

## POLICY & PROCEDURES

# NJ Bulk Sale Filings and Asset Transfer Tax Declaration

FEBRUARY 14, 2009

### BE IN A POSITION OF STRENGTH

When a business entity sells substantially all of its assets outside the normal course of business, the sale is subject to the **bulk sale requirements** of New Jersey law. Under the law, the **buyer** must file a Notification of Sale, Transfer or Assignment in Bulk, (See *Form C-9600 attached*) with the Division of Taxation Bulk Sale Section. This form must be received by the Division of Taxation (the "Division") **at least 10 days prior** to the closing date of the transaction. Upon receipt of this form, the Bulk Sale Section will review the seller's tax accounts and forward to the buyer's attorney notice of the tax escrow amount that must be withheld at closing. The escrow amount required will include any deficiencies or delinquencies reflected in the seller's tax account. The escrow will also include the seller's estimated gain on the sale of the assets.

Law changes effective August 1, 2007 created a new form that will be used to assist the Division in determining the estimated gain on the transaction. The Asset Transfer Tax Declaration form (See *Form TTD attached*) must be completed by the seller and provided to the Division. The Division will use this form to better estimate the expected gain on sale. If, upon filing and review of the Form TTD, the Division determines that it is appropriate to reduce the escrow amount, a revised tax escrow letter will be issued to the buyer's attorney. At this point, the buyer's attorney would be free to release the excess tax escrow amount to the seller.

In order to properly calculate and allocate withholding taxes upon asset disposition, it is important that each taxing owner of the seller entity file a Form TTD.

**BE AWARE OF NEW JERSEY BULK SALE REQUIREMENTS WHEN BUYING OR SELLING SUBSTANTIALLY ALL ASSETS OUTSIDE THE NORMAL COURSE OF BUSINESS.**

Questions or comments?

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The form clearly indicates that if the seller entity is a partnership, LLC or S corporation, each partner, member, or shareholder, must file a Form TTD. While the Division is still working through the mechanics of transactions involving tiered partnerships, it is likely that each partner in a tiered partnership structure will be required to complete a Form TTD.

After the closing, the Division will demand from buyer's attorney payment equal to any existing state tax debts and the seller's estimated tax liability on the gain from the escrow amount. With regard to estimated taxes on the gain, the Division will provide the seller's attorney with a receipt reflecting the application of the estimated payment. Once all final returns are filed and all taxes are paid, the Division will authorize the release of any remaining tax escrow being held by the buyer's attorney. Completion of this process releases the buyer from any further liability related to tax debts existing prior to the acquisition. It is important to note that this process does not release the seller from any liabilities that arise from an audit relating to periods prior to the sale transaction.

Questions or comments?

E-mail us at [taxbriefs@withum.com](mailto:taxbriefs@withum.com)

*If you should have any questions, please contact the WS+B tax department.*

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