

## BUYER BEWARE: DID YOU FILE YOUR BULK SALES NOTIFICATION?

By Stacy L. Asbell, Esq., Hyland Levin LLP

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### BACKGROUND:

The bulk sale notification requirements initially applied to entities required to collect and remit sales tax. It was implemented to provide the New Jersey Division of Taxation (the "Division") with notice of asset sales thereby enabling the Division to collect any outstanding tax liabilities owed by the seller entity. Changes to these requirements in 2007 significantly expanded the application of the law. The Bulk Sales Act (the "Act"), codified by N.J.S.A. §54:50-38, became effective in June 2007, and now applies to all transactions in which the seller of business assets makes a sale, transfer or assignment in bulk of any part or the whole of its business assets, other than in the ordinary course of business. See N.J.S.A. 54:50-38. The Buyer's failure to comply with the Act results in the Buyer being deemed by statute to be liable for the payment of all of the seller's outstanding tax obligations to the State of New Jersey.

### COMMERCIAL REAL PROPERTY:

For purposes of the Act, a business means "any endeavor for which revenue or consideration is realized for the purpose of generating a profit or loss." A "business asset" consists of tangible or intangible assets and includes "realty if a use of the realty is to support a business on its premises, which includes, but is not limited to, renting space to another." See N.J. Div. of Tax. Technical Bulletin, TB-60R (October 21, 2010). As a consequence, the Act now applies to the sale of any real property where the purpose of the real property is to support a business of any type. In other words, the Act applies to the sale of most commercial properties. By way of example, the Act can also apply to: (i) the sale of real property by a single purpose entity whose sole asset is real property and the sole business of the single purpose entity is the leasing, operation and management of the real property; (ii) the sale of vacant land; (iii) short sale transactions even where there is no equity or proceeds from the sale; (iv) deeds in lieu of foreclosure if the real property has been used as income producing property; and (v) the sale of a "simple dwelling house" if owned by a business entity. See N.J. Div. of Tax., [Frequently Asked Questions](#).

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## COMPLIANCE WITH THE ACT:

### To satisfy the Act:

- ▶ The Buyer must submit to the Division a fully completed Form C-9600 including: (i) valid tax ID numbers for both the seller and the buyer; (ii) a specific closing date; (iii) mailing address for both parties; and (iv) a copy of the executed agreement of sale showing the sales price and the terms and conditions of the sale. The Form C-9600 can be found on the Division's website and is free to file. It is only valid if submitted to the Division by the buyer (it is ineffective if submitted by the seller) and must be signed by the buyer or the buyer's authorized representative (the seller is not required to countersign the Form). Practically, buyers should obtain the seller's tax ID number in the contract of sale to avoid any time delay in obtaining it before closing and otherwise obtain the seller's agreement to cooperate in this process.
- ▶ The Form C-9600 should be submitted to the Division by registered, certified mail or by overnight mail, Fed-Ex or UPS. The Form C-9600 cannot be submitted by facsimile or hand delivery.
- ▶ The Form C-9600 must be received by the Division at least 10 business days before the scheduled date of closing. The Division is not obligated to expedite the process and therefore, timely filing is necessary for full compliance.

## WITHIN TEN DAYS OF RECEIVING THE FORM C-9600, THE DIVISION WILL ISSUE ONE OF THE FOLLOWING NOTICES:

- ▶ Escrow Letter: Setting forth the amount of money to be withheld from the purchase proceeds in escrow at the time of the closing. The buyer or its agent (not the seller) must hold the escrow or risk being liable for the seller's tax obligations.
- ▶ Returns Required Letter: Setting forth which returns must be filed and paid to obtain a Clearance Letter
- ▶ Insufficient Notice: Identifying the items missing from the C-9600
- ▶ Clearance Letter: Stating that the bulk sales case is closed, no money is to be held or remain in escrow and absolving the buyer of liability; or
- ▶ Unreported Bulk Sales Letter: Notifying the buyer of the assets of the assumption of the seller's liability.

See N.J. Div. of Tax., [Frequently Asked Questions](#).

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## REDUCING THE ESCROW:

A seller can try to reduce the amount of the escrow by providing the Division with additional information regarding the seller's tax liability. In addition to the filing and payment of delinquent returns or deficiencies, a seller can submit an Asset Transfer Tax Declaration Form ("TTD Form") providing the Division with information on the gain of the sale of the business asset. The Division will use the information submitted on the TTD Form to calculate a more exact amount of the tax due and will often adjust the amount of the tax escrow. Although the Division does not recommend filing the TTD Form until after a caseworker has been assigned, there are no formal time requirements for filing the TTD Form. As the TTD Form usually results in a reduction of the escrow, it is in the seller's best interest to file the TTD Form as soon as the buyer has submitted the Form C-9600 or even simultaneous with the buyer's submission of the Form C-9600. Sellers should note that all shareholders, partners or members of a selling entity must each complete a separate TTD Form.

## SUMMARY:

With the 2007 expansion, the Act applies broadly to many transactions and the Division is aggressive in its enforcement. While compliance with the Act is relatively easy and inexpensive, failure to comply can have severe financial consequences to the buyer, burdening the buyer with the seller's tax liabilities. If there is any question as to applicability, the buyer should file the Form C-9600.

Stacy L. Asbell, Esq. is of counsel with Hyland Levin LLP. She regularly represents buyers and sellers in the acquisition and sale of real property.



**Stacy L. Asbell, Esq.**  
**Hyland Levin LLP**

Email: [asbell@hylandlevin.com](mailto:asbell@hylandlevin.com)

*Practice Areas:*

*Real Estate Leasing*

*Real Estate Development and Finance*

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*Real Property Taxation*

6000 Sagamore Drive, Suite 6301, Marlton, NJ 08053-3900

Phone: 856.355.2900

[www.hylandlevin.com](http://www.hylandlevin.com)



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