

BULK SALES FOR REAL ESTATE, CORPORATE AND TAX LAWYERS-A WEBINAR

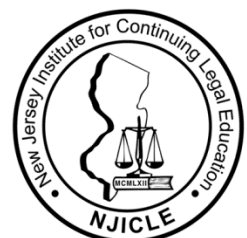
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Thank you for logging in – the webinar will begin shortly.

BULK SALES FOR REAL ESTATE, CORPORATE AND TAX ATTORNEY



Using The Online Classroom

1. All Attendee phone lines are muted.
2. Questions may be submitted
 - Via Chat on the right hand side of your screen.
 - Questions will be answered periodically during the presentation

Note: Attendees with dial up connections will see a slower response.

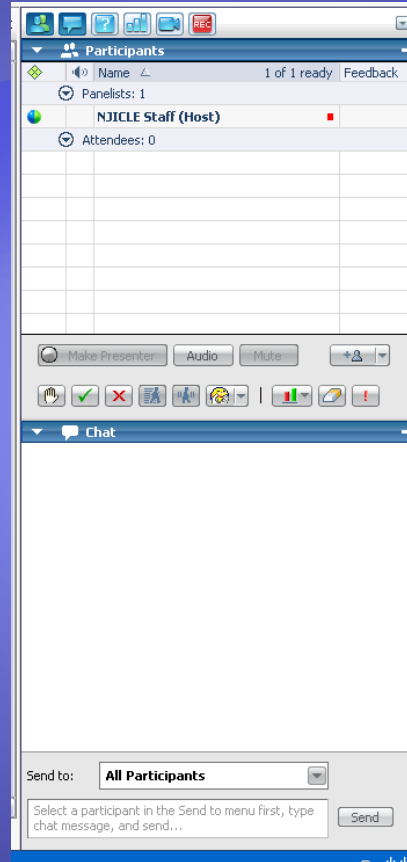


Asking Questions – Easy as 1,2,3

3. See your messages here

1. Type your question here.

2. Send



SEMINAR MATERIALS AND CLE FORMS

- ◆ TO ACCESS SEMINAR MATERIALS, ATTENDANCE VERIFICATION AND CLE FORMS PLEASE GO TO:

<http://tcms.njsba.com/personifyebusiness/njicle/WebinarInformation.aspx>

ATTENDANCE VERIFICATION

- ◆ PLEASE FAX OR E-MAIL YOUR ATTENDANCE VERIFICATION FORM TO NJ ICLE

- ◆ FAX: 732-249-1428

- ◆ E-MAIL: smilek@njsba.com

BULK SALES FOR REAL ESTATE, CORPORATE AND TAX LAWYERS – A WEBINAR SEPTEMBER 15, 2016

New Jersey Division of Taxation Bulk Sales Section:

Marie Alaina J. Murdza, Supervising Investigator
Elizabeth Hartmann, Investigator II
Keith Muller, Investigator II

Gibbons P.C.:

Peter J. Ulrich, Esq.
Ivette P. Alvarado, Esq.

Discussion Topics:

- What is the Bulk Sale Law?
- Application of Bulk Sale Law
- Bulk Sale Review Process
- Bulk Sales Q&A
- Audience Q&A





State of New Jersey
Department of the Treasury

Division of Taxation



Bulk Sale Law:

- Enacted in 1966 (See N.J.S.A. 54:32B-22(c))
 - last amended in 2011.
- Protects Purchaser and State.
- Purchaser of business assets must notify State at least ten business days prior to closing.
- Covers assignments or transfers of business assets.
- Business Asset - The term "business" is defined to mean "any endeavor from which revenue or consideration is realized for the purpose of generating profit or loss".
- A business asset can include goodwill, materials, supplies, licenses, patents, copyrights, equipment, leases, merchandise or other inventory and realty.



State of New Jersey
Department of the Treasury

— Division of Taxation —

Bulk Sale Act Amendment (enacted 8/01/07)

See N.J.S.A. 54:50-38

- Allowed review of all State taxes for all sales, assignments and transfers instead of just for Sellers who collected Sales and Use Tax.
- Transferor can be required to file Asset Transfer Tax Declaration (TTD) Form with the State.
- Transferor pays tax on the Estimated Gain at time of transfer.



State of New Jersey
Department of the Treasury

— Division of Taxation —

Bulk Sale Act Amendment (enacted 9/14/11)

- Exempts from notification the transfer of a “simple dwelling house” to individuals, married or civil union couples, estates and trusts.
- A “simple dwelling house” is a 1 or 2 family home.



State of New Jersey
Department of the Treasury

— Division of Taxation —



Court Cases Involving Bulk Sales:

- Bunting v. Director, Div. of Taxation, 1 N.J. Tax 189 (1980) – held that an escrow prescribed by the State can exceed the purchase price of the business assets.
- New Jersey Hotel Holdings v. Director, Div. of Taxation, 15 N.J. Tax 428 (1996) – held that the acquisition of business assets by way of a deed in lieu of foreclosure is a bulk sale.



State of New Jersey

Department of the Treasury

— Division of Taxation —

Court Cases Involving Bulk Sales:

- GABGEO, Inc. v. Director, Div. of Taxation, 23 N.J. Tax 38 (2006) – held that bulk sale notice must be filed (a) by the purchaser, (b) on the form prescribed by the Director, and (c) at least ten days before the proposed transaction closes.

Transactional Attorney's Considerations

- Certainty that transaction covered
 - Exempt real property transfers: by developers in ordinary course, some residential real estate
- Buyer concerns vs. Seller concerns
- Type of property being sold
- Purchase price allocations

Transactional Attorney's Considerations (cont'd)

- Roles of parties and agents:
 - Buyer / Buyer's attorney
 - Seller / Seller's attorney
 - Escrow agent
 - Buyer's attorney, or
 - Third party escrow agent

Transactional Attorney's Considerations (cont'd)

- Business assets vs. real estate
 - Business: mix of assets sold
 - Defining assets being sold
 - Mix of conveyance methods & documents
 - Purchase price allocations
 - Real estate: often a single conveyance
 - Greater potential for lienholders

Transactional Attorney's Considerations (cont'd)

- Contractual Provisions
 - Notice of process
 - Cooperation & coordination
 - Time periods to act
 - Buyer's right to escrow funds
 - Escrow account provisions

Transactional Attorney's Considerations (cont'd)

- When Buyer might not notify
 - Sign and close transaction
 - Exposure slight & quantifiable
 - Indemnification risks low
 - Seller a good credit risk
 - Buyer and seller work together periodically
 - Remember: no fixed \$ penalty for compliance failure
 - Penalty to Buyer is uncapped transferee liability for all unpaid State taxes including income taxes on transaction.

Bulk Sale Notification Process vs. Application of Sales Tax to Transaction

- Distinguish between bulk sale notification process and the potential imposition of sales tax on the transaction.
 - Sale of business assets (vs. real estate)
 - Allocation of purchase price among assets
 - Seller may need to collect & remit sales tax
 - Location of assets – NJ?

Bulk Sale Notification Process vs. Application of Sales Tax to Transaction (cont'd)

- Filing of bulk sale notification and complying with Bulk Sales Section's instructions does not absolve Seller from duty to collect any sales tax on the NJ asset sale.
- Addressing sales tax exposure on transaction does not absolve Buyer's need to comply with Bulk Sale notification requirements.

Bulk Sale Notification Process vs. Application of Sales Tax to Transaction (cont'd)

- Certain items likely to be subject to sales tax:
 - Vehicles, boats, aircraft
 - Non-manufacturing equipment
- Certain items exempt if applicable exemption certificates properly prepared and delivered:
 - Inventory
 - Manufacturing equipment
- Other items exempt by definition: accounts receivable, intangible assets, goodwill

Bulk Sale Notification Process vs. Application of Sales Tax to Transaction (cont'd)

- Casual or Occasional Sale Exemption
 - N.J.S.A. 54:32B-8.6; 54:32B-2(u)
 - Exemption from sales tax for an isolated or occasional sale of an item of tangible personal property or digital property by a person who is not regularly engaged in the business of making retail sales of such property.
 - Does not cover inventory. Buyer should issue a sale for resale exemption certificate.
 - The definition of “retail sale” affords exemptions for certain defined contributions of property to corporations or partnerships for stock or partnership interests, respectively, and in certain liquidating and reorganization transactions. N.J.S.A. 54:32B-2(e)(4).



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Department of the Treasury

— Division of Taxation —

BULK SALES PROCESS AND FREQUENTLY ASKED QUESTIONS



State of New Jersey Department of the Treasury

— Division of Taxation —

C-9600
10-07, R-7

STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF TAXATION

NOTIFICATION OF SALE, TRANSFER, OR ASSIGNMENT IN BULK

ATTACH COPY OF PENDING CONTRACT OF SALE OR TRANSFER

This form is to be used by the purchaser/transferee to notify the Director of the Division of Taxation, of any bulk transfer in accordance with P.L. 2007, Chapter 100 (A5002). See Reverse Side.

By statute the following information is required to be submitted by registered mail ten (10) days before taking possession of, or paying for, the property. **CERTIFIED MAIL OR OVERNIGHT DELIVERY IS ALSO ACCEPTABLE.**

Name of Purchaser(s) _____

Trade Name of Purchaser(s) _____

Street _____ City _____ State _____ Zip Code _____

Federal Identification No. _____ Social Security No. _____

Name and Address of Attorney
or Escrow Agent for Purchaser _____

Telephone Number (_____) _____

Seller's N.J. Tax Identification No. _____

Name of Seller(s) _____

Trade Name of Seller(s) _____

Name of Officer, Partner, or Individual Owner _____

Home Address _____ City _____ State _____ Zip Code _____

Home Phone Number (_____) _____ Business Phone Number (_____) _____

Federal Identification No. _____ Social Security No. _____

Name and Address of Attorney
or Agent for Seller _____ Phone Number (_____) _____

Seller's Liquor License No. (If Applicable) _____

Date Seller Acquired Business: Month _____ Year _____

SCHEDULED DATE OF SALE	Sales Price of Furniture, Fixtures & Equipment	\$
	Sales Price of Land and Building	\$
	Sales Price of Other Assets (attach schedule)	\$
	Total Sales Price	\$

TERMS AND CONDITIONS OF SALE

LOCATION OF BUSINESS OR PROPERTY

TYPE OF BUSINESS

Signature

Title - If other than purchaser, please identify

Date



State of New Jersey Department of the Treasury

— Division of Taxation —

C-9600 NOTIFICATION AND EXCLUSIONS:

What is needed from the purchaser for the notification to the Division of Taxation to be proper?

- For the notification to be considered proper and complete the following must be provided by the purchaser.
 1. A fully completed form C-9600, including:
 - **valid tax ID numbers for both** the seller and purchaser
 - a **specific** closing date (at least 10 business days prior to the Division's receipt of notification)
 - proper mailing addresses for both parties' representatives
 - signed and submitted by the purchaser or their representative
 2. A copy of the **executed** contract of sale, court order or assignment agreement clearly showing the sales price and all the terms and conditions of the transfer.



State of New Jersey Department of the Treasury

— Division of Taxation —

3. The C-9600 and a contract must be received by the Division of Taxation ten (10) business days prior to the closing date.
4. These documents should be submitted registered or certified mail to the Division of Taxation, Attn: Bulk Sale Section, PO Box 245, Trenton, NJ 08695-0245 **or by overnight mail, Fed-Ex, or UPS** to the Division of Taxation, 50 Barrack Street, Trenton, NJ 08695, Attn: Bulk Sale Section.
5. **Regular mailing, hand-delivery faxing, or emailing of the C-9600 Form is not permitted!**

Is there any way expedite service?

- No. There is no expedited service in any case.



State of New Jersey Department of the Treasury

— Division of Taxation —

How will the state respond to the C-9600?

- The state will issue one or more of the following notices:
 1. Escrow Letter to the purchaser with a copy to the seller - (states the amount of money to be held at the transfer).
 2. Returns Required Letter to the seller - (outlines which returns must be filed and paid to obtain clearance for the bulk sales case).
 3. Clearance Letter to the purchaser and if an escrow was held a copy to the seller - (states the bulk sales case has been closed, no money is to remain in escrow and absolves the purchaser of any liability).
 4. Insufficient Notice to the purchaser - (lists items that are missing from the notification and must be sent in to make it complete).
 5. Bulk Sale Violation Letter - (notifies the purchaser of the assets of the assumption of the seller's liability).

Transactional Attorney's Considerations re Form C-9600

- Multiple Sellers? Then multiple C-9600s
- Including the contract of sale
- Allocation of purchase price
- Contact information of attorneys
- Changes to the deal



State of New Jersey
Department of the Treasury

— Division of Taxation —

**THE DIVISION REVIEWS THE
TAX RECORDS OF THE SELLER
AND IF THERE ARE NO
OUTSTANDING TAXES DUE —
A CLEARANCE LETTER IS
ISSUED TO THE PURCHASER.**



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
September 17, 2013

Purchaser Info
[REDACTED]

RE: [REDACTED] → Name of Seller
TAXPAYER ID NO: XXX-XX-X- /000
CASE NO : 1
BULK SALE NO : [REDACTED]

Dear Taxpayer:

Please be advised that, with respect to the bulk transfer of the business as-
sets of (Seller) [REDACTED] the Division will not assert liability against the
transferee, nor require an escrow pursuant to the bulk transfer provisions of the
New Jersey tax statutes.

Very truly yours,

Robert R. Egan
Division of Taxation

IN REPLY REFER TO:

[REDACTED]
NJ DIVISION OF TAXATION
BULK SALES SECTION
P O BOX 245
TRENTON NJ 08695-0245
[REDACTED]

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State of New Jersey
Department of the Treasury

Division of Taxation

State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
May 17, 2013

Purchaser Info

[REDACTED]

RE: [REDACTED] → Seller
TAXPAYER ID NO: xxx-xxxx-00
CASE NO : 1
BULK SALE NO :

INSUFFICIENT NOTICE MEANS
THERE ARE ITEMS MISSING
FROM THE C9600 (EX. CONTRACT,
SCHEDULED DATE OF SALE,
INCORRECT BUYER, ETC.)

INSUFFICIENT NOTICE OF BULK SALE

Dear Taxpayer,

The notice you recently submitted to the Bulk Sale Unit of the Division of Taxation is not in accord with N.J.S.A. 54:50-38 for the reason(s) identified below.

Contract is absent. Resubmit the C-9600 with the executed contract and revised date of sale. The contract **must be mailed** to the Division of Taxation's Bulk Sale Unit at the address indicated below.

The cause of the rejection must be resolved and submitted to this office 10 business days prior to the date of sale. Any transfer of assets or consideration taking place after this rejection will be deemed unreported and the purchaser may become liable for the entire liability of the seller.

IN REPLY REFER TO:

[REDACTED]
NJ DIVISION OF TAXATION
BULK SALES SECTION
P O BOX 245
TRENTON NJ 08695-0245



State of New Jersey
Department of the Treasury

Division of Taxation

**DIVISION ISSUES ESCROW
REQUIREMENT IF THE
SELLER HAS OUTSTANDING
LIABILITIES AND/OR HAS A
POTENTIAL CAPITAL GAIN
ON THE TRANSACTION.**



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION

June 3, 2013

Purchaser Info

[REDACTED]

RE: [REDACTED] → Seller
TAXPAYER ID NO: xxx-xxx-00
CASE NO : 1
BULK SALE NO : [REDACTED]

Dear Taxpayer:

This office has received information with respect to the sale, transfer, or assignment in bulk of the business assets of [REDACTED] → Seller

Following the receipt of the tax returns required to be filed by the seller, an office examination will be made to determine whether a complete audit will be required.

In the event that title to the assets is transferred prior to our examination of the transferor's records, you are hereby advised that \$11,000.00 be placed in escrow to protect the interests of the purchaser and the State of New Jersey for any unpaid tax liabilities.

WARNING: The escrow monies should not be released to the seller until such time as you have a clearance letter, issued by this office for that purpose, in your possession.

Persons commencing business or opening additional places of business must register at least 15 business days prior to commencement or opening. Registration may be completed on line at www.state.nj.us/nibgs or the Client Registration Bureau may be contacted at (609)292-1730.

Furthermore, once the closing has occurred or if the sale does not take place, written notification is requested.

IN REPLY REFER TO:

NJ DIVISION OF TAXATION
BULK SALES SECTION
P O BOX 245
TRENTON NJ 08695-0245

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State of New Jersey Department of the Treasury

— Division of Taxation —

RETURNS REQUIRED LETTER (RRL) ISSUED TO SELLER FOR ITEMS NEEDED BY DIVISION DURING THE SELLER REVIEW PROCESS (EX. TAX RETURNS, TTD, ETC.)



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
June 3, 2013

Purchaser/Seller Info

[REDACTED]

RE: [REDACTED] → Seller
TAXPAYER ID NO: xxx-xxx-00
CASE NO : 1
BULK SALE NO : [REDACTED]

Dear Taxpayer:

Pursuant to the Bulk Sales provisions of New Jersey tax statutes, this office has received information that you have or will transfer your business assets, in whole or in part to [REDACTED] → Seller

The following tax returns must be filed with the Division of Taxation and any monies due thereon must be remitted:

TAX TYPE

TAXABLE PERIOD

TTD Form

<http://www.state.nj.us/treasury/taxation/>

Note: Certain Tax Returns are required to be filed electronically through the Division's website referred to above. Forwarding copies of electronically filed tax returns to the Bulk Sale Section will assist in the expedited release of escrow monies held. Those tax returns that cannot be filed electronically should be forwarded with full payment directly to the Bulk Sale Section.

In addition to the returns cited above, if any other taxable periods remain unsatisfied, a "Schedule of Liabilities" enumerating those liabilities and/or delinquencies will accompany this letter.

It will also be necessary for you to answer the following questions on the enclosed copy of this letter, and after the sale has taken place, forward it to the person whose name appears in the lower right hand corner of this letter.

(A) Last Day of Business _____

(B) Date of Sale _____

(C) Did this transaction involve the transfer of corporate stock?
YES _____ NO _____

(D) Will the seller continue to file tax returns under the above referenced ID number after the sale? YES _____ NO _____

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State of New Jersey Department of the Treasury

— Division of Taxation —

If yes, what type? _____

- (E) Will the seller be paying wages subsequent to the date of sale?
YES _____ NO _____

NOTICE TO EMPLOYERS: When an employer goes out of business or permanently stops paying wages, that employer must file the final **FORM NJ-927** at the end of the quarter.

WARNING: FAILURE TO PROVIDE THIS INFORMATION AND/OR TAX RETURNS WITHIN THIRTY (30) DAYS FROM THE DATE OF SALE COULD RESULT IN DELAYS IN THE ISSUANCE OF ANY CLEARANCE LETTERS, AND RELEASE OF ESCROW.

To insure proper handling of this matter, please direct all communications, and payments to the **BULK SALES SECTION**.

IN REPLY REFER TO:

NJ DIVISION OF TAXATION
BULK SALES SECTION
P O BOX 245
TRENTON NJ 08695-0245



State of New Jersey Department of the Treasury

— Division of Taxation —

ALSO KNOWN AS TTD.
USED TO CALCULATE
ESTIMATED CAPITAL
GAIN ON THE
TRANSACTION.



ASSET TRANSFER TAX DECLARATION

P.L. 2007, Chapter 100 (A5002)
N.J.S.A. 54:50-38

New Jersey Division of Taxation
Bulk Transfers
Box 245
Trenton NJ 08645-0245

Form TTD
This form may be reproduced
(Please print or type)

Party Information

Seller's Name: _____

Seller's FID/EIN: _____

Purchaser's Name: _____

ACTUAL Date of Sale: _____

Business Type (check one)

S-Corporation * ☐ Partnership * ☐ LLC * ☐ Corporation ☐ Proprietor ☐ State of Formation _____

Return type filed to report gain: CBT ☐ PART ☐ NJ1040/1041 ☐ NJ1040NR ☐ TIN _____

* If a gain is declared (Line 9), each intended K-1 recipient must complete a declaration. Number of K-1s: ☐

Realty Location (if applicable)

Block(s) ☐ Lot(s) ☐

Street Address ☐

City ☐ State ☐ Zip ☐

Calculation of Estimated Tax (to nearest dollar) See reverse side for specific line instructions.

1. Consideration / Selling Price	1. \$ _____
2. Settlement Charges (Not to include Mortgage/Loan payoffs)	2. \$ _____
3. Cost After Depreciation	3. \$ _____
4. Current Year Loss	4. \$ _____
5. NOL Carryover (if allowable)	5. \$ _____
6. IRC Section 1031 Exchange (if applicable)	6. \$ _____
7. Gain (subtract lines 2 through 6 from line 1)	7. \$ _____
❖ 8. Amount of Gain Deferred (if applicable)	8. \$ _____
9. Current Year Gain (subtract line 8 from line 7)	9. \$ _____
10. _____ % Share of Gain if K-1 (multiply line 9 by percentage)	10. \$ _____
11. Tax Rate from NJ-1040 Schedule (<u>not effective rate</u>)	11. % _____
12. Estimated Tax on Gain Due (line 10 multiplied by line 11)	12. \$ _____
❖ Will there be installment proceeds? Yes <input type="checkbox"/> No <input type="checkbox"/> (if yes, give details on reverse side.)	

Taxpayer's Declaration

I declare that all the information on this declaration is correct. I am aware that if any of the foregoing information provided by me is knowingly false, I am subject to punishment.

Date: _____

Owner/Partner/Member Signature: _____

Print: _____

Title: _____



State of New Jersey Department of the Treasury

— Division of Taxation —

TAX RATES FOR ESTIMATED GAIN ARE THE SAME AS ONE USED FOR INDIVIDUALS AND CORPORATE ENTITIES.

N.J.S.A. 54:50-38 instructs the Director, Division of Taxation, to notify the purchaser, transferee or assignee of business assets of any possible claim for State taxes. This directive includes all final business tax returns and payment.

Procedure

The estimated tax on the gain portion of the escrow to be held at closing is *initially calculated* by multiplying the gross consideration by the tax rate of the taxpayer.

- ◆ Upon completion of this declaration, submission to and review by the Division, the estimated tax on the gain portion of the escrow *may be reduced* appropriately.

Upon closing of the transaction, the escrow will be held by the transferee's attorney and the estimated tax on the gain portion of the escrow will be demanded by the Division to be applied to the appropriate tax type and year. A confirmation of receipt and the application of the estimated tax payment will be sent to the transferor's attorney.

The taxpayer files their year end business tax return, claims credit for the payment and pays any additional tax due. They may request a refund or credit if an overpayment exists.

Specific Line Instructions for Estimated Tax Calculation

Special Note: Lines 1 through 9 establish gain. Line 10 assigns share.

Line 1: Total sale price or consideration of all assets currently being transferred.

Line 2: Total amount of settlement charges to transferor associated with this transaction.

Line 3: If fully depreciated enter zero.

Line 8: Calculate amount deferred based on installment or short term notes.

Line 9: For NJ1065 filers: If any member/partner is not an *individual* or if the number of nonresident member/partners exceeds five (5) **stop here** and attach the most current membership directory. The Division will calculate and communicate the estimated tax for resident filers and/or withholding amount for nonresident filers.

Line 11: Individual tax rates may be found in the most current NJ-1040 instructions. Corporate tax rate 6.5% (\$1-\$50,000), 7.5% (\$50,001-\$100,000) or 9% (above \$100,000).

- ◆ Line 12:
 - C-Corporation - use the *greater* of declared tax or minimum tax. (\$500, \$750, \$1,000, \$1,500 or \$2,000 based on NJ Gross Receipts.)
 - S-Corporation - minimum tax applies in addition to any tax on gain.
- ◆ This is the declared amount that the Division will demand from escrow to be applied to the taxpayer's account(s).

Details of Installment proceeds:

Transactional Attorney & Form TTD

- Seller or Seller's representative should prepare
- Form TTD can help bridge the gap between the parties – both sides benefit
- Timing: although not due up front, often need involvement of Seller's accountant or CFO
- Form covers a multitude of situations

Transactional Attorney & Form TTD (cont'd)

- Pass-Thru Entities
 - Separate Form TTD for each pass-thru member
 - Partners (LLC members)
 - S corporation shareholders
 - If non-individual partners/members, or $x > 5$ partners/members, provide list/chart of members; Division will calculate estimated tax or withholding tax for nonresidents.

Transactional Attorney & Form TTD (cont'd)

- Tax attributes to reflect on Form TTD
 - Adjusted tax basis of sold assets
 - Available Net Operating Losses of Seller(s)
 - Other losses recognized in same taxable year
 - Selling costs
 - Non-recognition transaction – IRC Section 1031



State of New Jersey Department of the Treasury

— Division of Taxation —

ISSUED ONCE THE SALE
HAS CLOSED TO THE
PURCHASER FOR FUNDS
REQUIRED TO BE
HELD IN ESCROW BY
PURCHASER AT TIME
OF TRANSACTION.



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
June 13, 2013

Purchaser Info
[REDACTED]

RE: [REDACTED] → Seller
TAXPAYER ID NO: XXX-XXXX-00
CASE NO : 1
BULK SALE NO : [REDACTED]

DEMAND FOR ESCROW PAYMENT FROM TRANSFeree

Dear Taxpayer:

TAKE NOTICE that under the authority of N.J.S.A. 54:48-1 et seq., the Director of the Division of Taxation has determined from an examination of available data that [REDACTED] is/are liable for a deficiency in payment of taxes.

The bulk transfer provisions of the New Jersey tax statutes provide *inter alia* that, whenever the Director shall inform the transferee that a claim for taxes exists, any sums of money or other consideration which the transferee is required to transfer to the transferor shall be subject to a first priority right and lien, and the purchaser is forbidden to transfer to the seller any sums of money or other consideration. For failure to comply with these provisions, the purchaser shall be personally liable for the payment of any such taxes determined to be due to the State of New Jersey from the seller.

DEMAND is hereby made that you remit the sum of \$9,900.00 from the monies held in escrow within 15 days from the date hereof for the taxes due and owing the State of New Jersey. Failure to comply may result in the Division filing a Certificate of Debt against you in the Superior Court of New Jersey.

WARNING: Any remaining escrow monies should not be released to the seller until such time as you have a clearance letter, issued by this office for that purpose, in your possession.

IN REPLY REFER TO:

NJ DIVISION OF TAXATION
BULK SALES SECTION
P O BOX 245
TRENTON NJ 08695-0245

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State of New Jersey Department of the Treasury

— Division of Taxation —



ESTIMATED TAX PREPAYMENT RECEIPT

Re: NAME WHICH PREPAYMENT IS APPLIED TO

New Jersey ID# XXX-XX-XXXX/000

**TAX RECEIPT ISSUED TO
ANY ENTITY THAT PAYS
AN ESTIMATED PAYMENT
ON AN UNFILED TAX RETURN
WITH THE STATE.**

On DATE PAYMENT RECEIVED, the Division of Taxation received an estimated payment of \$\$\$\$ and applied it to your TAX TYPE tax.

The above payment should be claimed as an **ESTIMATED PAYMENT** when the 0 return is filed.

The above payment was received based on the declaration of WHO COMPLETED TTD relating to the transfer of assets of SELLER New Jersey tax ID number XXX-XX-XXXX/000.



In Reply Refer To:
Jon Shetler
Bulk Sales
PO Box 245
Trenton NJ 08695-0245
(609) XXX-XXXX



State of New Jersey Department of the Treasury

— Division of Taxation —

ISSUED TO BOTH PARTIES.

GIVES PURCHASER PROTECTION

AGAINST ANY SELLER

LIABILITIES. THIS ALSO

ALLOWS SELLER TO

RECOUP ANY UNREQUESTED

ESCROW STILL BEING HELD

BY PURCHASER.



State of New Jersey DEPARTMENT OF THE TREASURY DIVISION OF TAXATION

September 16, 2013

Purchaser / Seller Info

[REDACTED]

RE: [REDACTED] → Seller
TAXPAYER ID NO: xxx-xx-x [REDACTED] 000
CASE NO : 1
BULK SALE NO :

Dear Taxpayer:

Seller → Please be advised that with respect to the bulk transfer of the business assets of [REDACTED], the records of the Division of Taxation indicate that all tax returns required to be filed, pursuant to Title 54 and 54A of the Revised Statutes of New Jersey, have been filed and the taxes reported to be due thereon have been paid by, or on behalf of, the seller.

Accordingly, the Division will not assert liability against the transferee pursuant to the bulk transfer provisions of the New Jersey tax statutes, and there is no further requirement that the purchaser withhold any amount from the purchase price to be paid to the seller.

This clearance is given solely for the purpose of authorizing the release of monies held in escrow. The filing of the required returns and the payment of the tax reported to be due does not release the seller from any liabilities that may be determined to be due as a result of an audit of the books and records at some future date.

Very truly yours,

Robert R. Egan
Division of Taxation

IN REPLY REFER TO:

[REDACTED]
NJ DIVISION OF TAXATION
BULK SALES SECTION
P O BOX 245
TRENTON NJ 08695-0245
[REDACTED]

2230001176145680631000001001 040C

New Jersey is an Equal Opportunity Employer

Closing Process

- Integrating Bulk Sale Escrow process with deal closing
 - Role of the Bulk Sales Escrow Agent, Buyer/Buyer's Attorney
 - Collection of Bulk Sale Escrow at Closing
 - Action upon receipt of the Demand Letter
 - Returning excess Bulk Sale Escrow

Difficult Situations

- Short Sales
- Large number of holders or Sellers
- Sign & Close Transactions
- Deeds in Lieu
- Contributions of Property to Joint Ventures



State of New Jersey Department of the Treasury

— Division of Taxation —

Is there a fee for filing the C-9600 form?

- There is no fee for filing the C-9600 form.

What if the purchaser fails to satisfy the notice requirements?

- If the purchaser fails to notify the Division of Taxation timely or accurately, the transaction is considered a Bulk Sale Violation. This means the purchaser is now responsible for any state tax liabilities such as deficiencies, assessments on delinquent returns, and any possible assessments for future audits owed by the seller. The Division can take steps necessary to satisfy the seller's tax indebtedness including judgment, levy and seizure of assets of the purchaser as well as the seller.

Suppose the seller's Tax ID number on the C-9600 is incorrect. Does that make the C-9600 incomplete?

- No. The Division will contact the seller or his representative to request the proper ID#. If the seller fails to provide the purchaser with the correct ID#, the Division will take this factor into consideration when reviewing the notification.



State of New Jersey Department of the Treasury

— Division of Taxation —

Why is a copy of a signed contract of sale, transfer or assignment required by the Division as part of the C-9600 form notice?

- The signed contract provides the final agreement and commitment of the parties to the transaction. It gives the terms and conditions of the agreement and the authorization and obligation to provide an amount of money to be held in escrow by the purchaser.

Proper notification was received less than ten (10) business days prior to closing. Will purchaser be protected from liability?

- No. If the closing occurs prior to the 10 business days elapsing and the Division has not prescribed an escrow to the purchaser, it is a bulk sale violation and the purchaser will be held responsible for the tax liability of the seller.

What happens if the date of sale or the purchase price changes?

- The Division must be notified of the new date of sale or any change in price. The caseworker assigned will make any necessary adjustments.

Can the seller file a C-9600 form notice if the purchaser does not want to?

- The statute stipulates C-9600 notice must be received from the purchaser. Filing of the notice by the seller does not protect the purchaser in any way.



State of New Jersey Department of the Treasury

Division of Taxation

Does the seller need to sign the C-9600?

- No.

Are any sales or transfers excluded from the bulk sale statute?

- Yes, excluded transactions follow:
 1. Any transfer of assets considered to be in the **established ordinary course** of the business of the seller.
- *Example*
Excluded: A developer buys tracts of land and builds houses to sell. This is what a developer does on a regular day-to-day basis. If the developer sells a house he built, the transfer **IS NOT** subject to the bulk sale statute.

Not excluded: If the developer sells some of its used building equipment to another developer, it is not part of its ordinary course of business and IS subject to the bulk sale statute.
- Sale of stock or membership interest of an **individual**. The stock/membership interest is a personality, therefore, it is not a business asset. *Sale of stock by a business is subject to Bulk Sale, as that the asset belongs to the business.*



State of New Jersey

Department of the Treasury

Division of Taxation

- *Example*
Excluded: Joe Smith sells 100% of his shares in ABC, LLC to Paul Jones.
Not excluded: Smith's, LLC sells 100% of its shares in ABC, LLC to Paul Jones.
- Any property obtained **directly** through a sheriff's sale.
- Sale of any one or two family residence owned by an individual (defined as a single individual, married or civil union couple), estate, or trust as defined by the Bulk Sales Amendment.

Other examples of non-ordinary course activities:

- First or last sale of an entity,
- Single-purpose entities,
- Entities that engage in rental activity.

A purchaser files the C-9600 notice but before closing, assigns its rights to another party. Must the assignee also file form C-9600, even though none of the terms of the sales agreement have changed, except for the substitution of the new purchaser?

- No, but the Division must be notified. The assignee, by taking the place of the original purchaser/transferee must now take on all of the previous party's rights and obligations under the law, including responsibility for holding the amount of escrow in the Division's notice to the original purchaser.



State of New Jersey Department of the Treasury

— Division of Taxation —

Can the Division release confidential tax information to the purchaser if the seller waives its right in the sales contract or a release form?

- Yes. In order for the Division to release confidential information about the seller to the purchaser, the seller must complete a Power of Attorney (M-5008-R) form authorizing the release of such tax information to the purchaser and forward the completed form to the Division's Bulk Sale section.

Is the 10 days prior to closing notice counted as 10 calendar days or business days? Why?

- 10 business days (i.e. excluding weekends and holidays). This provides the Division with the time it needs to adequately research the seller's tax status and compute the amount of escrow, if any, to be held and notify the purchaser's attorney.

How much time does the Division have to respond to the purchaser from the date of receipt of the C-9600 form notifying the Division of the transfer?

- The statute states that "Within 10 days of receiving such notice, the director shall notify the purchaser, transferee or assignee that a possible claim for State taxes exists and include the State's claim."

When does the 10 day response time start?

- The 10 day response time starts when the Division receives proper notification.



State of New Jersey Department of the Treasury

— Division of Taxation —

TYPES OF TRANSFERS:

Can an estate sale be considered a bulk sale?

- Yes, if the assets of the estate being conveyed are business assets.

Are the sales of business intangibles considered a bulk sale?

- Yes. Transfer of assets such as, but not limited to, delivery routes, goodwill, non-compete agreements, patient lists, recipes, trademarks, patents and the like are considered a transfer of business assets and the Division must be notified in accordance with the statute.

Are transfers of disregarded entities subject to the bulk sale law?

- Yes. For tax purposes, a disregarded entity is one that is separately taxed as part of a different entity. Disregarded entities that were previously formed with the New Jersey Secretary of State must register with the Division of Revenue in the Department of Treasury. Delays in the transfer can occur if an entity has been formed but is not registered. The Division of Taxation cannot give an escrow response to a purchaser for an entity that does not exist with the Division. Accordingly, a C-9600 will be considered incomplete if the Division is unable to identify the entity in its records.



State of New Jersey Department of the Treasury

— Division of Taxation —

ESCROW:

What is an escrow?

- For the purpose of a bulk sale, an escrow is a specific amount of money the state demands the purchaser withhold from the proceeds at the time of closing.

How is the escrow calculated?

- The escrow is calculated using several factors, including but not limited to; internal and external information, established Division tax liabilities, the gain from the sale of the assets, and any unfiled returns including final returns.

Who is responsible for holding the escrow?

- The purchaser or the purchaser's escrow agent must hold in escrow the demanded amount. If the purchaser or his agent does not hold the escrow as instructed by the Division, the purchaser will be liable for the seller's tax obligations.



State of New Jersey Department of the Treasury

— Division of Taxation —

The closing or the transfer occurred without notifying the Division, but the parties decided to hold an agreed upon amount in escrow. Is the purchaser protected from liability for the seller's tax obligations?

- No. This sale is now considered a **bulk sale violation**. The agreed upon escrow is a third party agreement that the Division was not privileged to and does not satisfy the bulk sale notice requirements.

Can the escrow exceed the purchase price? Why?

- Yes. The New Jersey Tax Court has indicated that the escrow can exceed the purchase price. "...a purchaser may assume personal liability for the seller's delinquent taxes in excess of the price he pays for the business assets." *Bunting v. Director, Division of Taxation*, 1 N.J. Tax 189, 197 (T.C. 1980).

What if there are no proceeds from the sale or the proceeds are insufficient to meet the escrow amount required by the Division?

- It is still the purchaser's responsibility to hold the escrow as prescribed by the bulk sale section. It will be between the purchaser and seller to decide who will provide the additional funds at the time of closing to satisfy the escrow.



State of New Jersey Department of the Treasury

— Division of Taxation —

Can the escrow be reduced?

- Yes. The escrow may be reduced as additional information is received by the caseworker that modifies the seller's tax liability. Examples of justification to alter the escrow amount:
 1. Asset Transfer Tax Declaration Form from the seller
 2. Payment of deficiencies and/or audit assessments
 3. Filing and payment of delinquent returns

Can the escrow be raised?

Yes. The escrow may be raised **prior to closing** as additional information is received by the caseworker that modifies the seller's tax liability.

When will the escrow be released to the seller?

- Once the Division is assured that all Division tax obligations of the seller have been met, it will issue a letter to the purchaser or his agent allowing the purchaser to release the balance of the escrow funds to the seller.

Can an escrow letter or clearance letter be faxed?

The Division sends all correspondence via first class mail.



State of New Jersey Department of the Treasury

— Division of Taxation —

What if the Division fails to timely notify the purchaser of its claim and escrow amount requirement?

- If the Division does not respond to the purchaser within ten (10) business days with an escrow notice, the purchaser will not be liable for any state tax liability of the seller.



State of New Jersey Department of the Treasury

— Division of Taxation —

ASSET TRANSFER TAX DECLARATION (TTD) FORM:

What is the TTD (Asset Transfer Tax Declaration) form?

- The TTD is the form that sellers in bulk sale transactions submit to the Division with information on the gain on the sale of business assets. It assists the Division and the seller in calculating a more accurate amount of tax due.

Is the TTD form required for the purchaser's C-9600 notification to be complete?

- No.

Who completes the TTD form (if required)?

- The seller or authorized representative should complete the TTD form.

When should the TTD form be submitted?

- The TTD form (if required) should be submitted to the Bulk Sale Section after the case has been assigned to a caseworker.



State of New Jersey Department of the Treasury

— Division of Taxation —

Where can the seller obtain the TTD form?

- The form with instructions can be downloaded and printed from the Taxation website:

<http://www.state.nj.us/treasury/taxation/pdf/ttdv1.pdf>



State of New Jersey Department of the Treasury

— Division of Taxation —

REAL ESTATE

Is the transfer of real estate that is used for income purposes covered by the bulk sale law?

- Yes. However, the sale of a single or two family home by an individual (defined as a single individual, married or civil union), trust or estate is exempt.

Is the sale of vacant land (e.g. a parking lot or easement) a bulk sale transfer?

- Yes. Vacant land may be a business asset.

Is the transfer of new construction on real estate covered by the bulk sale law?

- If the transfer of new construction is done in the ordinary course of business, it is not subject to Bulk Sale.

Is a short sale of realty considered a bulk sale?

- Yes, as long as the realty that is being sold, transferred or assigned is used for business/income purposes. A bank approval letter should be submitted with the C-9600 form. A Marshall's deed carries the same weight as a Sheriff's deed.



State of New Jersey Department of the Treasury

— Division of Taxation —

In a short sale transaction or in a situation where there is no equity or proceeds from the sale will the Division require an escrow?

- The Division reserves the right to request an escrow.

Is a foreclosure considered a bulk sale?

- In a formal foreclosure process, a sheriff's deed is used to transfer assets to a transferee free and clear without encumbrances. It not subject to Bulk Sale.

Is a deed in lieu of foreclosure considered a bulk sale?

- A deed in lieu of foreclosure is a conveyance from the actual title owner to the mortgagee, and thus, if the property is or has been used for income producing purposes, it is considered a bulk sale transfer requiring proper and timely notice to the Division from the mortgagee.

In a transaction where business assets are being transferred, not in the ordinary course of business, and where the seller is a non-resident, is the amount paid with the GIT/REP-1 non-resident declaration form, taken into consideration in determining the amount of escrow?

- Yes, as long as the Bulk Sale Section caseworker is made aware of the separate gross income tax remittance.



State of New Jersey Department of the Treasury

— Division of Taxation —

Is a seller/title owner who buys for investment purposes, rehabilitates property (not for rent) and then sells it subject to the bulk sale law?

- If it is in the seller's ordinary course of business to buy, rehabilitate and then sell properties (i.e. an activity that the seller does on a regular, as opposed to irregular, infrequent basis), then, generally speaking, these sales would not be subject to the reporting requirements of the bulk sale law. However, if in doubt, the buyer should file the C-9600 to obtain the protection against the potential of being liable for the seller's tax liability.



State of New Jersey Department of the Treasury

— Division of Taxation —

MISCELLANEOUS

If the seller is a tax-exempt or non-profit organization, including but not limited to a church/synagogue/temple/mosque, and is selling its real property and/or tangible property not in the ordinary course of business, does the purchaser have to file a C-9600 form with the Division?

- Yes. Even though the seller may be exempt from some Division taxes, it may still have certain tax obligations such as employee tax withholdings or sales tax obligations.

In a bulk sale transaction, if taxes are not ordinarily due until the following year, are the returns included in the escrow amount?

- Yes. The escrow will be calculated to include all taxes that are due and those that would become due as a consequence of the sale.

Where can you find other information about the administration of the bulk sale law by the Division?

- Other information and guidelines may be found in [Technical Bulletin 60-R](#).



State of New Jersey Department of the Treasury

— Division of Taxation —

How is a UCC Filing reported?

- The seizure of business assets under a UCC Filing requires notification to Bulk Sales. A UCC Filing letter will be issued to the filing party that any proceeds from the sale of any seized assets above what the amount of the lien owed is required to be disclosed to the State and may be required to be turned over to the State at their request to satisfy any seller liabilities.

How is an auction reported?

- The auctioneer is required to notify Bulk Sales at least ten business days prior to the auction taking place for review and any escrow prescribed would be the responsibility of the auctioneer at the time of the auction taking place.

Who is an authorized agent for the buyer or seller?

- Their attorney. Any other representative (i.e. Realtor, CPA, Title Agency) must provide an M-5008-R signed by the buyer or seller.

How can the Division be contacted for further information about the bulk sale law and its implementation?

- Written inquiries should be submitted to the Division to: Bulk Sales Unit, New Jersey Division of Taxation, P.O. Box 245, Trenton, New Jersey 08695-0245. Phone inquiries may be made to (609) 292-6604 with a request to speak to an employee from the Bulk Sales Unit.



State of New Jersey Department of the Treasury

— Division of Taxation —

How is a disregarded entity treated by Bulk Sales?

- The Division treats a disregarded entity as an eligible entity that is treated as an entity not separate from its single owner for income tax purposes. A “disregarded entity” is treated as separate from its owner for:
 1. Employment tax purposes, effective for wages paid on or after January 1, 2009; and
 2. Excise taxes reported on Forms 720, 730, 2290, 11-C, or 8849, effective for excise taxes reported and paid after December 31, 2007.



State of New Jersey
Department of the Treasury

— Division of Taxation —



DISCLAIMERS

These materials are for informational and educational purposes only. They are not intended and should not be construed as legal advice, and may not be used or relied upon as a substitute for legal advice.

BULK SALES FOR REAL ESTATE, CORPORATE
AND TAX LAWYERS – A WEBINAR
SEPTEMBER 15, 2016

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- ◆ The program handbook, relevant CLE forms and additional materials for this program can be accessed at:
 - ◆ <http://tcms.njsba.com/personifyebusiness/njicle/WebinarInformation.aspx>
- ◆ Please hang up your telephone now.





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Services: Real Property & Environmental; Transactional Real Estate

OVERVIEW

Ms. Alvarado focuses her practice on multiple disciplines within commercial real estate law, mainly in New Jersey and New York. Beyond negotiating deals and drafting pertinent documents to memorialize terms, Ms. Alvarado takes a hands-on approach to serving her clients by advising them of potential risks, assisting them in problem solving, and coordinating with their other professionals to successfully close deals. Ms. Alvarado brings a unique perspective and set of skills stemming from her Latin heritage and bilingual abilities, allowing her to represent clients' interests in Latin America.

Ms. Alvarado's experience in commercial real estate spans leasing, acquisitions, dispositions, real estate finance, condominium, redevelopment, and tax incentives matters. She has overseen local counsel and handled matters for clients in more than 15 United States jurisdictions and in Europe and Latin America, and she has routinely worked on large-scale leasing, acquisition, and disposition projects.

FOCUS AREA(S)

Commercial Leasing, Acquisitions, and Dispositions

- Negotiating and drafting office, retail, and commercial building and ground leases and subleases throughout the United States
- Assisting clients in the review and analysis of their existing real estate holdings and implementing divestiture plans
- Advising clients that are reorganizing their real estate holdings between subsidiaries
- Coordinating the efforts of the client's real estate portfolio managers, chief financial officers, facilities managers, and insurance and risk managers
- Conducting extensive due diligence investigations for multiple-property leasehold and fee title acquisitions
- Counseling clients in connection with contract and lease compliance issues related to land use, zoning, and governmental permits and approvals

Redevelopment Law

- Representing both developers and municipalities in the negotiation and drafting of redevelopment agreements
- Representing both developers and municipalities in the negotiation and drafting of financial agreements

Financing

- Negotiating and drafting loan documents on behalf of lending institutions in connection with multi million-dollar acquisition and construction loans
- Conducting due diligence on behalf of lending institutions
- Acting as local New Jersey counsel for lending institutions in connection with financing secured by New Jersey real property
- Negotiating on behalf of borrowers in mortgage lending, refinancing, and defeasance matters

Condominium Law

- Counseling clients and assisting in the formation of mixed-use, residential, medical office, and age restricted housing, as well as commercial fee simple condominiums and leasehold condominiums
- Coordinating with the client's professionals, including architects and engineers, to strategically develop complex condominium regimes

EXPERIENCE

Leasing

- Analyzed and identified potential exit strategies for a global diversified manufacturing company operating in the energy, transportation and industrial markets, which was undergoing an internal reorganization and had real estate leaseholds in the United States, Europe, Asia, and Central and South America
- Analyzed and negotiated a leading global financial services firm's rights under more than 100 existing and new leases to accommodate the client's massive branch expansion into the Northeast Region of the United States
- Negotiated office and retail leases on behalf of a real estate investment trust (REIT), that owns and operates a large portfolio of neighborhood and community shopping centers
- Acted as leasing counsel for a multibillion-dollar global manufacturer in the negotiation of more than 30 new leases, lease modifications, and subleases in several United States jurisdictions over the span of one year

Acquisitions/Dispositions

- Coordinates the disposition in bulk of real estate assets in eleven different jurisdictions in the United States, including addressing local requirements, overseeing local counsel, and addressing transfer tax issues for a global diversified manufacturing company operating in the energy, transportation and industrial markets
- Represents a real estate investment trust (REIT) that owns and operates a large portfolio of neighborhood and community shopping centers, in its disposition of several properties in the northeast
- Represents a major bi-state governmental authority on two major interstate bridge projects, which have had and will continue to have significant impact on the region

Redevelopment/PILOT and Condominium Law

- Negotiated and drafted a Master Redevelopment Agreement on behalf of a redeveloper for a massive redevelopment project in Central New Jersey, addressing multiple construction and development phases, brownfields and environmental issues, riparian grant issues, and multiple land acquisitions (including through eminent domain proceedings)
- Represented a municipality in Northern New Jersey in the negotiation of several aspects of a multifaceted redevelopment project, which included a redevelopment agreement, financial agreement for payments-in-lieu of taxes (PILOT), issuance of bond anticipation notes, and a ground lease
- Worked closely with the sponsor of a multi-unit medical office and treatment center condominium to create and implement a complex leasehold condominium regime under New Jersey law

EDUCATION

Rutgers School of Law - Newark (J.D.)

- Managing Notes & Comments Editor, *Computer and Technology Law Journal*
- President, International Law Society
- Member, Association Latin American Law Students

Rutgers University (B.A.)

PROFESSIONAL ADMISSIONS

State of New York

State of New Jersey

United States District Court for the District of New Jersey

PROFESSIONAL ACTIVITIES

Hispanic Bar Association (New Jersey and New York Chapters)

Commercial Real Estate Women (CREW)
Membership Subcommittee

International Council of Shopping Centers

PUBLICATIONS & FEATURES

- "New York Real Property Owners at Risk for Exposure to Joint and Several Liability in Connection with Trademark Counterfeiting Taking Place on Their Property," *IP Law Alert and Real Property & Environmental Law Alert*, September 22, 2015 (By: Wendy R. Stein, Uzoamaka N. Okoye, Ivette P. Alvarado)
- "From Ink to Occupancy - Part Two: Properly Identifying the Property in the Contract: Are You Sure You Know What You're Getting?" *Real Property & Environmental Law Alert*, June 5, 2013
- "Upcoming Changes to ADA May Impact Landlords," *Real Property & Environmental Law Alert*, November 30, 2011
- "The Americans With Disabilities Act: How Upcoming Changes Will Impact Landlords," *New Jersey Law Journal*, October 17, 2011
- "Court Better Defines "Completion" Under New Jersey's Five-Year Exemption and Abatement Law," *Real Property & Environmental Law Alert*, February 1, 2011
- "How to Avoid "Sun-block" - New Jersey's Solar Easements Act," *Real Property & Environmental Law Alert*, January 18, 2011
- "Third Parties' Right to Easement," *Globest.com*, March 31, 2010
- "Court Assesses Right to Easement of Third Parties Without an Interest in the Dominant Estate," *Real Property & Environmental Law Alert*, March 9, 2010
- "Court Assesses Right to Easement of Third Parties Without an Interest in the Dominant Estate," *In-Sites*, March 9, 2010
- "New Day Care Center Licensing Requirements," *Mid Atlantic Real Estate Journal*, December 19, 2008
- "New Jersey Courts Require Substantial Evidence," *NJPA Real Estate Journal*, September 28, 2007 (By: Susanne Peticolas, Ivette P. Alvarado)
- "Following *Gallenthin's* Lead, NJ Court Invalidates Newark's Designation of the Mulberry Street Area as "An Area in Need of Redevelopment"," *In-Sites Special*, August 15, 2007

EVENTS

- Speaker, New York City Bar, "16 Hour New Jersey Bridge-The-Gap: Satisfy the Mandatory 15 Credits & More," Topic: "New Jersey Real Estate Closing Procedures," City Bar Center for CLE, New York, NY, December 6, 2013
- Speaker, National Business Institute, "Commercial Real Estate From A to Z," Topic: "Easements and Other Servitudes in the Commercial Context," Princeton, NJ, November 4, 2013
- Speaker, New York County Lawyers' Association, "New Jersey Bridge the Gap Program," Topic: "An Introduction to Real Estate Closing Practices in New Jersey," New York County Lawyers Association, New York, NY, July 16, 2013
- Speaker, Gibbons Women's Initiative Event, "From Ink to Occupancy – A Game Plan for a Successful Real Estate Project," Newark, NJ, May 14, 2013 (Featuring: Jennifer M. Porter, Ivette P. Alvarado, Nancy A. Lottinville)
- Speaker, CoreNet, "New Jersey Woman's Leadership Event," Florham Park, NJ, January 17, 2013
- Speaker, New York City Bar, "16 Hour New Jersey Bridge-The-Gap: Satisfy the Mandatory 15 Credits & More," Topic: "New Jersey Real Estate Closing Procedures," City Bar Center for CLE, New York, NY, February 3, 2012

LEGAL EMPLOYMENT BACKGROUND

Prior to joining Gibbons, Ms. Alvarado was a Commercial Real Estate Associate at Cole, Schotz, Meisel, Forman & Leonard, P.A.; an Associate at Ben D. Shiriak, P.C.; and an associate at Wilentz, Goldman & Spitzer, P.A.

CIVIC/CHARITABLE ACTIVITIES

Mentor, NJLEEP, 2009-2012

LANGUAGES

Spanish



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OVERVIEW

Mr. Ulrich's experience is in U.S. income taxation of corporations and individuals, including structuring and income tax planning for taxable acquisitions and tax-free reorganizations, incorporations, and the formation of other business entities. As such, Peter works often with tax-free reorganizations, Section 351 transactions, Section 338(h) (10) transactions, the consolidated return regulations, and related provisions of the Internal Revenue Code. Peter is frequently involved in structuring international transactions to take into account tax rules relating to income sourcing, withholding, tax credits, branch profits tax, Subpart F, and the effects of applicable U.S. income tax treaties. Peter also assists a number of nonprofit clients with obtaining and maintaining federal tax-exempt status, treatment of unrelated business taxable income, and planning to minimize the negative implications of UBIT. Counseling for nonprofit clients also includes assisting organizations with registration for solicitation purposes, planning for lobbying and legislative activities, and structuring of affiliated organizations. Other areas of practice include state and local taxation of businesses and individuals including multistate taxation, application of sales and use taxes, and the issue of nexus or taxability of corporations and other taxpayers. Mr. Ulrich is a Certified Public Accountant in New Jersey and received an L.L.M. in Taxation from New York University.

EDUCATION

New York University School of Law (LL.M.)
Rutgers School of Law - Newark (J.D.)
Wharton School of the University of Pennsylvania (B.S.)

PROFESSIONAL ACTIVITIES

New Jersey State Bar Association
Taxation Law Section, Chair 2012-2013

PROFESSIONAL ADMISSIONS

State of New Jersey
State of New York

SERVICES

Business Transactions, Including
M&A
Capital Markets
Corporate
Cross-Border Transactions
Distressed Situations
Executive Compensation
German Practice
Governmental Transaction/Public-
Private Partnerships (P3)
Healthcare
Private Equity
Solar Energy Finance
Supply Chain
Tax
Venture Capital and Emerging
Companies

United States District Court for the District of New Jersey

United States Tax Court

Certified Public Accountant - New Jersey, (Current Status: inactive)

LEGAL EMPLOYMENT

Tax Accountant, Touche Ross & Co., Newark, NJ, 1986-1989

PUBLICATIONS & FEATURES



IRS Releases New Earnings Stripping Regulations

Corporate & Finance Alert

Peter J. Ulrich, Bozena M. Diaz

May 2016 - On April 4, 2016, the United States Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") released proposed regulations ("Proposed Regulations") under Section 385...



IRS' Aggressive Position Challenging the Treatment of a License Agreement as a Sale of a Capital Asset Rejected on Summary Judgment

IP Law Alert

Bozena M. Diaz, George M. Gould, Peter J. Ulrich

May 04, 2016



Critical Business Provisions of the Protecting Americans from Tax Hikes Act of 2015

Corporate & Finance Alert

Peter J. Ulrich, Bozena M. Diaz

January 06, 2016 - On December 18, 2015, the Senate passed, and President Obama signed, the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act" or "Act"). The Act reflects a broad agreement...



IRS Takes Aggressive Position in Challenging the Treatment of a License Agreement as a Sale of a Capital Asset

IP Law Alert

Bozena M. Diaz, George M. Gould, Peter J. Ulrich

January 06, 2016



The New Jersey Tax Court's AHS Hospital Decision: Judge Bianco Lays Down the Gauntlet

Corporate & Finance Alert

Peter J. Ulrich, Bozena M. Diaz

July 08, 2015 - In a detailed and closely-watched decision issued on June 25, 2015, Judge Vito Bianco, a New Jersey Tax Court judge sitting in Morristown, has denied a property tax appeal of Morristown...



Outline of Sources of Law Regarding Grants by Charitable Organizations to Foreign Organizations

Taxation Law Section Newsletter

Peter J. Ulrich

March 2015



New Jersey 2014 Tax Resolution Program

Corporate & Finance Alert

Peter J. Ulrich, Leonard G. Sprishen

October 24, 2014 - The New Jersey Division of Taxation (the "Division") is offering businesses and individuals that have unpaid tax liabilities for the taxable years 2005 through 2013 a way to request...



Die steuerlichen Auswirkungen der Organisation Ihres U.S. Unternehmens als 'Corporation' oder 'Limited Liability Company'

Legal & Tax Newsletter

Peter Flägel, Peter J. Ulrich
October 2013



Fiscal Cliff Averted: The American Taxpayer Relief Act of 2012

Corporate & Finance Alert

Rita M. Danylichuk, Peter J. Ulrich, Leonard G. Sprishen

January 25, 2013 - On January 2, 2013, President Obama signed the American Taxpayer Relief Act of 2012 (the "2012 Act"), which permanently extends certain federal income tax rate reductions first enacted...



Real Property Transfers: Dealing With The New Jersey Bulk Sales Act

The Metropolitan Corporate Counsel

Russell B. Bershad, Peter J. Ulrich, Nicole E. Taplin

November 2012



Taxpayers Beware: The New 3.8% Medicare Tax on Net Investment Income

Corporate & Finance Alert

Peter J. Ulrich, Leonard G. Sprishen

August 17, 2012 - In addition to higher federal income tax rates on dividend income, capital gains, and ordinary income, currently scheduled to take effect on January 1, 2013, the Obama Administration's...



The 2013 Fiscal Cliff: Expiring Tax Cuts and the Implementation of New Tax Provisions

Corporate & Finance Alert

Peter J. Ulrich, Leonard G. Sprishen

July 12, 2012 - Unless Congress does something, the "Bush-era tax cuts" automatically expire at year end and are automatically replaced by rates that may shock you. If Congress fails to act, at year...



N.J. Bulk Sales Notification Requirements: Recent Changes and Guidance

New Jersey Law Journal

Russell B. Bershad, Peter J. Ulrich

March 19, 2012



Last Minute Treasury Guidance on Beginning of Construction for Section 1603 Grants

Corporate Department Publications

Peter J. Ulrich

December 20, 2011 - Just last week, the U.S. Treasury Department provided additional guidance to its FAQs on how to meet the 2011 beginning of construction requirement for applicants for grants under Section...



IRS Announces a Helpful Voluntary Worker Classification Settlement Program

Corporate Department Publications

Peter J. Ulrich, Leonard G. Sprishen

December 01, 2011 - In order to facilitate voluntary resolution of worker classification issues and provide some certainty to taxpayers, workers, and the Internal Revenue Service ("IRS"), the IRS has developed...



IRS Opens Second Offshore Voluntary Disclosure Initiative

Corporate & Finance Alert

Peter J. Ulrich

March 10, 2011 - On February 8, 2011, the Internal Revenue Service announced its 2011 Offshore Voluntary Disclosure Initiative (OVDI) designed to allow U.S. taxpayers with undisclosed income from offshore...



Renewable Energy Excitement Continues!

Corporate & Finance Alert

Kevin S. Evans, Peter J. Ulrich

December 17, 2010 - Late last night, Thursday, December 16, 2010, the House joined the Senate in approving the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" expected...



Two-Year Tax Cut Extension is Here

Corporate & Finance Alert

Peter J. Ulrich

December 17, 2010 - Largely consistent with the December 6, 2010 announcement of a deal between the White House and the Senate Republicans, late last night, December 16, 2010, Congress adopted tax cut...



Uncertainty Over Extension of Reduced Capital Gains Tax May Spur End of Year Real Estate Deals

Real Property & Environmental Law Alert

Peter J. Ulrich

November 02, 2010



Treasury Grants in Lieu of Tax Credits: Beginning Construction Before January 1, 2011

Corporate & Finance Alert

Steven H. Sholk, Peter J. Ulrich

September 28, 2010 - I. INTRODUCTION: SOLAR ENERGY CREDITS Under the investment tax credit provisions of Section 48 of the Internal Revenue Code ("IRC"), taxpayers are entitled to a federal income...



Gross Receipts Taxes in New Jersey: As Rare as an Uncongested Highway

Journal of State Taxation

Peter J. Ulrich

May-June 2010



Expanded Tax Refunds From Carrying Back 2008 and 2009 NOLs May Be Available

Corporate & Finance/Real Property Alert

Peter J. Ulrich, Alfred R. Fuscaldo

November 12, 2009 - On Friday, November 6, President Obama signed the Worker, Homeownership and Business Assistance Act of 2009 (the "New Act") into law. The New Act adopts a number of changes, such...



Deadline for Voluntary Tax Disclosures Extended - Deadline now October 15th

Corporate & Finance Alert

Peter J. Ulrich

September 25, 2009 - As we discussed in our previous article dated August 26, 2009, the Internal Revenue Service ("IRS") has been encouraging U.S. owners and beneficiaries of undisclosed foreign accounts...



Deadline for Voluntary Tax Disclosures is Fast Approaching - September 23rd

Corporate & Finance Alert

Peter J. Ulrich, Michael J. DelTergo

September 08, 2009 - Update: On September 21st, the IRS announced that it was extending the deadline for the Program to October 15, 2009. The IRS also announced that there would be no further extensions....



Tax Planning for Debt Restructuring: Limiting COD When a Debtor Can Least Afford More Taxes

Corporate & Finance Alert

Peter J. Ulrich

June 02, 2009 - In the current financial climate, many borrowers need to restructure their debt obligations so that interest and principal payments better match their cash flows. While reducing debt...



The IRS Voluntary Disclosure Program for Holders of Foreign Bank Accounts - A Better Investment Than a Bear Market Rally?

Corporate & Finance Alert

Peter J. Ulrich

May 19, 2009 - During its first 100 days, the Obama administration, primarily through the Internal Revenue Service ("IRS") and the Treasury Department, has devoted considerable attention to the issue...



New Jersey State Tax Amnesty

Corporate & Finance Alert

Peter J. Ulrich

May 05, 2009 - DEADLINE - JUNE 15, 2009 On Monday, May 4, 2009, the New Jersey tax amnesty program went into effect, and will last for only six weeks until June 15, 2009. During that period, individuals,...



Ownership Changes and Their Impact on Net Operating Losses: Tough to Avoid and Hard to Control

Corporate & Finance Alert

Peter J. Ulrich

May 05, 2009 - While many small business companies and real estate entities are structured as S corporations, partnerships, or limited liability companies treated as partnerships for federal income...



Business Tax Provisions of Economic Stimulus Act

Corporate & Finance Alert

Steven H. Sholk, Peter J. Ulrich

March 03, 2009 - The American Recovery and Reinvestment Act of 2009 (the "2009 Recovery Act") which was signed into law on Tuesday, February 17, 2009, contains a number of tax relief provisions for...



Some Federal Income Tax Aspects of Acquiring a Distressed Company

Corporate & Finance Alert

Peter J. Ulrich

February 03, 2009 - Normally, in a rising economic climate, when a buyer acquires a business, there are several advantages to acquiring assets rather than the controlling equity interests of the business....



Post-Confirmation Litigation And Liquidating Trusts

New Jersey Law Journal

Peter J. Ulrich, Geraldine E. Ponto

January 12, 2009



Federal Income Tax Treatment of Investment Losses From L'Affaire Madoff

Corporate & Finance Alert

Steven H. Sholk, Peter J. Ulrich

January 09, 2009 - Investors in Bernard L. Madoff Investment Securities LLC (the "Madoff Firm") are now addressing the federal income tax treatment of their losses from their investments in the Madoff...



Connecticut's Tax Amnesty Program in Late Spring

Corporate & Finance Alert

Peter J. Ulrich

December 30, 2008 - Connecticut's lawmakers recently passed a state tax amnesty program that will run from May 1 to June 25, 2009. On November 25, 2008, Gov. M. Jodi Rell signed the law into effect after...



New Jersey Proposes Tax Relief to Attract and Retain Businesses

Corporate & Finance Alert

Peter J. Ulrich, Robert F. Coyne

November 18, 2008 - On October 27, 2008, in response to the ongoing financial crisis, the New Jersey Assembly passed a bill designed to help New Jersey businesses. The bill would allow C corporations a...



Broad View of the Expansion of the Tax Bulk Sales



Notification Requirements

New Jersey Law Journal

Russell B. Bershad, Peter J. Ulrich

October 15, 2008



Post-Confirmation Litigation and Liquidation Trusts: Consideration of Certain Required Plan Provisions and Tax Implications," Presented at the American Bankruptcy Institute's 4th Annual Mid-Atlantic Bankruptcy

Presented at the American Bankruptcy Institute's 4th Annual Mid-Atlantic Bankruptcy Workshop

Peter J. Ulrich, Geraldine E. Ponto

July 31-August 2, 2008



Final Incentive Stock Options Regulations Make Beneficial Changes to Proposed Regulations, But Some Complexities Remain Unresolved

Journal of Taxation and Regulation of Financial Institutions

Steven H. Sholk, Peter J. Ulrich

November/December 2004



Congress Passes Bill Permitting Plaintiffs Who Recover Judgments or Settlements in Discrimination/Retaliation Cases to Take Full 'Above-the-Line' Deduction on Federal Tax Returns for Attorney Fees

The Employment and Labor Law Alert

Richard S. Zackin, Peter J. Ulrich

October 22, 2004 - Background In Commissioner of Internal Revenue v.

Schleier, 515 U.S. 323 (1995), the Supreme Court held that a plaintiff's recovery by way of judgment or settlement in a discrimination...



New Jersey "Millionaire's Tax" and Other Tax Increases

Corporate & Finance Alert

Peter J. Ulrich

July 08, 2004 - 1. The "Millionaire's Tax" On June 28, 2004, New Jersey's Governor James E. McGreevey signed into law legislation that increased New Jersey's highest personal income tax rate...



IRS Launches Voluntary Compliance Initiative for Holders of Offshore Credit Card Accounts

Corporate & Finance Alert

Steven H. Sholk, Peter J. Ulrich, Mark R. Kossow

January 30, 2003 - Under the Internal Revenue Code, United States citizens must pay tax on their worldwide income. Even though it is not by itself illegal to have an offshore credit or debit card account,...



New Jersey State Tax Amnesty

Corporate & Finance Alert

Peter J. Ulrich

April 01, 2002 - On Monday, April 15, 2002, the New Jersey tax amnesty program went into effect, and will last for only eight weeks until June 10, 2002. During this period, individuals, businesses and...

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Speaker, Academy for Continuing Professional Education, "Practical Tax Guidance on Pass-Through Tax Issues from a Legal Perspective," Iselin, NJ, September 23, 2014



Speaker, Tax Executives Institute Inc., "Special NJ/NY M&A Tax Considerations" Randolph, NJ, May 16, 2014



Speaker, Academy for Continuing Professional Education & Burke Financial Strategies, "Business Valuation and Tax Planning Strategies for M&A Transactions," September 24, 2013



Speaker, Gibbons P.C. & Deloitte, "Current Developments in Law and Accounting: A Joint Business & Networking Event " Newark, NJ, August 20, 2013
August 20, 2013



Speaker, New Jersey Institute for Continuing Legal Education, "Excess Benefits Transactions," New Brunswick, NJ, May 3, 2013



Speaker, NJSBA Joint Meeting of Business Law and Taxation Sections, "Tax Gross-Up Provisions in Asset Purchase Agreements," New Brunswick, NJ, March 20, 2013



Speaker, The Commerce and Industry Association of New Jersey, "Financial Decision Makers Roundtable: Is Your Business Ripe for a Tax Audit," Hasbrouck Heights, NJ, February 28, 2012
February 28, 2012



Speaker, Gibbons Academy, "Taxation for Attorneys," Newark, NJ, March 9, 2011



Speaker, New Jersey Institute for Continuing Legal Education, "New Jersey State & Local Tax Day," New Brunswick, NJ, October 25, 2010
October 25, 2010



Speaker, Financial Executives International, "Professional Development Seminar," East Hanover, NJ, October 14, 2008

From the State.....

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