

WAYS AND MEANS: Palmer, Chair; Riordan and Fuhrman

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ways & means

SENATE FILE 325
BY RIORDAN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to impose an additional tax on certain gains from the sale
2 or exchange of real property, and imposing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 325

1 Section 1. NEW SECTION. 428A.16 TAX IMPOSED ON REAL
 2 PROPERTY GAINS.

3 1. In addition to other taxes imposed by this chapter, a
 4 tax is imposed on the gain from the sale or exchange of real
 5 property located in the state, except for real property
 6 meeting one of the conditions in section 428A.17. The rate of
 7 tax shall be based upon the holding period of the transferor
 8 and the gain on the sale as a percentage of the basis of the
 9 real property as follows:

10 Holding Period of Transferor:	11 Gain as a Percentage of the Basis:		
	12 0-99%	13 100-199%	14 200% or More
15 a. Less than one year	16 30%	17 45.0%	18 60%
19 b. One year or more, but			
20 less than two years	21 25%	22 37.5%	23 50%
24 c. Two years or more, but			
25 less than three years	26 20%	27 30.0%	28 40%
29 d. Three years or more, but			
30 less than four years	31 15%	32 22.5%	33 30%
34 e. Four years or more, but			
35 less than five years	5%	7.5%	10%
f. Five years or more, but			
less than six years			

2. As used in this division, "real property" does not include buildings or other structures attached to the land, and "Internal Revenue Code" means the same as it is defined in section 422.3.

3 Sec. 2. NEW SECTION. 428A.17 GAINS EXEMPTED.

1. The gain from the sale or exchange of real property which meets one of the following conditions is exempt from the tax imposed by this division:

a. Real property on which is located a dwelling used as the transferor's principal residence.

b. Real property on which is located a dwelling to be used as the transferee's principal residence.

c. Real property on which construction of a building to be

1 used as the transferee's principal residence commences within
2 one year of the date of transfer if the building is completed
3 and occupied as the transferee's principal residence within
4 two years from the date of the transfer.

5 d. Real property which was purchased by the state from an
6 organization qualifying under section 501(c)3 of the Internal
7 Revenue Code.

8 e. Real property purchased by a person who builds on the
9 property a dwelling which, upon the next succeeding sale, will
10 be the principal residence of the person purchasing from the
11 builder. To qualify for this exemption, the person construct-
12 ing the dwelling shall begin construction within one year of
13 the date of purchase, complete the building within two years
14 of that date, and sell it within three years from the date of
15 purchase to a purchaser who uses the dwelling as the
16 purchaser's principal residence.

17 f. Real property which is transferred as a result of con-
18 demnation.

19 2. Real property, the gain from which is exempted under
20 this section, shall not exceed five contiguous acres.
21 However, if zoning or similar laws or regulations require a
22 minimum of more than five acres for residential property, then
23 that number of contiguous acres are exempt but under no
24 circumstances shall ten or more contiguous acres be so
25 exempted. However, this subsection does not apply to
26 paragraphs "d" and "f" of subsection 1.

27 3. To qualify for an exemption under this section, the
28 taxpayer or purchaser, or both, as applicable, shall certify
29 to the director of revenue and finance that the property
30 qualifies.

31 4. "Principal residence" as used in this division in re-
32 gard to the transferor means the dwelling occupied by that
33 person, in good faith, as a home for six months or more in the
34 last year ending on the date of the sale or transfer.

35 "Principal residence" as used in this division in regard to

1 the transferee means the dwelling to be occupied by the
2 transferee, in good faith, as a home for six months or more in
3 the year beginning on the date the dwelling can be occupied.

4 5. As used in this division, "sale or exchange of real
5 property" means the transfer of legal or equitable title to
6 real property for a consideration. "Sale or exchange of real
7 property" includes but is not limited to a transfer of an op-
8 tion for the sale or exchange of real property, a contract for
9 the sale or exchange of real property, and a sale or exchange
10 of shares in a corporation or other entity or of comparable
11 rights or property interests in any other form of organization
12 or legal entity which effectively entitles the transferee to
13 the use or occupancy of real property. However, under
14 contracts for the sale or exchange of real property, the sale
15 or exchange is considered to take place at the time
16 consideration first passes under the contract, but amounts
17 paid as earnest money, in deposit, or in escrow to which the
18 transferor has no immediate rights do not constitute the
19 passing of consideration.

20 Sec. 3. NEW SECTION. 428A.18 BASIS -- AMOUNT REALIZED --
21 GAIN -- HOLDING PERIOD.

22 1. The taxpayer's basis on real property sold or exchanged
23 is determined as computed under the Internal Revenue Code.

24 2. The amount realized from a sale or exchange is the full
25 actual consideration, paid or to be paid, including the amount
26 of any liens or encumbrances on the real property existing
27 before the sale or exchange and not removed. The amount
28 realized from the sale or exchange is the gross amount, re-
29 duced by any expenses of sale and commissions. If a sale or
30 exchange includes buildings or other structures or personal
31 property, the amount realized shall be allocated between the
32 real property and the buildings or other structures or
33 personal property on the basis of fair market value.

34 3. The amount of gain from the sale or exchange subject to
35 the tax under this division is the amount realized over the

1 basis of the real property as determined under subsection 1,
2 except that if gain is not recognized under the Internal
3 Revenue Code, in relation to the sale or exchange of capital
4 assets, the gain is not subject to tax under this division.
5 The rates listed in subsection 1 are percentages applied to
6 the gain, or amount realized over the basis, in accordance
7 with the classification based on the percentage by which the
8 gain exceeds the basis.

9 4. The taxpayer's holding period of real property sold or
10 exchanged is determined under the Internal Revenue Code except
11 as provided in this subsection. As to a person whose holding
12 period is claimed by the transferor or cannot be determined
13 under the Internal Revenue Code, the holding period shall not
14 exceed the time for which the person has had actual title in
15 the person's name, and shall include the time the real
16 property was so held prior to the effective date of this Act.
17 If a husband and wife are joint tenants, the amount of time
18 the real property was held by one spouse alone before that
19 spouse created the joint tenancy shall be added to the holding
20 period. If a joint tenancy is dissolved by reason of death,
21 the holding period during the joint tenancy shall be added to
22 the holding period of the survivor owning the real property.
23 In the case of a gift, the holding period of the donee
24 includes the time that actual title was held by the donor.

25 5. The amount of gain from the sale or exchange of real
26 property subject to tax under this division is not reduced by
27 losses incurred in other transactions.

28 Sec. 4. NEW SECTION. 428A.19 PERSON LIABLE FOR TAX.

29 The person liable for the tax imposed under this division
30 is the transferor of the real property sold or exchanged.
31 However, if the gain from the sale or exchange of real
32 property is exempt as a result of the operation of section
33 428A.17, subsection 1, paragraph "b", "c", or "e", and the
34 conditions of the applicable paragraph are not met, the
35 transferee is liable for the payment of the tax due from the

1 transferor as a result of and to the extent of the exemption.
2 The deed for the property shall recite the fact that a lien
3 equal to the tax on the gain exempted runs with the real
4 property sold or exchanged and shall continue until such time
5 as all conditions have been met.

6 Sec. 5. NEW SECTION. 428A.20 WITHHOLDING -- PAYMENT --
7 LIEN.

8 1. The transferee of land held by the transferor for less
9 than six years shall withhold ten percent of all consideration
10 paid to the transferor for the real property, including ten
11 percent of partial payments made pursuant to installment sale
12 under section 428A.21. At the time payment is made to the
13 transferor, the amounts withheld shall be remitted to the di-
14 rector of revenue and finance.

15 2. Within thirty days of the sale or exchange of real
16 property, the transferor shall file a return with the director
17 of revenue and finance setting forth the amount of the tax due
18 pursuant to section 428A.17 and the amount withheld by the
19 transferee pursuant to subsection 1. The transferor shall
20 either remit with the return the balance of the tax due or
21 make claim for a refund. A refund not made by the director
22 within fifteen days of receipt of a valid claim shall accrue
23 interest at the rate of three-fourths of one percent per
24 month. For good cause shown and upon conditions set by rule,
25 the director may extend the time for filing the return and
26 paying the tax required by this division. A return is not
27 required if the transferor obtains a written ruling from the
28 director that tax is not due under this division.

29 3. Subsection 1 does not apply if the transferor pays the
30 tax imposed by this division or obtains a written ruling from
31 the director that tax is not due under this division. In
32 either case, the director shall certify to the transferor that
33 payment has been made or that tax is not due. Upon receipt by
34 the transferee of such certification from the transferor, the
35 transferee is not required to withhold under subsection 1.

1 4. Taxes required to be paid or withheld under this
2 division constitute a personal debt of the person liable to
3 pay or withhold the tax to the state of Iowa and the debt
4 constitutes a lien in favor of the state upon all property and
5 rights to property, whether real or personal, belonging to the
6 person liable for the tax or for the withholding. Section
7 422.26 applies to this division.

8 Sec. 6. NEW SECTION. 428A.21 INSTALLMENT SALES.

9 1. As used in this division, "installment sale" means sale
10 or exchange of land for which the total tax due under this
11 division is greater than two thousand dollars and in which the
12 parties agree in advance that payments shall be received by
13 the transferor in more than one installment on a date other
14 than the date of closing. A sale or exchange financed by a
15 mortgage, deed of trust, or other financing arrangement in
16 which the transferor is paid in full on the date of closing of
17 the sale or exchange is not an installment sale. A lease-
18 purchase agreement under which a part of the rental payments
19 constitute a portion of the purchase price of the land is an
20 installment sale, and for the purposes of this division the
21 end of the holding period with respect to the sale or exchange
22 shall be determined as of the date of the agreement.

23 2. Notwithstanding section 428A.20, subsection 2, in
24 regard to the time the tax is due, the tax under this division
25 on an installment sale is due on each installment within
26 thirty days of the date of payment of each installment paid to
27 the transferor. However, except for the first installment the
28 transferor may elect to file the return due under this divi-
29 sion as part of the transferor's Iowa income tax return for
30 any year in which subsequent installments are paid or due, and
31 to pay the balance of the tax as part of the income tax. If
32 the transferor elects to file annual returns, interest shall
33 not accrue on any withholding as provided by section 428A.20.

34 3. In an installment sale, the total amount of taxes due
35 under this division is the amount that would have been due if

1 the actual purchase price had been paid on the date the sale
2 or exchange took place. The amount of taxes due on each
3 separate installment, including the first installment, shall
4 be in the same proportion to the total amount of taxes due as
5 the amount of that installment is to the total consideration.

6 Sec. 7. NEW SECTION. 428A.22 VIOLATIONS -- PENALTIES.

7 1. A person who willfully defeats or evades or attempts to
8 defeat or evade the tax imposed by this division is guilty of
9 an aggravated misdemeanor. A corporation or other taxable
10 entity not a natural person is subject only to the fine pro-
11 vided for an aggravated misdemeanor.

12 2. An officer, employee, director, trustee, or other re-
13 sponsible person of a corporation or other taxable entity, and
14 any other person, who counsels, aids, abets, participates in,
15 or conceals the defeat or evasion or the attempt to defeat or
16 evade the tax, is subject to the penalties of subsection 1.

17 EXPLANATION

18 This bill imposes an additional tax on the sale and ex-
19 change of real property. The rate of tax is paid by the
20 transferor and based upon the length of time that the trans-
21 feror held the property and the amount of gain. Penalties are
22 included for tax evasion. The tax does not include gains
23 attributable to buildings or other structures on the land and
24 exempts real estate used or to be used as one's principal
25 residence. The bill creates and refers to sections of a new
26 division of chapter 428A, tentatively numbered as sections
27 428A.16 through 428A.22.

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