The principal residence exemption set forth in paragraph (1) of  
46 subsection b. of this section, shall apply only if the property sold or

1 transferred was used exclusively as the principal residence of the seller  
2 or transferor. If the real property sold or transferred includes both the  
3 principal residence and other real property, the taxpayer shall file and  
4 pay the estimated tax due based upon the gain on the other real  
5 property.

6 d. A county recording officer shall not record or accept for  
7 recording any deed for the sale or transfer of real property subject to  
8 P.L.2004, c. (C. ) (now pending before the Legislature as this  
9 bill), unless accompanied by a form prescribed by the director pursuant  
10 to subsection a. of this section and the payment of any estimated tax  
11 shown as payable on such form, or unless such form includes a  
12 certification by the seller or transferor on the deed who is an  
13 individual, estate or trust that this section is not applicable to the sale  
14 or transfer. The method for the certification under this subsection  
15 shall be set forth in forms and instructions as shall be prescribed by the  
16 director.

17 e. A county recording officer shall act as an agent of the director  
18 for purposes of collecting the estimated gross income tax, if any,  
19 shown to be payable upon the form prescribed pursuant to subsection  
20 a. of this section. The director, by regulation, shall prescribe one or  
21 more methods for the county recording officer's collection of such  
22 estimated tax. Every county recording officer shall account for and  
23 remit to the county treasurer any funds collected and any returns filed  
24 with such county recording officer and the county treasurer shall remit  
25 those returns and those funds, net of administrative costs, to the  
26 director on such days as the director shall set by regulation consistent  
27 with the administration of the provisions of P.L.1968, c.49(C.46:15-5  
28 et seq.) as amended and supplemented. Every county recording officer  
29 also shall follow such procedures and keep such records in respect to  
30 the implementation of this section as the director may prescribe.

31 f. A county recording officer shall not be liable under this section  
32 for any inaccuracy in any statement on the form prescribed pursuant  
33 to subsection a. of this section or in the amount of estimated gross  
34 income tax a county recording officer shall collect under this section  
35 so long the county recording officer shall collect the estimated gross  
36 income tax shown as payable on such form.

37 g. If a deed is recorded notwithstanding an omission or inaccuracy  
38 in the form prescribed pursuant to subsection a. of this section or in  
39 any certification by the transferor on such form or a deficiency in the  
40 payment of estimated gross income tax required by this section, the  
41 recording of such deed shall not be invalidated by reason of such  
42 omission, inaccuracy, erroneous certification or deficiency nor shall  
43 the title founded on such deed be impaired thereby.

44 h. If there has been an overpayment of tax required to be paid  
45 through the estimated tax payments made with the filing of the deed,  
46 the overpayment of tax may be refunded prior to the filing of a gross

1 income tax return under such requirements and in a manner as the  
2 director shall prescribe, but no interest shall be allowed or paid on  
3 such overpayment.

4  
5 4. This act shall take effect August 1, 2004.  
6

7  
8 STATEMENT  
9

10 This bill establishes a new requirement for nonresident taxpayers to  
11 pay estimated New Jersey gross income tax on gain on New Jersey  
12 real estate transactions. Generally, New Jersey gross income tax is  
13 due on any transaction if the gain is recognized for federal income tax  
14 purposes and nonresidents must pay New Jersey gross income tax on  
15 New Jersey source income. New Jersey source income for nonresident  
16 taxpayers includes income from any interest in real or tangible personal  
17 property owned or disposed of in this State pursuant to N.J.S.54A:5-  
18 8.

19 Effective for sales or transfers of real property occurring on and  
20 after August 1, 2004, nonresident individuals, estates and trusts who  
21 sell or transfer certain real property located within New Jersey will be  
22 required to pay estimated gross income tax to the Division of  
23 Taxation. The amount of the estimated gross income tax is determined  
24 by multiplying the amount of the gain, if any, for federal income tax  
25 purposes from the sale or transfer of the real property by the highest  
26 applicable rate of New Jersey gross income tax in effect for the taxable  
27 year. The estimated tax payment must not be less than 2% of the  
28 consideration for the sale of transfer stated in the deed affecting the  
29 conveyance.

30 A nonresident transferor is exempt from the payment of estimated  
31 gross income tax on the transfer of real property if:

32 (1) the real property being sold or transferred is used exclusively as  
33 the principal residence of the seller or transferor within the meaning of  
34 section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
35 s.121;

36 (2) the seller or transferor is a mortgagor conveying the mortgaged  
37 property to a mortgagee in foreclosure or in a transfer in lieu of  
38 foreclosure with no additional consideration; or

39 (3) the seller or transferor, or transferee is an agency or authority  
40 of the United States of America, an agency or authority of the State  
41 of New Jersey, the Federal National Mortgage Association, the  
42 Federal Home Loan Mortgage Corporation, the Government National  
43 Mortgage Association, or a private mortgage insurance company.

44 Nonresident transferors may take credit on their personal income  
45 tax returns for the estimated tax paid. If the estimated tax paid  
46 exceeds the nonresident transferor's actual tax liability for the year,

**A3128 COHEN**

1 a refund will be issued. Estimated tax payments made with the filing  
2 of the deed may be refunded prior to the filing of a gross income tax  
3 return in circumstances and in a manner as the Director of the Division  
4 of Taxation shall prescribe.

5 The county recording officers in each county will be the agent of  
6 the Director of the Division of Taxation for the filing of the estimated  
7 tax form and the collection of the payment. No deed covering  
8 applicable sales will be recorded unless accompanied by an estimated  
9 tax form and the payment of any estimated tax, or unless such form  
10 includes a certification by the seller or transferor on the deed that the  
11 estimated tax requirement is not applicable to the sale or transfer. The  
12 county treasurers are permitted to retain \$10.00 per tax filing to offset  
13 the additional direct expenditures as may be incurred by the county  
14 recording officer and the county treasurer for the implementation of  
15 their responsibilities under this bill.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3128

# STATE OF NEW JERSEY

DATED: JUNE 22, 2004

The Assembly Budget Committee reports favorably Assembly Bill No. 3128.

Assembly Bill No. 3128 establishes a new requirement for nonresidents to pay estimated New Jersey gross income tax on gain on New Jersey real estate transactions. Generally, New Jersey gross income tax is due on any real estate transaction if the gain is recognized for federal income tax purposes, and nonresidents must pay New Jersey gross income tax on the New Jersey source income from sales of realty located in New Jersey.

For sales or transfers of real property occurring on and after August 1, 2004, the bill requires nonresident individuals, estates and trusts who sell or transfer certain real property located within New Jersey to pay estimated gross income tax to the Division of Taxation. The amount of the estimated gross income tax is determined by multiplying the amount of the gain, if any, from the sale or transfer of the real property recognized for federal income tax purposes by the highest applicable rate of New Jersey gross income tax in effect for the taxable year. The estimated tax payment may not be less than 2% of the consideration for the sale or transfer stated in the deed affecting the conveyance.

A nonresident transferor is exempt from the payment of estimated gross income tax on the transfer of real property under the bill if:

(1) the real property being sold or transferred is used exclusively as the principal residence of the seller or transferor within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.121; or

(2) the seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration; or

(3) the seller or transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

The bill allows nonresident sellers to take credit on their personal income tax returns for the estimated tax paid. If the estimated tax paid exceeds the nonresident transferor's actual tax liability for the year, a

refund will be issued. The bill allows estimated tax payments made with the filing of the deed to be refunded prior to the filing of a gross income tax return in circumstances and in a manner as the Director of the Division of Taxation shall prescribe.

Under the bill, the county recording officers in each county will be agents of the Director of the Division of Taxation for the filing of the estimated tax form and the collection of the payment. No deed covering applicable sales will be recorded unless accompanied by an estimated tax form and the payment of any estimated tax, or unless the form includes a certification by the seller or transferor on the deed that the estimated tax requirement does not apply to the sale or transfer. The county treasurers are permitted to retain \$10 per tax filing to offset the additional costs of the county recording officer and the county treasurer for the implementation of their responsibilities under this bill.

**FISCAL IMPACT:**

At this time, the Executive branch has not provided any information concerning the fiscal impact of the provisions of this bill.

**SENATE, No. 1775**

---

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

---

INTRODUCED JUNE 17, 2004

**Sponsored by:**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Requires the payment of estimated gross income tax on sales of real property in this State by nonresidents.

**CURRENT VERSION OF TEXT**

As introduced.





S1775 BRYANT

2

1 AN ACT concerning the payment of estimated gross income tax on  
2 certain gains of nonresidents on sales of real property,  
3 supplementing Title 54A of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in P.L.2004, c. (C. ) (now pending before the  
9 Legislature as this bill):

10 "Administrative costs" means an amount equal to \$10.00 per  
11 estimated gross income tax form filed with a county recording officer,  
12 which may be retained by the county treasurer from the estimated  
13 gross income tax payment accompanying such form to provide the  
14 resources necessary to offset the additional direct expenditures  
15 incurred by the county recording officer and the county treasurer for  
16 the implementation of their responsibilities under P.L.2004, c.  
17 (C. ) (now pending before the Legislature as this bill);

18 "County recording officer" means the register of deeds and  
19 mortgages in counties having such an officer and the county clerk in  
20 the other counties;

21 "Date of sale or transfer" means the date the deed affecting the  
22 conveyance is delivered by the seller or transferor to the transferee;

23 "Gain" on the sale or transfer of real property means the amount  
24 determined pursuant to section 1001 of the federal Internal Revenue  
25 Code of 1986, 26 U.S.C. s.1001, as that section applies to the sale or  
26 transfer of real property;

27 "Nonresident taxpayer" means:

28 a. an individual who qualifies as a nonresident taxpayer as defined  
29 in subsection (n) of N.J.S.54A:1-2, and an estate or trust that qualifies  
30 as a nonresident estate or trust as defined in subsection (p) of  
31 N.J.S.54A:1-2; or

32 b. An individual who is not domiciled in New Jersey but who may  
33 be considered a resident of New Jersey for tax purposes under  
34 paragraph (2) of subsection m. of N.J.S.54A:1-2 at the end of a  
35 taxable year, by virtue of maintaining a permanent place of abode in  
36 New Jersey for substantially all of the taxable year and by spending in  
37 aggregate more than 183 days of the taxable year in New Jersey,  
38 unless the individual has already qualified as a resident on the date of  
39 sale or transfer of real property;

40 "Sale or transfer of real property" means the change of ownership  
41 of a fee simple interest in real property by any method; and

42 "Seller or transferor" means the individual, estate or trust making  
43 the sale or transfer of a fee simple interest in real property.

44

45 2. a. A nonresident taxpayer shall estimate and pay the gross  
46 income tax liability on the gain, if any, upon the sale or transfer of real

**S1775 BRYANT**

1 property within this State. A nonresident taxpayer shall estimate the  
2 gross income tax due on a form prescribed by the director, using an  
3 estimated tax rate that is equal to the highest rate of tax for the taxable  
4 year provided in N.J.S.54A:2-1. The estimated tax due shall equal the  
5 gain, if any, multiplied by that rate. The amount of gain used in the  
6 computation shall equal the amount of gain reportable for federal  
7 income tax purposes for the taxable year, but may not be less than 2%  
8 of the consideration for the sale of transfer stated in the deed affecting  
9 the conveyance.

10 b. If the real property sold or transferred is located partly with and  
11 partly without this State, the nonresident taxpayer shall estimate the  
12 tax due using only the portion of the gain reasonably attributable to  
13 the portion of the real property located within this State.

14 c. If the nonresident is an estate or trust, the taxpayer shall  
15 estimate the tax due based upon the gain, if any, computed without  
16 reduction for any distribution of income to the beneficiaries during the  
17 taxable year in which the sale or transfer occurred.

18

19 3. a. A nonresident taxpayer shall file the estimated tax form with  
20 the county recording officer, along with the payment of any estimated  
21 tax due, at the time the deed is filed with the county recording officer  
22 for recording using the procedures prescribed in such form and  
23 accompanying instructions as the director shall prescribe. The  
24 nonresident taxpayer shall make that estimated tax payment payable to  
25 the Department of the Treasury for the estimated tax which payment  
26 shall be separate from any other payment required to be made by the  
27 seller or transferor pursuant to law. Except for a nonresident taxpayer  
28 who meets one of the exemptions provided in subsection b. of this  
29 section, a nonresident taxpayer who is a seller or transferor of real  
30 property within this State shall file the estimated tax form, whether or  
31 not they have a gain on the sale or transfer.

32 b. The requirements of this section shall not apply if:

33 (1) the real property being sold or transferred is used exclusively  
34 as the principal residence of the seller or transferor within the meaning  
35 of section 121 of the federal Internal Revenue Code of 1986, 26  
36 U.S.C. s.121;

37 (2) the seller or transferor is a mortgagor conveying the mortgaged  
38 property to a mortgagee in foreclosure or in a transfer in lieu of  
39 foreclosure with no additional consideration; or

40 (3) the seller or transferor, or transferee is an agency or authority  
41 of the United States of America, an agency or authority of the State  
42 of New Jersey, the Federal National Mortgage Association, the  
43 Federal Home Loan Mortgage Corporation, the Government National  
44 Mortgage Association, or a private mortgage insurance company.

45 c. The principal residence exemption set forth in paragraph (1) of  
46 subsection b. of this section, shall apply only if the property sold or

S1775 BRYANT

1 transferred was used exclusively as the principal residence of the seller  
2 or transferor. If the real property sold or transferred includes both the  
3 principal residence and other real property, the taxpayer shall file and  
4 pay the estimated tax due based upon the gain on the other real  
5 property.

6 d. A county recording officer shall not record or accept for  
7 recording any deed for the sale or transfer of real property subject to  
8 P.L.2004, c. (C. ) (now pending before the Legislature as this  
9 bill), unless accompanied by a form prescribed by the director pursuant  
10 to subsection a. of this section and the payment of any estimated tax  
11 shown as payable on such form, or unless such form includes a  
12 certification by the seller or transferor on the deed who is an  
13 individual, estate or trust that this section is not applicable to the sale  
14 or transfer. The method for the certification under this subsection  
15 shall be set forth in forms and instructions as shall be prescribed by the  
16 director.

17 e. A county recording officer shall act as an agent of the director  
18 for purposes of collecting the estimated gross income tax, if any,  
19 shown to be payable upon the form prescribed pursuant to subsection  
20 a. of this section. The director, by regulation, shall prescribe one or  
21 more methods for the county recording officer's collection of such  
22 estimated tax. Every county recording officer shall account for and  
23 remit to the county treasurer any funds collected and any returns filed  
24 with such county recording officer and the county treasurer shall remit  
25 those returns and those funds, net of administrative costs, to the  
26 director on such days as the director shall set by regulation consistent  
27 with the administration of the provisions of P.L.1968, c.49(C.46:15-5  
28 et seq.) as amended and supplemented. Every county recording officer  
29 also shall follow such procedures and keep such records in respect to  
30 the implementation of this section as the director may prescribe.

31 f. A county recording officer shall not be liable under this section  
32 for any inaccuracy in any statement on the form prescribed pursuant  
33 to subsection a. of this section or in the amount of estimated gross  
34 income tax a county recording officer shall collect under this section  
35 so long the county recording officer shall collect the estimated gross  
36 income tax shown as payable on such form.

37 g. If a deed is recorded notwithstanding an omission or inaccuracy  
38 in the form prescribed pursuant to subsection a. of this section or in  
39 any certification by the transferor on such form or a deficiency in the  
40 payment of estimated gross income tax required by this section, the  
41 recording of such deed shall not be invalidated by reason of such  
42 omission, inaccuracy, erroneous certification or deficiency nor shall  
43 the title founded on such deed be impaired thereby.

44 h. If there has been an overpayment of tax required to be paid  
45 through the estimated tax payments made with the filing of the deed,  
46 the overpayment of tax may be refunded prior to the filing of a gross

1 income tax return under such requirements and in a manner as the  
2 director shall prescribe, but no interest shall be allowed or paid on  
3 such overpayment.

4  
5 4. This act shall take effect August 1, 2004.  
6

7  
8 STATEMENT  
9

10 This bill establishes a new requirement for nonresident taxpayers to  
11 pay estimated New Jersey gross income tax on gain on New Jersey  
12 real estate transactions. Generally, New Jersey gross income tax is  
13 due on any transaction if the gain is recognized for federal income tax  
14 purposes and nonresidents must pay New Jersey gross income tax on  
15 New Jersey source income. New Jersey source income for nonresident  
16 taxpayers includes income from any interest in real or tangible personal  
17 property owned or disposed of in this State pursuant to N.J.S.54A:5-  
18 8.

19 Effective for sales or transfers of real property occurring on and  
20 after August 1, 2004, nonresident individuals, estates and trusts who  
21 sell or transfer certain real property located within New Jersey will be  
22 required to pay estimated gross income tax to the Division of  
23 Taxation. The amount of the estimated gross income tax is determined  
24 by multiplying the amount of the gain, if any, for federal income tax  
25 purposes from the sale or transfer of the real property by the highest  
26 applicable rate of New Jersey gross income tax in effect for the taxable  
27 year. The estimated tax payment must not be less than 2% of the  
28 consideration for the sale of transfer stated in the deed affecting the  
29 conveyance.

30 A nonresident transferor is exempt from the payment of estimated  
31 gross income tax on the transfer of real property if:

32 (1) the real property being sold or transferred is used exclusively as  
33 the principal residence of the seller or transferor within the meaning of  
34 section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
35 s.121;

36 (2) the seller or transferor is a mortgagor conveying the mortgaged  
37 property to a mortgagee in foreclosure or in a transfer in lieu of  
38 foreclosure with no additional consideration; or

39 (3) the seller or transferor, or transferee is an agency or authority  
40 of the United States of America, an agency or authority of the State  
41 of New Jersey, the Federal National Mortgage Association, the  
42 Federal Home Loan Mortgage Corporation, the Government National  
43 Mortgage Association, or a private mortgage insurance company.

44 Nonresident transferors may take credit on their personal income  
45 tax returns for the estimated tax paid. If the estimated tax paid  
46 exceeds the nonresident transferor's actual tax liability for the year,

**S1775 BRYANT**

1 a refund will be issued. Estimated tax payments made with the filing  
2 of the deed may be refunded prior to the filing of a gross income tax  
3 return in circumstances and in a manner as the Director of the Division  
4 of Taxation shall prescribe.

5 The county recording officers in each county will be the agent of  
6 the Director of the Division of Taxation for the filing of the estimated  
7 tax form and the collection of the payment. No deed covering  
8 applicable sales will be recorded unless accompanied by an estimated  
9 tax form and the payment of any estimated tax, or unless such form  
10 includes a certification by the seller or transferor on the deed that the  
11 estimated tax requirement is not applicable to the sale or transfer. The  
12 county treasurers are permitted to retain \$10.00 per tax filing to offset  
13 the additional direct expenditures as may be incurred by the county  
14 recording officer and the county treasurer for the implementation of  
15 their responsibilities under this bill.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 1775

# STATE OF NEW JERSEY

DATED: JUNE 21, 2004

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1775.

This bill establishes a new requirement for nonresident taxpayers to pay estimated New Jersey gross income tax on gain on New Jersey real estate transactions. Generally, New Jersey gross income tax is due on any transaction if the gain is recognized for federal income tax purposes and nonresidents must pay New Jersey gross income tax on New Jersey source income. New Jersey source income for nonresident taxpayers includes income from any interest in real or tangible personal property owned or disposed of in this State pursuant to N.J.S.54A:5-8.

Effective for sales or transfers of real property occurring on and after August 1, 2004, nonresident individuals, estates and trusts who sell or transfer certain real property located within New Jersey will be required to pay estimated gross income tax to the Division of Taxation. The amount of the estimated gross income tax is determined by multiplying the amount of the gain, if any, for federal income tax purposes from the sale or transfer of the real property by the highest applicable rate of New Jersey gross income tax in effect for the taxable year. The estimated tax payment must not be less than 2% of the consideration for the sale of transfer stated in the deed affecting the conveyance.

A nonresident transferor is exempt from the payment of estimated gross income tax on the transfer of real property if:

(1) the real property being sold or transferred is used exclusively as the principal residence of the seller or transferor within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.121;

(2) the seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration; or

(3) the seller or transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Nonresident transferors may take credit on their personal income

tax returns for the estimated tax paid. If the estimated tax paid exceeds the nonresident transferor's actual tax liability for the year, a refund will be issued. Estimated tax payments made with the filing of the deed may be refunded prior to the filing of a gross income tax return in circumstances and in a manner as the Director of the Division of Taxation shall prescribe.

The county recording officers in each county will be the agent of the Director of the Division of Taxation for the filing of the estimated tax form and the collection of the payment. No deed covering applicable sales will be recorded unless accompanied by an estimated tax form and the payment of any estimated tax, or unless such form includes a certification by the seller or transferor on the deed that the estimated tax requirement is not applicable to the sale or transfer. The county treasurers are permitted to retain \$10.00 per tax filing to offset the additional direct expenditures as may be incurred by the county recording officer and the county treasurer for the implementation of their responsibilities under this bill.

#### FISCAL IMPACT

No data is available on which to base an estimate of the revenue that the State may realize from implementation of the provisions of this bill. It is noted, however, that the bill embodies one of several Executive proposals to enhance enforcement and collection of State taxes, and that the Executive budget message projected cumulative potential new revenue from these measures at \$25 million in FY2005.