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STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
601 Delaware Avenue  
Wilmington, Delaware 19899

TAX NEWSGRAM 75-15

August 13, 1975

- Recording of Deeds - Affidavit of Residence and Gain

House Bill No. 712 (Chap. 277, Vol. 60, Laws of Delaware), approved August 4, 1975, amends Section 9605, Chapter 96, Title 9, Delaware Code, relating to the conveyance of real estate and recording of deeds, to prohibit the Recorder from accepting for recording any deed or other instrument purporting to convey title to real estate unless there is first filed with the Recorder, by or on behalf of the seller (grantor), an "Affidavit of Residence and Gain," setting forth the following information "to the extent such information is known to the person making the affidavit or such person can make such authorization."

- (a) a description of the seller, including name and address, social security number and principal residence or place of business,
- (b) whether the seller is a non-resident individual, trust, estate or partner as defined in Chapter 11, Title 30, relating to the personal income tax, or, if a corporation, the State of incorporation,
- (c) the actual consideration received by the seller,
- (d) whether the seller realized a gain on the sale of the real estate being conveyed, and
- (e) authorization granted by the seller for the Division of Revenue or other designated State Agencies to obtain copies of any appropriate Federal income tax forms, schedules or attachments, or other documents which relate solely to the real estate being conveyed.

An exception from this requirement to file an affidavit is provided in that the Recorder may accept for recording any deed or instrument without such affidavit first being filed if the conveyance or transfer is specifically exempted from the definition of "document"



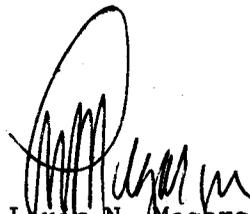
under Section 5401 (1), Title 30, Delaware Code, relating to the Realty Transfer Tax.

Moreover, with respect to the required affidavit, it is provided that if the seller is a Delaware resident or a Delaware domiciled corporation, "it shall be necessary only to so state on the Affidavit of Residence and Gain."

For purposes of the affidavit, whether a gain on the transfer was realized should be determined in the same manner as required for purposes of the Federal income tax, without the 50% long-term capital gain deduction allowed under Federal law. It is not necessary to state the amount of the gain on the affidavit.

The Recorder in each County is required to make available the appropriate form to be used for the "Affidavit of Residence and Gain." Further, each Recorder, within 30 days of the date of recording any deed or instrument as to which an Affidavit of Residence and Gain was filed, must transmit to the Division of Revenue a copy of such affidavit.

The amendment (Subsections (h) and (i), Section 9605, Title 9, Delaware Code) takes effect on September 1, 1975, and applies to the recording of any deed or instrument purporting to convey title to real estate on and after September 1, 1975.



Louis N. Megargee  
Director of Revenue

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