



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

House Economic Development, Banking, Insurance & Commerce Committee Meeting
Minutes

6.20.18

Chair B. Short called the meeting to order at 2:59 p.m. Members present included Vice Chair Bennett and Reps. Paradee, Keeley, Baumbach, Ramone, Gray, Spiegelman, Yearick, and Hensley. For a list of guests present, please see the attendance list below.

Chair B. Short introduced **SB 175 W/ SA 1, AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO WITHHOLDING OF INCOME TAX ON SALE OR EXCHANGE OF REAL ESTATE BY NONRESIDENTS**. He explained that the bill is a transfer of real estate tax measure and would exempt the transfer of real estate acquired by foreclosure or deed in lieu of foreclosure from nonresident income tax withholding requirements. SA 1 clarifies that the act does not exempt a transfer from a third-party purchaser through a foreclosure proceeding from withholding on the subsequent sale of the property purchased.

Representative Baumbach stated he believed in cases of foreclosures there would be less confidence in getting the taxes and that is who should not be exempted, and asked for a clarification on this.

With the permission of the Chair, Rebecca Goldsmith, Deputy Secretary of Finance, explained that this provision of law is currently not being complied with. When an individual is going through a foreclosure there is not a lot of opportunity for gain, and the Department of Finance has no objections to the draft. They helped draft SA 1 as they felt the bill was unintentionally too broad, for example a flipper who purchased and resold would be exempt from the gain, and SA 1 makes that correction.

Representative Yearick asked if a bank acquired a foreclosure and held the property for years before an out of state resident bought the property, that any gain from what the bank bought it had to what it sold for will be taxed to the nonresident.

Ms. Goldsmith stated that they would not be exempt from paying any obligation otherwise due at the time of sale, but are exempt from withholding at the time of sale. This would exempt a financial institution from withholding at the time of sale, as they do not have compliance issues like individuals do.

Representative Yearick asked if a bank kept a foreclosed property in their assets for year then if there would be a chance of gain.

Ms. Goldsmith stated the bill would not absolve them of any obligation on the gain, but absolves them at the time of which they pay the tax. In the case of a financial institution, the tax liability due on the gain would be paid on their normal tax return filing.

At the request of the Chair, Stephen Spence, representing the Delaware State Bar Association (DSBA) Real Estate Section, explained that when a lender who owns a foreclosed property tries to sell to a third-party they don't have information on what the basis was, which makes it more difficult to calculate what the income tax due at the time of the settlement is. This exempts the lender from paying the tax at the time of the settlement and instead pay at the end of the tax year. Who this applies to has been narrowed in order to get foreclosed property to people who will use the property. If a third-party purchases the property as opposed to a regular mortgagee they will still have to comply with withholding.

Chair B. Short opened up the floor for public comment.

Maria Evans, representing the Delaware Association of REALTORS, stated their support for the bill. (See attached).

Chair B. Short requested a motion. A motion was made by Rep. Keeley and seconded by Rep. Baumbach to release SB 175 w/ SA 1 from committee; motion carried. Yes=9 (B. Short, Bennett, Keeley, Baumbach, Ramone, Gray, Spiegelman, Yearick, Hensley); No=0; Absent=3 (Paradee, Q. Johnson, Matthews). The bill was reported out of committee with a F=0, M=9, U=0 vote.

Chair B. Short introduced **SB 194, AN ACT TO AMEND CHAPTER 38, TITLE 12 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC STATUTORY TRUSTS**. He explained that the bill is part of the annual package of updates from the trust section of the DSBA. The bill will make updates including providing that the registration of a beneficial interest in a statutory trust may be evidenced electronically, addressing aspects of liability of a person associated with a trust, clarifying between a trust and a LLC, and replacing "entity" which is not defined with "person".

Sarah Long, representing the Delaware Bankers Association, stated their support for the bill, as it will help Delaware continue to be at the forefront of the industry.

Chair B. Short requested a motion. A motion was made by Rep. Keeley and seconded by Rep. Baumbach to release SB 194 from committee; motion carried. Yes=10 (B. Short, Bennett, Paradee, Keeley, Baumbach, Ramone, Gray, Spiegelman, Yearick, Hensley); No=0; Absent=2 (Q. Johnson, Matthews). The bill was reported out of committee with a F=0, M=10, U=0 vote.

Chair B. Short introduced **SB 195, AN ACT TO AMEND TITLES 10, 12, 18, AND 25 OF THE DELAWARE CODE RELATING TO DECEDENTS' ESTATES AND FIDUCIARY RELATIONS AND PROPERTY**.

At the request of the Chair, Mark Doyle, representing the DSBA, explained this bill is part of the annual update to the trust code to allow Delaware to remain competitive with other jurisdictions. The bill is mostly clarifications, corrections, and minor updates, but he explained one aspect which would expressively allow trusts to authorize socially responsible investing. He explained needs have changed as beneficiaries have become more socially aware and invested in social and environmental government issues and this will allow corporations to meet this need.

Sarah Long, representing the Delaware Bankers Association, stated their support for the bill.

Chair B. Short requested a motion. A motion was made by Rep. Keeley and seconded by Rep. Baumbach to release SB 195 from committee; motion carried. Yes=10 (B. Short, Bennett, Paradee, Keeley, Baumbach, Ramone, Gray, Spiegelman, Yearick, Hensley); No=0; Absent=2 (Q. Johnson, Matthews). The bill was reported out of committee with a F=0, M=10, U=0 vote.

Chair B. Short introduced **SB 196, AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE.**

At the request of the Chair, Jason Russell, representing the DSBA, explained the bill is a clarifying change. There was confusion in the lender community about how to protect security interests when dealing with a series of limited liability and this legislation would create a registered series which would be a registered organization and Delaware entity.

Chair B. Short requested a motion. A motion was made by Rep. Bennett and seconded by Rep. Baumbach to release SB 196 from committee; motion carried. Yes=9 (B. Short, Bennett, Paradee, Baumbach, Ramone, Gray, Spiegelman, Yearick, Hensley); No=0; Absent=3 (Q. Johnson, Keeley, Matthews). The bill was reported out of committee with a F=0, M=10, U=0 vote.

Chair B. Short introduced **SB 193, AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE FALSE CLAIMS AND REPORTING ACT.** He explained that the federal government requires Delaware to take certain actions to prevent fraud in the Medicaid system and Delaware has until December of 2018 to make these updates to be in compliance with the requirements, which this bill will implement.

Representative Yearick asked how many false claims have been prosecuted in the last few years.

Kate Keller, the Director of the Medicaid Fraud Control Unit, explained the Social Security Act allows states to have a ten percent increase in civil penalties, and states need to be in compliance with the Social Security Act in order to get that ten percent. Between fiscal years 2015 and 2017 Delaware brought in about \$350,000 from this ten percent. In total Delaware receives about a million dollars every year from false recovery claims, which goes towards the Delaware Medicaid and Medical System Program.

Chair B. Short requested a motion. A motion was made by Rep. Keeley and seconded by Rep. Bennett to release SB 193 from committee; motion carried. Yes=10 (B. Short, Bennett, Paradee, Keeley, Baumbach, Ramone, Gray, Spiegelman, Yearick, Hensley); No=0; Absent=2 (Q. Johnson, Matthews). The bill was reported out of committee with a F=0, M=10, U=0 vote.

Chair B. Short adjourned the meeting at 3:22 p.m.

Respectfully submitted by:

Jennifer Proebstle

Attendance List:

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1. Rebecca Goldsmith, Department of Finance
2. Stephen Spence, Delaware State Bar Association
3. Maria Evans, Delaware Association of REALTORS
4. Sarah Long, Delaware Bankers Association
5. Mark Doyle, Delaware State Bar Association
6. Jason Russell, Delaware State Bar Association
7. Kate Keller, Medicaid Fraud Control Unit