

# New Jersey's Bulk Sales Act Faces a Challenge in the State Legislature

Eliminating a New Jersey tax trap for homes that were either investment properties or seasonal rentals is a good idea and a change worth making.

BY TIMOTHY J. BLOH, Esq.  
FOX ROTHSCHILD LLP

**H**OME SALES IN NEW JERSEY HAVE DRAMATICALLY decreased during the last couple of years. The sluggish economy has had an impact on those sales but New Jersey's tax structure may also have influenced those numbers. Increased costs at closing and taxes associated with sales often affect the economics of a sale transaction. One of the many taxes affecting the sales of homes is the Bulk Sales Act.

The Bulk Sales Act applies only to the sale of business assets sold outside the normal course of business. A common example of that situation would be the sale of a carpet business rather than the sales of individual carpets. Most people have difficulty seeing how such a statute could affect the sale of real estate.

The State of New Jersey has been using the Bulk Sales Act to recoup taxes on sales of homes that were either investment properties or seasonal rentals. This surprised many homeowners that purchased summer homes in shore communities. At the time of sale, if those homes were ever rented on a weekly or seasonal basis, the State of New Jersey concluded that the owner was in the business of renting property and the sale of that property constituted a bulk transfer. The taxable amount is calculated on the gain on the property since the time of purchase.

For some properties purchased recently, that meant no tax would be due but properties that were purchased prior to 2000 or that have used tax deferral vehicles may have sizeable tax penalties at the time of the sale. The insidious nature of this tax is that the state created a system to collect the tax at the time of closing, when the seller would have the greatest incentive to clear all possible obligations on the property. The Bulk Sales Act permits a purchaser to advise the state of the intent to purchase a property that might be subject to the Bulk Sales Act.

Filing the "Notification of Sale, Transfer or Assignment

in Bulk Form C-9600" acts to insulate the buyer from any potential tax liability for the sale of the property. The seller has the opportunity to file an "Asset Transfer Tax Declaration" (TTD) for the state to accurately determine the taxability of the transaction. The seller also has the ability to argue that no taxes should be taken from the sale proceeds as a result of either the property having no gain or having never been subject to weekly or seasonal rentals. All of these determinations must be completed before the property is scheduled to be transferred at closing, so the title company does not feel compelled to withhold escrow unnecessarily.

The New Jersey Legislature appears to agree that the application of this tax in circumstances described in this article is an unexpected extension of an otherwise logical tax structure. Currently pending before both the New Jersey Assembly and Senate are proposed bills that will eliminate this tax against the sale of "non-commercial dwelling units" or "seasonal rental units."

These exemptions would eliminate the need for purchasers of residential properties to get involved with the bulk sales unit in the first place and, therefore, sellers would not be required to make an application for a waiver. Clearly, these bills will impact the recovery of revenue for the state coffers and thus these bills could face strong opposition. One of the bills includes a provision for it to be retroactive to August 2007, requiring the state to issue refunds to owners or entities monies that may have already been allocated to other needs.

Currently, there is hope that these bills will pass each house and be signed by the governor in time to assist both future homeowners and sellers of property that have already suffered lost value from a depleted real estate market. ■

*Timothy J. Bloh, Esq., is a partner with Fox Rothschild LLP, based in Atlantic City, New Jersey.*