

THE EXPANDED BULK SALE LAW

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Prior to August 1, 2007, the New Jersey Sales and Use Tax Act (the "Bulk Sale Law") provided that a purchaser's failure to notify the Division of Taxation (and subsequently comply with the Division's instructions to pay or escrow claimed sums due to the state) of its acquisition of another's business assets purchased in bulk and outside of the ordinary course of business, could result in the purchaser becoming liable for the unpaid sales tax owed by the seller of such assets. The Bulk Sale Law was fairly limited in scope and application, as it applied only to a sale of business assets in bulk and only to the unpaid sales tax of the selling party.

rental property is acquiring the property from a single purpose entity runs the risk of assuming the seller's tax liability if it fails to provide a Notice of Sale to the Division of Taxation, and either pay or escrow the seller's estimated tax liability. Further, the potential tax liability applies to all potential taxes of the Seller, including any potential gain on the sale of the real estate itself.

This expansion of the Bulk Sale Law, is certainly understandable from the perspective of the Division of Taxation seeking not to lose the potential last chance opportunity to collect taxes. However, it does present significant

Under the expanded Bulk Sale Law, if a purchaser of a commercial or residential rental property is acquiring the property from a single purpose entity, they run the risk of assuming the seller's tax liability.

As of August 1, 2007, New Jersey expanded the Bulk Sale Law to make it applicable to transactions in which any seller makes a bulk sale. Further, the expanded Bulk Sale Law applies to all state tax obligations, not just sales tax. Under the expanded law and the Division of Taxation's application, a bulk sale is defined as "any sale, transfer or assignment, in whole or in part, of a person's business assets, not made in the ordinary course of business." Business assets now includes "...realty if the primary use of the realty is to support a business on its premises." The term "business" is defined to mean "any endeavor from which revenue or consideration is realized for the purpose of generating a profit or loss."



potential problems in the transaction. Most single purpose entities are traditionally pass-through entities. Therefore, the calculation of the potential tax is a function of the tax position of the partners or members of the selling entity, and not solely a function of the

specific transaction. Further, in difficult economic times, it is quite possible that the required escrow for the payment of such taxes is greater than the sale proceeds.

Purchasers of income producing real estate must understand the expanded Bulk Sale Law and the steps required to comply with it, or risk successor liability for the seller's tax liability to the State.

By these definitions, the sale of virtually any rental real estate which is outside of the ordinary course of business would be subject to the Bulk Sale Law. Thus, a typical real estate transaction in which a purchaser of a commercial or residential

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