

Form OR-18-WC Instructions

Report of Tax Payment or Written Affirmation for Oregon Real Property Conveyance

Introduction

Those who sell Oregon real property are subject to Oregon tax on the gain from the sale. When the seller is a non-resident, escrow agents and attorneys acting as authorized agents may be required to withhold and remit tax payments to the Oregon Department of Revenue as an estimated payment for any taxes that may be due. Taxpayers will claim these tax payments as estimated tax payments on their Oregon tax returns filed for the year in which the sale was made. These instructions and forms are designed to inform authorized agents and taxpayers of their requirements. There are exceptions as indicated in these instructions.

Purpose

Form OR-18-WC is required for all nonexempt transferors who have not provided written assurance that the entire gain is excludable from federal tax under IRC Section 121. Transferors (and their authorized agents) may use this form to show that this sale is exempt by completing Parts A through C and signing the form.

Definitions

The following terms are used in these instructions:

Authorized agent is an escrow agent licensed under Oregon Revised Statutes (ORS) 696.505 to 696.590. An attorney is an authorized agent if there is no licensed escrow agent involved and the attorney deposits the proceeds of the sale into a client trust account and disburses funds to the transferor.

FEIN is the federal employer identification number a business is assigned for federal tax purposes.

Nonexempt transferor is a transferor that is a nonresident of Oregon, including grantor trusts and single-member LLCs owned by an individual or C corporation, or a nonresident C corporation that isn't registered to do business in Oregon or is otherwise qualified to do business in Oregon on the closing date of the conveyance.

Pass-through entity is an entity through which income and expenses flow to the owners of the entity, such as a partnership, S corporation, limited liability company (LLC), limited liability partnership (LLP), certain trusts, or estates. See "Determining nonexempt status" for LLCs and grantor trusts that are disregarded entities.

Transferee is a person who acquires ownership of real property located in Oregon.

Transferor is a property owner who transfers, sells, deeds, or otherwise conveys their ownership interest in real property to another person or entity.

Exemptions

Exempt transferors

Authorized agents aren't required to submit tax payments if the transferor is an exempt transferor. The following are examples of exempt transferors:

- An individual who is a resident of Oregon (see "Determining residency status");
- A C corporation registered to do business in Oregon;
- A personal representative, executor, conservator, bankruptcy trustee, or other person acting under judicial review;
- A pass-through entity reporting income on Form OR-20-S, OR-65, or OR-706, (see exceptions under "Determining nonexempt status"); or
- A governmental instrumentality (such as city, county, state, or federal agencies).

Authorized agents: Don't use this form for exempt transferors. Keep information showing that the seller is an exempt transferor.

Transferors: The authorized agent may require proof or have you sign a document certifying that you are an exempt transferor. **Don't** submit this document to us, but keep it with your records.

Exempt transfers

Authorized agents aren't required to submit tax payments if:

- The **consideration** (total sales price) for the real property is \$100,000 or less;
- The transferor delivers a written assurance to the authorized agent, as provided in Treasury Regulation 1.6045-4, that the sale or exchange qualifies for exclusion of the **entire** gain as the seller's principal residence under IRC Section 121;
- The conveyance is pursuant to a judicial foreclosure proceeding, a writ of execution, a nonjudicial foreclosure of a trust deed, or a nonjudicial forfeiture of a land sale contract; or
- The conveyance is occurring instead of foreclosure of a mortgage, trust deed sales contract, or other security instrument, or a land sale contract with no additional monetary consideration.

Principal residence exemption. If the nonexempt transferor is selling a personal residence located in Oregon and the **entire** gain qualifies for exclusion under federal law, the transferor must provide the authorized agent with:

- A written assurance that all of the gain qualifies for exclusion under IRC Section 121; or

- A signed Form OR-18-WC with Parts A through C completed.

The authorized agent will send us a copy of the written assurance or Form OR-18-WC.

If the nonexempt transferor is selling a personal residence and the *entire* gain isn't excludable from federal tax, the transferor and authorized agent must complete Form OR-18-WC. Situations where the entire gain isn't excludable include situations when the transferor claimed business use of home deductions in the past, or the gain exceeds the federal exclusion amount.

Authorized agents: If the transferor is selling their personal residence and has provided you with a written assurance that the entire gain qualifies for exclusion under IRC Section 121, don't use this form.

Determining residency status

Tax payments are required when nonresidents sell Oregon real property, unless the transfer is exempt. If it's uncertain whether transferors are Oregon residents, use the criteria below to help make that determination or have them provide a signed statement indicating their residency status.

Oregon resident

A transferor is a full-year resident of Oregon (even if living outside of Oregon) if all of the following are true:

- The transferor thinks of Oregon as his or her permanent home;
- Oregon is the center of the transferor's financial, social, and family life; and
- Oregon is the place the transferor intends to return to when away.

The transferor is still an Oregon resident if he or she moves out of Oregon temporarily or moved back to Oregon after a temporary absence.

Oregon nonresident

A transferor is a nonresident of Oregon if they maintain their permanent home outside of Oregon all year. Oregon residents may be deemed nonresidents if they:

- Maintained a permanent home outside of Oregon the entire year; and
- Didn't keep a home in Oregon during any part of the year; and
- Spent less than 31 days in Oregon during the year.

Oregon part-year resident

A transferor who moved into or out of Oregon during the calendar year is a part-year Oregon resident. The individual is a resident of Oregon for part of the year and a nonresident

of Oregon for part of the year. A part-year resident may only claim exemption from this requirement if the conveyance occurs and the proceeds are disbursed during the part of the year that the transferor is a resident of Oregon or another exemption applies.

Example 1: Anne moved from Oregon to California on March 31. She sold her Oregon property on July 28. Even though Anne was a resident of Oregon for the first three months of the year, she wasn't a resident at the time of the conveyance so she may not claim exemption as a resident of Oregon and must complete Form OR-18-WC. If it was Anne's principal residence for 5 years before she moved and her gain is \$250,000 or less, she qualifies under federal law to exclude the gain from tax. She will claim the appropriate exemption in Part C when she completes the form.

Determining nonexempt status

Disregarded entities

If a transferor is an LLC or a grantor trust, special rules apply for tax purposes. Generally, these entities are disregarded for tax purposes. To determine if the entity is disregarded for tax purposes, use these guidelines.

LLCs. Authorized agents should disregard an LLC owned entirely by an individual, spouses, or a C corporation. They should base payment requirements on the owner instead of the LLC. If an LLC is owned by one individual or spouses filing a joint return, treat the member(s) as individuals and follow the related instructions. If the LLC is solely owned by a C corporation, treat it as a C corporation and follow the related instructions. If the seller is a single member LLC owned by an exempt transferor, such as an LLC with multiple owners or an S corporation, then the authorized agent won't send in payments because the pass-through entity is required to do so using Form OR-19-V.

Grantor trusts. A grantor trust isn't recognized for tax purposes because the grantor retains substantial control. A grantor trust is sometimes referred to as a "revocable trust" or a "living trust." As long as the grantor is living, treat the trust as an individual and follow the related instructions. Fill out the form and submit any payments in the name of the individual.

If the grantor is deceased, the trust is **irrevocable**. This form and tax payments **aren't required for an irrevocable trust**.

Form OR-18-WC

Form OR-18-WC is retained in the records of the authorized agent for six years from the date the transaction closed. **The authorized agent also sends the original Form OR-18-WC and any required attachments to the department.** The transferor should keep a copy of the completed Form OR-18-WC.

When the property is owned by more than one transferor

Each transferor is considered separately. If one transferor is exempt, tax payments are only required on the portion of the conveyance attributable to the nonexempt transferor(s).

If two transferors are married and intend to file a joint Oregon tax return for the year of the transaction, complete one Form OR-18-WC. Otherwise, complete a Form OR-18-WC for each transferor.

Instructions

The transferor and authorized agent need to complete Parts A and B. The transferor then completes Part C or Part D and signs the form. The authorized agent then completes Parts E and F, as needed.

Use the following guidelines to determine which box to check in the “Type of property conveyed” in Part A:

Specially assessed is property that has received a special property tax assessment such as a reduced valuation or deferral.

Undeveloped land is a parcel of land that is vacant and hasn’t been improved for accessibility to utilities nor has any structures located upon it.

Acquired as gift is property that the seller didn’t purchase. It could be property that was inherited or simply gifted to the seller.

Farm use is land that is employed in the trade or business of farming for a profit. The land may be zoned for exclusive farm use (EFU) but isn’t required to be.

Rental property is any real property (commercial, industrial, or residential) that is a rental building or structure (including mobile homes) for which rental income is received.

Personal residence with taxable gain is property that was used as a personal residence and part of the gain was not excludable under IRC Section 121. See “Exemptions” for more information.

Other is for property that needs additional explanation or doesn’t fit elsewhere, such as commercial property or a personal residence without taxable gain.

Part C: Exemption

If a transferor reasonably determines that the gain from the sale is unlikely to be subject to Oregon tax, the transferor may claim an exemption by checking the appropriate box in Part C. In making the determination, the transferor may not consider other losses or deductions that may be claimed when the tax return is filed. To claim an exemption, the transferor completes Part A, selects the reason for the exemption in Part C, and signs the form. The authorized agent will

complete Part B, provide a copy of the form to the transferor, keep a copy for their records, and send the form to us.

Note: If you can exclude all of the gain under Internal Revenue Code (IRC) section 121 for selling your home, use Part C. Don’t use Part C if you’re able to exclude gain from taxation under a different federal law, or if you can only exclude part of your gain under IRC section 121. In those situations, complete Part D and show the applicable IRC and excluded gain on line 11.

Example 2: A California resident (nonexempt transferor) sells Oregon property and reasonably expects to be eligible to claim the credit for taxes paid to another state on the Oregon nonresident return based on the amount of gain that California will also tax. The California resident completes Part A, checks the appropriate box in Part C, and signs the form.

Example 3: A California residents sells an Oregon property at a loss, and there is no gain on the sale. The California resident does not need to complete Form OR-18-WC.

Part D: Calculation of gain

The transferor completes Part D to show the calculation of taxable gain and signs the form.

Provide this to the authorized agent handling the transaction in the time specified by the authorized agent (but no later than the closing date). The authorized agent will use the taxable gain amount to determine the tax payment.

Unless you claim an exemption or are otherwise exempt from this requirement, the authorized agent must withhold a tax payment from the proceeds. They will submit a tax payment that is the smallest of:

- Four percent of the consideration (sales price);
- The net proceeds disbursed to the transferor; or
- Eight percent of the gain that is includable in Oregon taxable income.

If you don’t know your adjusted basis in the property or you don’t complete Part D of this form in time, the authorized agent will withhold the smaller of 4 percent of your consideration or all of your net proceeds as a tax payment.

Calculating the taxable gain

Lines 1 through 6—Adjusted basis

Complete lines 1 through 6 to calculate the adjusted basis. Attach a separate sheet with your calculations if you have other increases or decreases to basis that are not included on the form. Adjusted basis is generally considered the amount originally paid for the property plus improvement costs and minus depreciation. Use your federal adjusted basis unless your Oregon adjusted basis is different from your federal adjusted basis.

You may wish to consult a tax professional for assistance if you’re unsure how to calculate your adjusted basis.

Line 7—Selling costs

Unless these are already included on line 6, enter the selling costs directly related to the conveyance.

Line 9—Consideration

Your consideration for the conveyance is the amount given to you in exchange for your interest in the real property and is generally the sales price. Consideration includes cash, the fair market value of any property you received in the transaction, and any debt assumed by the buyer.

Line 11—Excludable gain

Enter the amount and applicable IRC(s) of the gain from line 10 that is excludable (in whole or in part) under federal law.

If you use the installment method under IRC Section 453 to report the gain associated with the conveyance, this reduces the gain used to calculate the tax payment. Reduce the gain for the year by the amount that is deferred. The authorized agent is only required to submit a tax payment on the first installment of an installment sale.

Example 4: Matt sold his rental triplex and he needs to determine his adjusted basis. He purchased the property 15 years ago for \$400,000 (line 1). He renovated the property and spent an additional \$200,000 (line 2). He will enter a total of \$600,000 on line 4. Matt has claimed straight-line depreciation on the property over the last 15 years totaling \$327,270 (\$21,818 each year for 15 years). He will enter \$327,270 on line 5 and enter his adjusted basis of \$272,730 (\$600,000 – \$327,270) on line 6. He had ordinary selling costs of \$50,000 (line 7), so his adjusted basis plus selling costs on line 8 are \$322,730. Matt sold the property for \$750,000 (line 9), and none of his gain is excludable. Matt’s gain includable in taxable income (line 12) is \$427,270 (\$750,000 – \$322,730).

Example 5: Sarah’s filing status is single. She sold her personal residence and needs to determine her adjusted basis. She purchased the property eight years ago for \$225,000 (line 1). She has not made any capital improvements nor had any allowable depreciation, so her adjusted basis is \$225,000 (line 6). Sarah’s selling costs are \$20,000 (line 7), and her adjusted basis plus selling costs equal \$245,000 (line 8). She sold the property for \$690,000 (line 9). Her gain on line 10 is \$445,000 (\$690,000 – \$245,000). Under IRC Section 121, Sarah may exclude \$250,000 of the gain from the sale of her personal residence from taxation, so she enters ‘121’ and \$250,000 on line 11, so her taxable gain on line 12 is \$195,000 (\$445,000 – \$250,000).

Example 6: Edward sold a large acreage and his gain on line 10 is \$600,000. He and the transferee entered into a land-sale contract where the transferee pays Edward over five years with 40 percent paid in the first year and the remainder paid evenly each subsequent year. For tax purposes, IRC Section 453 allows Edward to recognize only \$240,000 (\$600,000 x 40%) of the gain in the year of the conveyance, so he enters ‘453’ and \$360,000 (\$600,000 – \$240,000) on line 11 so he can subtract the deferred gain. The authorized agent will calculate the tax payment only on \$240,000 of the gain recognized in the year of the sale (line 12).

Part E: Calculation of tax payment

If a transferor isn’t exempt from the tax payment requirements or doesn’t complete Part C indicating an exemption, the authorized agent must withhold from the proceeds and submit the smallest of:

- Four percent of the consideration (sales price);
- Eight percent of the gain that is includable in Oregon taxable income; or
- The net proceeds disbursed to the transferor.

To determine the proper tax payment, the transferor must complete Part D, “Calculation of gain,” and provide it to the authorized agent handling the transaction in the time specified by the authorized agent (but no later than the closing date). If the transferor doesn’t provide this to the authorized agent by the closing date, the authorized agent must complete Parts A, B, and E of Form OR-18-WC and remit 4 percent of the consideration for the conveyance, or, if less, the entire net proceeds.

Calculating the tax payment

The authorized agent must complete Part E if a nonexempt transferor is not claiming an exemption in Part C. Also complete Part A if the transferor has not done so.

Line 13—Consideration percentage

The consideration for the conveyance is the amount given to the transferor in exchange for the transferor’s interest in the real property and is generally the sales price. Consideration includes cash, assumed debt, and the fair market value of any property given to the transferor.

Multiply the amount the transferor provided on line 9 by 4 percent (0.04). If the transferor has not completed Part D (and is not exempt), determine the consideration and enter 4 percent of that amount here.

Line 14—Net proceeds to seller

Net proceeds is the amount from the conveyance that is to be disbursed to the transferor. Generally, this is the amount of “cash to seller” shown on the settlement statement.

Example 7: Katie sold a small commercial building for \$500,000. She still owed \$205,000 on it. Her selling expenses from the property were \$20,000 and included typical costs. The amount on the settlement statement on the “cash-to-seller” line was \$275,000. The escrow agent is scheduled to disburse \$275,000 from this conveyance. The authorized agent will enter “net proceeds” of \$275,000 on line 14.

Example 8: Same facts as Example 6, except that Katie entered into a like-kind exchange to defer part of the gain. The escrow agent forwarded \$200,000 of the amount due to Katie to a qualified intermediary. The escrow agent is scheduled to disburse \$75,000 to Katie, so this is the amount that will be entered as the net proceeds on line 14.

Line 15—Taxable gain percentage

Multiply the amount the transferor provided on line 12 by 8 percent (0.08). If the transferor has not completed Part D (and is not exempt), enter the amount from line 13.

Line 16—Tax payment

Compare lines 13, 14, and 15, then enter the smallest amount here. This is the amount to retain and submit to us on behalf of the transferor.

Information for authorized agents: Part F and reporting tax payments

An authorized agent must obtain a completed Form OR-18-WC from a nonexempt transferor by the closing date. Otherwise, the authorized agent must complete Parts A, B, E, and F of Form OR-18-WC, and submit a payment of 4 percent of the sales price or, if less, all of the net proceeds.

If a nonexempt transferor completes a written assurance that all of the gain qualifies for the principal residence exclusion under IRC Section 121, Form OR-18-WC is not required. The authorized agent must send either Form OR-18-WC or the written assurance for all **nonexempt** transferors to the department **within 30 days from closing**.

Part F and payments

If line 16 shows a tax payment due, complete Part F. Provide a copy of Form OR-18-WC to the transferor. Submit the payment to us with the signed and completed Form OR-18-WC. As evidence of the tax paid on the transferor's behalf, keep a copy of the Form OR-18-WC in your records for six years.

The transferor will claim this payment on their income tax return for the year of the sale. Individuals will include it with their estimated payments on their Form OR-40-N or OR-40-P. C corporations will include it as a withholding payment made on their behalf on their Form OR-20 for the tax year that includes the date of the sale.

You must remit the tax payment along with Form OR-18-WC to the department **within 20 days from the date the proceeds from the conveyance are disbursed to the transferor**. We will credit the payment to the appropriate tax year for the transferor as of the date of the payment based on the information provided on Form OR-18-WC.

If you need to make a payment and have already submitted Form OR-18-WC, see Form OR-18-WC-V Instructions for additional information.

Example 9: Hanna conveys her real property on August 14. Hanna and the authorized agent complete Form OR-18-WC. Then the authorized agent submits Form OR-18-WC with payment by September 3, or within 20 days of disbursement of the proceeds from the sale. We will credit Hanna's tax account with the payment for the year of the sale as of the date the payment is received.

Forms

You can access our forms and instructions anytime on our website at www.oregon.gov/dor/forms.

On our website you can:

- Download current forms, instructions, and publications.
- Download prior year forms and instructions.

Important addresses

Mail Form **OR-18-WC** with payment (if applicable) within 20 days from disbursement (or within 30 days from closing if there is no disbursement) to:

Oregon Department of Revenue
PO Box 14555
Salem OR 97309-0940

Do you have questions or need help?

www.oregon.gov/dor
503-378-4988 or 800-356-4222
questions.dor@dor.oregon.gov

Contact us for ADA accommodations or assistance in other languages.