



New Jersey Bulk Sales Transfers

By *Craig L. Finger*

Governor Corzine significantly expanded the reach of New Jersey's bulk sale statute when he signed into law N.J.S.A. 54:50-38 on June 28, 2007. The new law, which became effective on August 1, 2007, is now applicable to any transaction in which a seller makes a bulk sale; the statute is no longer applicable to just sellers who are obligated to collect and remit sales tax. The New Jersey Division of Taxation issued Technical Bulletin TB-60 on July 3, 2008, explaining the new requirements.

Some of the highlights of the new law are:

1. Expanded the tax bulk sales notice and it is now applicable to transactions in which any seller makes a bulk sale.
 - a. No longer limited to sellers who are obligated to collect and remit sales tax
 - b. Now applies to most sellers since most real estate is owned by SPEs
2. A purchaser who fails to follow the requirements of the new statute shall become personally liable for the payment to the state of any such taxes determined to be due to the state by the seller.
3. Procedures
 - a. The seller must prepare and deliver to the purchaser the Asset Transfer Tax Declaration (**Form TTD**).
 - b. Purchaser must prepare a Notification of Sale, Transfer or Assignment in Bulk (**Form C-9600**).
 - c. Purchaser must submit Form C-9600 and Form TTD, together with the fully executed Purchaser agreement, to the Director of the Division of Taxation (**Director**). The required documents should be submitted at least 10 days prior to date of closing.
 - d. Within 10 days following receipt of the documents, the Director will notify the purchaser of any possible claim for state taxes and specify the amount to be escrowed by the purchaser at the time of closing. It is preferable for the purchaser's attorney to act as escrow agent.
 - e. The escrow amount will include all deficiencies, interest, penalties, etc.
 - f. If no taxes are owed, the Director will issue a letter of clearance.

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- g. After closing, any amounts owed will be paid out of the escrow account.
 - h. After all final returns have been filed by the seller and all state taxes are paid, the Director will authorize the release of any funds remaining in the escrow account by issuance a letter of clearance.
 - i. Upon receipt of the letter of clearance, the purchaser is relieved of any further liability.

In order to ensure compliance with the new law, the purchaser should include the following provisions in the purchase and sales contract:

- a. Requirement that both the purchaser and the seller are required to fully comply with N.J.S.A. 54:50-38.
- b. A provision granting the purchaser the right to file the requisite notices with the State of New Jersey Division of Taxation at least 10 days prior to the date of closing.
- c. A provision requiring that a portion of the sales proceeds are to be held in escrow with the purchaser's attorney to cover the amount of any possible tax claim, and authorizing disbursements from escrow account to pay amounts directed by the Director.
- d. A provision requiring the seller to indemnify the purchaser for any state tax liability.

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