

PUBLISHED BY



2011 Amendments to the New Jersey Bulk Sale Law and Their Application to Single- and Two-Family Residences

September 26, 2011 by W. John Park and Joanna K. Slusarz

On Wednesday, September 14, 2011, Governor Christie signed into law amendments to the New Jersey Bulk Sale Law. Enacted as chapter 124 of the Public Laws of 2011, these amendments narrow the scope of N.J.S.A. 54:50-38, signed into law on June 28, 2007 by Governor Corzine, by exempting the sale, transfer or assignment of single- and two-family homes and of seasonal rental property from the bulk sale notification requirements.

The 2007 law expanded the scope of the 1966 New Jersey Sales and Use Tax Act which set forth bulk sale notification requirements designed to provide the N.J. Division of Taxation with notice of asset sales for the purpose of collecting any outstanding tax liabilities owed by a seller. The 1966 law did not, however, apply to commercial real estate transactions unless the transaction was part of the sale of business assets which included real estate, e.g., the sale of an existing hotel business.

The 2007 law dramatically changed the landscape of bulk sale notification requirements by compelling such notice to be a part of all transactions in which a bulk sale was made. Specifically, the pertinent sections of the law provided:

"Whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise

than in the ordinary course of business, the purchaser, transferee or assignee shall at least 10 days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the director by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee that he owes any tax pursuant to this act, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice . . . or whenever the director shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the State, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property or choses in action to the extent of the amount of the State's claim. For failure to comply with the provisions of this section the purchaser, transferee or assignee, . . . shall be personally liable for the payment to the State of any such taxes theretofore or thereafter determined to be due to the State from the seller, transferrer or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this act."

For purposes of the 2007 law: (i) "Business' mean[t] any endeavor from which revenue or consideration is realized for the purpose of generating a profit or loss," and (ii) "Business assets,' tangible or intangible, include[d] . . . realty if the primary use of the realty [was] to support a business on its premises." See N.J. Div. of Tax. Tech. Bull. 60 (July 3, 2008). On the contracting parties' end, proper notification consisted of inserting a provision into the Contract of Sale that both parties would comply with the statute; the seller preparing and delivering to the

purchaser the Asset Transfer Tax Declaration, in which seller was to disclose information that would assist the Director in estimating the gain on the transfer of asset(s) and the estimated tax on the gain; the purchaser preparing Form C-9600, which provided basic information regarding the sale, transfer, or assignment of property; and, finally, submitting both forms and a fully executed and complete purchaser agreement by registered mail to the Director at least ten business days prior to the date of closing.

The 2007 law made it apparent that, with the exception of building contractors who sold houses as inventory in the regular course of their business, single family residences used solely for that purpose, and other unique transactional situations, all real estate transactions required the statutory notification of a bulk sale. The notice requirements attached to sales of vacant land owned by a business; single-family homes used to obtain rental income; single-family homes used as a home office, if expensed as such on the homeowner's tax return to receive a tax benefit; and even transactions where the seller was a tax-exempt or non-profit organization.

(Case law also established that bulk sale notification requirements applied to deeds in lieu of foreclosure. For further discussion, see [The New Bulk Sales Notification Requirements and Their Application to New Jersey Real Estate Transactions - Part II](#)).

The 2011 amendments take effect immediately and apply retroactively to sales, transfers and assignments on or after August 1, 2007.

Under the 2011 amendments, the bulk sale notification requirements of N.J.S.A. 54:50-38 will not apply to "the sale, transfer or assignment of a simple dwelling house if the seller, transferrer or assignor is an 'individual,' 'estate,' or 'trust' as those terms are used for the purposes of the 'New Jersey Gross Income Tax Act,' N.J.S. 54A:1-1 et seq." A "simple dwelling house" is defined as a one-family or two-family dwelling unit and includes cooperatives and condominium units. Still subject to the law, however, are structures "containing more than two units of

dwelling space or containing, according to the municipal property tax assessor, commercial property including, or in addition to the units of dwelling space.”

Furthermore, the 2011 amendments attempt to resolve the ambiguity of whether the bulk sale law applies to the sale of a residential property that is only being rented for a short period of time. The law as amended now also exempts the sale, transfer or assignment of a “seasonable rental unit” or “of a lease for the seasonable use or rental or real property” if the seller is an individual, estate or trust. For purposes of the law, a “seasonal rental unit” is a timeshare estate (N.J.S.A. 45:15-16.51) or “a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere.”

Again, the above exemptions extend only to sellers who are individuals, estates or trusts. “Business entities,” including but not limited to corporations or partnerships, must continue adhering to the 2007 bulk sale notification requirements.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (201) 489-3000

900 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 752-8000

500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Phone: (302) 652-3131

300 East Lombard Street
Suite 2000
Baltimore, MD 21202
Phone: (410) 230-0660

301 Commerce Street
Suite 1700
Fort Worth, TX 76102
Phone: (817) 810-5250