NEW JERSEY TAX BULK SALE LAW AND CONTROLLING INTEREST TRANSFER TAX PROCEDURAL REQUIREMENTS

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I. New Jersey Tax Bulk Sale

A. At one time, the New Jersey Tax Bulk Sale law protected the interest of the New Jersey Division of Taxation for tax liabilities (i.e., sales tax, payroll taxes and/or corporation business taxes) due by the Seller from activity conducted prior to the sale of the business assets to the Buyer

B. The New Jersey Tax Bulk Sale law has been expanded to include (i) sales of real estate and (ii) the New Jersey income tax liability generated by the sale of the assets (P.L. 2007, Chapter 100 (A5002))

1. Does not apply to residential real estate sales. See copy of New Jersey Law Journal Article dated September 21, 2011 (Exhibit A)

2. Sale of assets of C Corp. creates New Jersey Business Corporation Tax liability

3. Sale of assets of pass through entity (i.e., S Corp, partnership, LLC) causes payment of NJ GIT by the equity owners of the pass through entity.

C. The series of documents which counsel to the Buyer and Seller will encounter in the New Jersey Tax Bulk Sale process are set forth below

1. The Buyer becomes responsible for Seller's New Jersey tax liabilities due by the Seller from activity conducted prior to the sale of assets unless the New Jersey Division of Taxation is notified of the sale within 10 days of the Closing. See Form C-9600 (Notification of Sale, Assignment or Transfer in Bulk) and Instructions at Exhibit B

2. Simultaneously with Buyer's counsel forwarding Form C-9600 to New Jersey Division of Taxation, Seller's counsel forwards Form(s) TTD (Asset Transfer Tax Declaration) to New Jersey Division of Taxation. See Form TTD and example of counsel's letter to New Jersey Division of Taxation with Form(s) TTD attached at Exhibit C

3. Upon receipt of Form C-9600, the New Jersey Division of Taxation immediately sends a letter to Buyer's counsel suggesting a tax escrow to (i) protect the interests of the Buyer and the New Jersey Division of Taxation for unpaid pre-closing tax liabilities of the Seller pending issuance of a Clearance Letter by the New Jersey Division of Taxation and (ii) the New Jersey income tax liability of the Seller (or owners of the pass through entity selling the assets) anticipated to be generated in the year of the sale. See copy of New Jersey Division of Taxation Letter at Exhibit D

4. Upon receipt of Form TTD, the New Jersey Division of Taxation will immediately send a letter to Seller's counsel demanding that New Jersey tax payments be made within 15 days of the New Jersey income tax due upon the sale of the assets. See copy of New Jersey Division of Taxation letter at Exhibit E

5. A check is then forwarded to the New Jersey Division of Taxation with copies of Form(s) TTD by counsel (or the title company) holding the escrow. See Seller's counsel's letter at Exhibit F

   a. As a practical matter, make sure accountant is aware of TTD(s) filing(s) and the amount of estimated tax paid on behalf of the Seller or each of the owners of the Seller

   b. Make sure correct Social Security Number is reported on the TTD or each TTD

6. Balance of funds must remain in escrow until New Jersey Division of Taxation notifies Buyer's counsel by Clearance Letter (N.J.S.A. 54:50-38). See copy of New Jersey Division of Taxation Clearance Letter releasing funds from escrow at Exhibit G. Seller's counsel may, as a practical matter, contact the New Jersey Division of Taxation to facilitate the process if the Clearance Letter is not forthcoming within a reasonable time frame

II. New Jersey Real Estate Tax Upon Sale of Controlling Interest

A. Historically, the sale of an entity owning real estate was not subject to New Jersey Real Estate Transfer Tax

B. In 2006, N.J.S.A. 54:15C-1 was passed. Now a sale of a controlling interest in an entity owning certain real estate may trigger New Jersey real estate transfer tax

C. The tax is imposed under the following conditions:

1. Sale in excess of $1,000,000 (subject to alternate equalized assessed value computation approach)

2. The real estate owned by the entity is Class 4A commercial property. Class A commercial property is any kind of income producing property other than vacant land, residential property, family property, industrial property and apartments

3. The tax is imposed at 1% of the value (or alternate equalized assessed value)

4. The tax is paid by the Buyer

D. See Form CITT-1 (Controlling Interest Transfer Tax) and Instructions at Exhibit H

E. The real estate transfer tax upon a sale of a controlling interest raises a number of issues:

1. Form CITT-1 indicates that the tax is to be governed by the State Uniform Tax Procedure Law. Practically, how is this tax in reality administered by the New Jersey Division of Taxation?

2. What are the sanctions upon the Buyer for non-payment of the tax?

3. How does the obligation to pay the tax impact issuance of title insurance to next Purchaser upon sale of the real estate by the Buyer at some later date? Will non-payment of the tax put a cloud on title of the underlying real estate?

4. One exemption to the real estate transfer tax upon the sale of a controlling interest applies if the real estate is incidental to a corporate merger or acquisition, and if the equalization assessed value of the real property transferred is less than 20% of the total value of all assets exchanged in the merger or acquisition. See Form CITT-1E at Exhibit I