

LC003243

IN GENERAL ASSEMBLY

RELATING TO TAXATION -- TAX ON GAINS FROM THE SALE OR EXCHANGE OF
REAL PROPERTY

Referred To: Senate Finance

1 SECTION 1. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
2 adding thereto the following chapter:

4 TAX ON GAINS FROM THE SALE OR EXCHANGE OF REAL PROPERTY

6 There is imposed, in addition to all other taxes imposed by this chapter, a tax on the gains
7 from the sale or exchange of real property in Rhode Island.

9 The following categories of real property sales are excluded from the tax imposed by this
10 chapter:

11 (1) Property sold by a nonprofit development corporation or nonprofit local development
12 corporation qualifying under Section 501(c)(3) of the United States Internal Revenue Code
13 (Internal Revenue Code).

14 (2) Property purchased by the State of Rhode Island from organizations qualifying under
15 Section 501(c)(3) of the Internal Revenue Code.

(3) Property conveyed pursuant to a court judgment decreeing the disposition of real estate
of the parties to a marriage, to the extent that the property is conveyed to either of the parties.

18 (4)(i) Farmland and open-space property sold to organizations qualifying under Section

1 501(c)(3) of the Internal Revenue Code, as amended, which also meet the "public support" test
2 under Section 509(a)(2) of the Code, provided one of the stated purposes of the organization is to
3 acquire property or rights and interests in property in order to preserve agricultural, forestry or
4 open-space uses; and provided that, the property transferred, or rights and interests in the property,
5 will be held for agricultural, forestry or open space purposes, and is so held by such organization
6 for at least six (6) years. As used in this section, "farmland" means land which shall be actively
7 operated or leased as part of a farm enterprise, and "open-space land" means land without structures
8 thereon.

9 (ii) If the property transferred, or rights and interests in the property, is not so held by such
10 organization for the six (6) year period, the tax which would have been due from the seller or
11 transferor shall become due from such organization for that portion of the property not so held or
12 transferred to a governmental entity. In cases coming within this subsection, the tax administrator
13 may require the seller or transferor to file a property gains tax return at the time of the sale or
14 exchange, in order to establish the amount of tax which shall become the tax liability of such
15 organization in such case.

16 (iii) The exclusion under this subsection shall be disallowed if the tax administrator
17 determines that the sale was not for a conservation purpose, as defined in Section 170(h) of the
18 Internal Revenue Code, as amended.

19 (5)(i) Property sold to organizations qualifying under Section 501(c)(3) of the Internal
20 Revenue Code, as amended, which also meet the "public support" test under Section 509(a)(2) of
21 the Code, provided one of the stated purposes of the organization is to acquire property or rights
22 and interests in property in order to develop affordable housing, as defined in § 42-128-8.1(d)(i);
23 and provided that, the property transferred, or rights and interests in the property, shall be held for
24 that purpose by such organization for at least six (6) years.

25 (ii) If the property transferred, or rights and interests in the property, is not so held by such
26 organization for the six (6) year period, the tax which would have been due from the seller or
27 transferor shall become due from such organization for that portion of the property not so held or
28 transferred to a governmental entity. In cases coming within this subsection, the tax administrator
29 may require the seller or transferor to file a property gains tax return at the time of the sale or
30 exchange, in order to establish the amount of tax which shall become the tax liability of such
31 organization in such case.

32 (iii) The exclusion under this subsection shall be disallowed if the tax administrator
33 determines that the sale was not for an affordable housing purpose, as defined in Section 170(h) of
34 the Internal Revenue Code, as amended.

(6) Property sold by the United States of America, the State of Rhode Island, or any of its instrumentalities or subdivisions, or by organizations qualifying under Section 501(c)(3) of the Internal Revenue Code; provided that, the sale is exempt from federal income taxation under the Internal Revenue Code.

(7) Agricultural land transferred by a farmer to a member of the farmer's family, when the land is used by the transferee as agricultural land for a period of time which, when added to the time the land was used as agricultural land by the transferor, equals or exceeds six (6) years. For the purpose of this section, the terms "agricultural land" and "farmer" shall have the definitions provided in §§ 42-82-2 and 44-27-2, and "family" means persons in a relationship to the transferor of grandparent, parent or stepparent, brother or sister, or natural or adopted child. As used in this section, property is deemed to be transferred from a farmer to a transferee when the farmer has died and title vests in the transferee by right of survivorship in a joint tenancy, tenancy by the entirety, or through intestate succession, or by will, without any intervening transfers, except those to and from the estate.

(8) Conservation rights and interests and preservation rights and interests transferred to a qualified holder are excluded from taxation under the provisions of this chapter.

44-73-3. Rate of tax.

(a) The tax imposed pursuant to this chapter shall be based upon the years held at the
following rates on the gain, as gain is determined under this chapter:

	*Gain, as a percentage of basis (tax cost)		
<u>Years property held by transferor</u>	<u>0-99%</u>	<u>100-199%</u>	<u>200% or more</u>
<u>Less than 4 months</u>	<u>60%</u>	<u>70%</u>	<u>80%</u>
<u>4 months, but less than 8</u>	<u>35%</u>	<u>52.5%</u>	<u>70%</u>
<u>8 months but less than 1 year</u>	<u>30%</u>	<u>45%</u>	<u>60%</u>
<u>1 year, but less than 2</u>	<u>25%</u>	<u>37.5%</u>	<u>50%</u>
<u>2 years, but less than 3</u>	<u>20%</u>	<u>30%</u>	<u>40%</u>
<u>3 years, but less than 4</u>	<u>15%</u>	<u>22.5%</u>	<u>30%</u>
<u>4 years, but less than 5</u>	<u>10%</u>	<u>15%</u>	<u>20%</u>
<u>5 years, but less than 6</u>	<u>5%</u>	<u>7.5%</u>	<u>10%</u>

* Gain, as percent of basis, shall be rounded to the next highest whole percentage. A single flat rate of tax shall apply to all of the gain, and shall be determined by the percentage which the entire gain is of the basis (tax cost).

(b) The total amount of tax due on the sale of a property by a transferor shall be reduced
by the federal taxes due from that transferor on the capital gains for that same property for that

1 same sale, under the provisions of the Internal Revenue Code.

2 **44-73-4. Sale or exchange.**

3 (a) As used in this chapter "sale or exchange of property" means any transfer of title to real
4 property for a consideration. The transfer of an option for the sale or exchange of property shall be
5 considered a transfer of title to property for the purposes of this chapter.

6 (b) Contracts for the sale of property constitute sales or exchanges of property for all
7 purposes of this chapter; provided, however, contracts shall not constitute sales or exchanges until
8 some consideration has passed thereunder to or for the benefit of the seller or exchanger. The sale
9 or exchange is considered to take place at the time any consideration whatsoever, of whatever
10 nature, first passes under the contract. If the land has been held by the seller for less than one year,
11 the entire tax due on the sale then shall become due as provided under this chapter, even if the
12 transaction between the parties involves an installment sale. A mere promise to purchase, and
13 amounts paid as earnest money, or amounts paid in deposit or amounts paid in escrow to which the
14 seller has no immediate right, do not constitute the passing of consideration for the purposes of this
15 chapter.

16 (c) Any sale or exchange of shares in a corporation or other entity, or of comparable rights
17 or property interests in any other form of organization or legal entity, which effectively entitles the
18 purchaser to the use or occupancy of property constitutes a sale or exchange of property.

19 **44-73-5. Basis, gain and holding period.**

20 (a) The provisions of the Internal Revenue Code shall determine the basis of property sold
21 or exchanged, except basis for property transferred by a mortgagee who acquired the property by
22 foreclosure or transfer in lieu of foreclosure shall be the amount of debt due the mortgagee,
23 increased by the costs of acquisition, and decreased by the amount of any tax benefit due to bad
24 debt loss on the mortgage debt.

25 (b) The amount realized from the sale or exchange shall be the full actual consideration
26 therefor, paid or to be paid, including the amount of any liens or encumbrances on the property
27 existing before the sale or exchange and not removed thereby. The amount realized from the sale
28 or exchange shall be the gross amount thereof, reduced by any reasonable expenses of sale and
29 commissions. Provided, however, if the seller has owned the property for less than one year, the
30 amount realized from the sale or exchange shall be the gross amount thereof, reduced by no more
31 than a total of twelve percent (12%) by any expenses of sale and commissions.

32 (c) The taxable gain from the sale or exchange is the amount realized minus the basis of
33 the property as determined under subsection (a) of this section. No gain shall be recognized in cases
34 where gain is not recognized under the Internal Revenue Code, as amended, in relation to the sale

1 or exchange of capital assets.

2 (d) The property sold or exchanged shall be deemed to have been held as determined under
3 the Internal Revenue Code. If spouses are tenants by the entirety, there may be added to the holding
4 period the amount of time the land was held by one spouse alone before that spouse created the
5 tenancy by the entirety. Notwithstanding any provision to the contrary under the Internal Revenue
6 Code, if a tenancy by the entirety is dissolved by reason of death or divorce, the holding period
7 during the tenancy by the entirety will be added to the holding period of the spouse subsequently
8 owning the property in the spouse's own name. For the purposes of this subsection property devised
9 to or inherited by a surviving spouse or awarded to a spouse upon dissolution of marriage shall be
10 treated as though it had been held by spouses as tenants by the entirety.

11 (e) The taxable gain under this chapter from the sale or exchange of property shall not be
12 reduced by any losses incurred in other transactions.

13 (f) Notwithstanding any other provisions of this section, property acquired from a decedent,
14 or an estate, or sold by an estate, shall have a holding period commencing as of the date of death
15 of the decedent, and its basis shall be the fair market value of such property as of the date of death
16 of the decedent, or alternative valuation date as finally determined under the Internal Revenue Code
17 for the federal estate tax.

18 **44-73-6. Liability for tax.**

19 (a) The person liable for the tax is the transferor (which includes the owner, seller, or other
20 exchanger) of the property sold or exchanged. Provided, however, whenever in this chapter the
21 transferor is relieved from liability for the payment of the tax on account of a certification or
22 statement made by the transferee concerning the use or intended use of the property, and such
23 certification or statement is, or turns out to be, untrue or incorrect, then the tax otherwise due from
24 the transferor shall become the liability of, and shall be paid by, the transferee. The transferee's tax
25 liability shall be a lien upon the land transferred, running with the property, in favor of this state.

26 (b) In any such case where the transferor is relieved of tax at the time of transfer on account
27 of a certification or statement made by the transferee, the transferor shall file at the time of transfer
28 a property gains tax return in order to establish the amount of the tax liability of the transferee in
29 the event that the certification or statement made by the transferee is, or turns out to be, untrue or
30 incorrect.

31 **44-73-7. Withholding at source -- Payment.**

32 (a) The buyer or transferee of any property held by the seller or transferor for less than six
33 (6) years, shall withhold ten percent (10%) of all consideration paid to the seller or transferor for
34 such land, including ten percent (10%) of all partial payments made pursuant to installment sales

1 under § 44-73-8. At the time any payment is made to the seller or transferor, the amounts withheld
2 shall be remitted to the tax administrator.

3 (b) Within thirty (30) days of the sale or exchange of property, for which withholding is
4 required under this section, the seller or transferor shall file a return with the tax administrator
5 setting forth the amount of the tax due pursuant to § 44-73-3 and the amount withheld by the buyer
6 or transferee pursuant to subsection (a) of this section. The seller shall either remit with the return
7 the balance of the tax due or make claim for a refund. Any refund not made by the administrator
8 within forty-five (45) days of receipt of a valid claim shall accrue interest at the statutory rate. For
9 good cause shown and upon conditions set by the administrator, the administrator may extend the
10 time for filing the return and paying the tax required by this chapter.

11 (c) Notwithstanding either subsection (a) or (b) of this section, the seller or transferor may,
12 in advance of the sale or exchange, pay the tax imposed by this chapter or obtain a written ruling
13 from the tax administrator that no tax is due under this chapter. In either case, the administrator
14 shall certify to the seller or transferor that such payment has been made or that no tax is due. Upon
15 receipt by the buyer or transferee of such certification from the seller or transferor, the buyer or
16 transferee shall not be required to withhold under subsection (a) of this section.

17 (d) All taxes required to be paid or withheld under this chapter shall constitute a personal
18 debt of the person liable to pay or withhold the same to the State of Rhode Island to be recovered
19 in an action pursuant to subsection (e) of this section.

20 (e) An action may be brought to recover the amount of the taxes to be paid or withheld in
21 the manner prescribed for recovering amounts owed for taxes under this title. The amount of taxes
22 to be paid or withheld shall be a lien in favor of the State of Rhode Island upon all property and
23 rights to property, whether real or personal, belonging to the person liable for the tax or for the
24 withholding.

25 **44-73-8. Installment sales.**

26 (a) For the purpose of this section, "installment sale" means the sale or exchange of
27 property as defined in § 44-73-4 for which the total tax due under this chapter is greater than two
28 thousand dollars (\$2,000) and in which the parties agree in advance that payments shall be received
29 by the seller or transferor in more than one installment on a date or dates other than the date of
30 closing. A sale financed by a mortgage, deed of trust, or other financing arrangement in which the
31 seller or transferor is paid in full on the date of the sale or exchange shall not be considered an
32 installment sale. A lease-purchase agreement under which any part of the rental payments constitute
33 a portion of the purchase price of the land shall be considered an installment sale, and for the
34 purposes of this chapter, the end of the holding period with respect to the sale or exchange shall be

1 determined as of the date of the agreement.

2 (b) Notwithstanding any provision of law to the contrary, the tax under this chapter on any
3 installment sale shall be due within thirty (30) days of the date of payment of each installment paid
4 to the seller or transferor. Provided, however, except for the first installment, the seller or transferor
5 may elect to file the return as part of their Rhode Island income tax return for any year in which
6 subsequent installments are paid or due, and to pay the balance of such tax as part of such income
7 tax; provided that, if the seller or transferor elects to file annual returns, no interest shall accrue on
8 any withholding as provided by § 44-73-7.

9 (c) In an installment sale, the total amount of taxes due under this chapter shall be the
10 amount that would have been due had the total purchase price been paid on the date the sale or
11 exchange took place. The amount of taxes due on each separate installment, including the first
12 installment, shall bear the same proportion to the total amount of taxes due as the amount of that
13 installment bears to the total consideration.

14 **44-73-9. Administration of taxes.**

15 (a) The tax administrator shall administer and enforce this chapter and this tax and may
16 issue, amend, and withdraw from time to time, reasonable rules and regulations to assist such
17 administration and enforcement.

18 (b) All the administrative provisions of this title, including those relating to the collection
19 and enforcement by the administrator of the withholding tax and the income tax shall apply to the
20 tax imposed by this chapter.

21 **44-73-10. Criminal penalties.**

22 (a) Any entity or person who willfully defeats or evades or attempts to defeat or evade the
23 tax imposed by this chapter shall be imprisoned up to two (2) years or fined not more than ten
24 thousand dollars (\$10,000) or five (5) times the amount of the tax defeated or evaded or attempted
25 to be defeated or evaded, whichever amount is greater, or may be both imprisoned and fined. A
26 corporation or other taxable entity not being a natural person shall be subject to the fine provided
27 by this section.

28 (b) Any officer, employee, director, trustee or other responsible person of a corporation or
29 other taxable entity, and any other person, who counsels, aids, abets, participates in, or conceals
30 the defeat or evasion of tax, or the attempt there at, shall be subject to the penalties of subsection
31 (a) of this section.

32 (c) The form for the payment of the tax under this chapter shall set forth in large type the
33 penalties provided by this section.

34 **44-73-11. Exception.**

1 Notwithstanding §§ 44-73-1 and 44-73-3, in the case of a sale or exchange of property to
2 an organization that qualifies under section 501(c)(3) of the Internal Revenue Code and also meets
3 the "public support" test of section 509(a)(2) of the Code, if one of the stated purposes of the
4 organization is to provide affordable housing and if the property shall be held for this purpose for
5 at least six (6) years following the sale, then one-half (1/2) of the tax otherwise imposed under this
6 chapter shall be due. If the property is not held for affordable housing purposes for at least six (6)
7 years following the transfer, the tax which would have been due from the seller or transferor shall
8 become due from such organization for that portion of the property not so held. In cases coming
9 under this section, the administrator may require the seller or transferor to file a property gains tax
10 return at the time of the sale or exchange, in order to establish the amount of tax which shall become
11 the tax liability of such organization in such case.

12 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION -- TAX ON GAINS FROM THE SALE OR EXCHANGE OF
REAL PROPERTY

- 1 This act would create a new tax on gains from the sale or exchange of real property held
- 2 for short periods of time, six (6) years or less, and would establish a comprehensive framework to
- 3 calculate and implement its enforcement and also provides penalties for imprisonment and/or fines
- 4 for those who evade their payment of the taxes.
- 5 This act would take effect upon passage.

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