



Pennsylvania Bulk Sales Transfers

By *Lauren W. Taylor*

Before you purchase real estate in Pennsylvania, you should consider whether you need to require that the seller secure a Bulk Sales Clearance Certificate, otherwise, you could be liable for all of the seller's unpaid taxes.

The Pennsylvania Bulk Sales Law is an important, but often overlooked, protection for buyers. The Bulk Sales Law requires that the Pennsylvania Department of Revenue and the Pennsylvania Department of Labor & Industry be notified in writing 10 days prior to the transfer of 51 percent or more of any real estate. Since most real estate is owned by single purpose entities, the Bulk Sales Law applies to most sellers. Specifically, the Bulk Sales Law applies to (i) all taxpayers subject to Sales and Use Tax; (ii) all taxpayers subject to Employer Withholding Tax; and (iii) all corporations, joint-stock associations, limited partnerships or companies (including limited liability companies, partnerships and sole proprietorships) subject to any of the taxes administered and enforced by the Pennsylvania Department of Revenue.

The purpose of the Bulk Sales Law is to protect the Commonwealth of Pennsylvania, as well as buyers. It is important to note, however, that buyers are only protected when they secure a Bulk Sales Clearance Certificate from the seller. The failure of a buyer to obtain a Bulk Sales Clearance Certificate makes the buyer liable for all unpaid taxes owed by the seller up to and including the date of the sale, whether or not the taxes have been settled, assessed or determined at that time.

To obtain a Bulk Sales Clearance Certificate, the seller must file an Application for Tax Clearance Certificate with both the Pennsylvania Department of Revenue and the Pennsylvania Department of Labor & Industry. The Application for Tax Clearance Certificate should set forth the date of the sale and include a copy of the Agreement of Sale and proposed Settlement Sheet. In addition, the seller must complete and file all tax reports/returns and pay all taxes (including interest, penalties, fees, charges and other liabilities) due to the Commonwealth up to and including the date of the sale.

The Department of Revenue can take a year or longer to issue a Bulk Sales Clearance Certificate. Since most sales cannot wait that long, a buyer should make sure that the Agreement of Sale includes representations from the seller that the seller owes no Pennsylvania taxes and a full indemnity by the seller against liability for any such taxes. In addition to a provision in the Agreement of Sale for indemnification by the seller to the buyer for any tax liability, the buyer should also consider holding back money in escrow. Since a seller will most likely distribute the funds it receives from the sale of the property and dissolve the selling entity, personal guaranties of the indemnity provisions and a hold back of a portion of the purchase price should be considered.

For more information about this topic, please contact Lauren Taylor at 215.918.3625 or lwtaylor@foxrothschild.com.

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