

Controlling Interest Transfer Tax

A new tax was enacted in July, 2006 imposing a transfer tax of 1% on certain transfers of controlling interest in entities possessing commercial real property. Specifically, if a controlling interest in an entity which possesses, directly or indirectly, a controlling interest in classified real property, then, with certain exceptions mentioned below, the purchaser of the controlling interest must pay a tax. The tax was established by P.L. 2006, c. 33, Section 3, (N.J.S.A. 54:15C-1), approved July 8, 2006.

The real property that is the subject of this tax statute is class 4A "commercial property" that is any kind of income-producing real property other than property classified as vacant land, residential property, farm property, industrial properties, and apartments.

The sale or transfer of a controlling interest subject to taxation may occur in one transaction or in a series of transactions. Transactions which occur within six months of each other are presumed, unless shown to the contrary, to be a series of transactions constituting a single sale or transfer.

A sale or transfer subject to tax may be accomplished by one purchaser or may be made by a group of purchasers acting in concert. Purchasers that are related parties are presumed to be acting in concert, unless the contrary is established to the satisfaction of the Director.

The act has transitional provisions. The act applies to transfers of controlling interests in property on and after August 1, 2006, except that if the transfer of a controlling interest is made on or before November 15, 2006 pursuant to a contract or other binding agreement that was fully executed before July 1, 2006, no tax shall apply.

Calculation of the Tax

The statute provides two different methods for calculating the tax that must be used under different circumstances. The first method is used if consideration in excess of \$1,000,000 is paid for controlling interest and the entity owning the classified real property owns only the classified real property.

The second method is used if the entity owns classified real property and also an interest in other property, real or personal. In this second method the equalized assessed value of the classified property, not the amount of consideration paid for the controlling interest, is relevant to the calculation of tax. In this situation, a tax shall be paid on the sale or transfer only if the equalized assessed value of the classified real property exceeds \$1,000,000, which shall be paid by the purchaser. The tax is measured by the portion of the equalized assessed value that is proportional to the percentage of the total interest in the property transferred.

Filing and Record Keeping

On or before the last day of the month following the month when the sale or transfer of a controlling interest was completed, the purchaser/transferee must file a return with the Director, Division of Taxation. Payment of the tax shall accompany the return. A copy of the return shall accompany the purchaser/transferee's business tax return filed with New Jersey.

Purchaser/transferee shall supply a copy of the CITT-1 to the seller/transferor and a copy of such return shall be attached as an exhibit to the seller/transferor's business tax return for the entity filed with New Jersey.

If sale or transfer of a controlling interest in an entity occurs, the entity shall keep a record of every transfer of a controlling interest in its stock or in its capital, profits, or beneficial interests as the case may be.

When an exemption box is checked on form CITT-1, Part 6 or Part 7, attach a properly executed CITT-1E "Statement of Waiver" to Form CITT-1 and file both forms. The completed CITT-1E documents why no tax is paid. Calculations must be shown on Part 6 and/or Part 7 of the CITT-1 even if an exemption is claimed.

Administration of the controlling interest transfer tax is governed by The State Uniform Tax Procedure Law.

Controlling Interest Transfers Tax – Return Instructions

Part 1:

1. Enter the name and address of the seller.
2. Enter the SSN or Business ID number of the seller.
3. Enter the New Jersey Business number (if any) of the seller.
4. If there is more than one seller, this information must be completed for each seller.

Part 2:

1. Enter the name and address of the purchaser.
2. Enter the SSN or Business ID number of the purchaser.
3. Enter the New Jersey Business number (if any) of the purchaser.
4. If there is more than one seller, this information must be completed for each purchaser.

Part 3:

1. Enter the name and address of the entity in which controlling interest was transferred.
2. Enter the Federal ID number of the transferred entity.
3. Enter the New Jersey Registration number (if any) of the transferred entity.
4. Check the type of entity transferred.

Part 4:

1. Enter the Business Property Identification and Location. If more than one property is involved, attach a rider to continue Part 4.

Part 5:

1. Enter the amount of tax calculated from the sale of Business Class 4A – Real Property from Part 6, line 4. (if none, enter zero)
2. Enter the amount of tax calculated from the transfer of a Controlling Interest in an entity that owns qualified Class 4A – Real Property from Part 7, line 4. (if none, enter zero)
3. Add lines 1 & 2.
4. Calculate any applicable interest due.
5. Calculate any applicable penalty due.
6. Add lines 3, 4, & 5 for Total amount due.

Part 6:

1. Enter street address and town of real property.
2. Check box if exempt. Exemptions include the following sales or transfers:
 - a. By or to the United States of America, the State of New Jersey, or any instrumentality, agency or subdivision thereof;
 - b. To a purchaser that is recognized as qualified under IRC 501(c)3;
 - c. Having the characteristics listed in N.J.S.A. 46:15-10, which concerns deeds excluded from additional recording fee, or that is subject to the fee imposed by N.J.S.A. 46:15-7.2 concerning the fee for the transfer of real property:
 - that is classified pursuant to the requirements of N.J.A.C. 18:12-2.2 as Class 2 “residential”;
 - that includes property classified pursuant to the requirements of N.J.A.C. 18:12-2.2 as class 3A: “farm property (regular)” but only if the property includes a building or structure intended or suited for residential use, and any other real property, regardless of class, that is effectively transferred to the same grantee in conjunction with the class 3A property;
 - that is a cooperative unit as defined in section 3 of P.L. 1987, c.381 (C.46:8D-3); or

- that is classified pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 4A “commercial properties”

that is transferred for consideration in excess of \$1,000,000 recited in the deed, which fee shall be an amount equal to 1 percent of the entire amount of such consideration.

- d. Incidental to a corporate merger or acquisition in which the equalized assessed value of the real property is less than 20% of the total value of all assets exchanged in the merger or acquisition.
3. Enter county/municipal code. The code can be accessed at <http://www.state.nj.us/treasury/taxation/pdf/lpt/cntycode.pdf>.
4. Enter the consideration in Column A.
5. Multiply Column A by 1% and enter amount in Column B.
6. Carry the amount in Column B to the final column of Part 6, Line 4, Tax Column and onto Part 5, Line 1.

Part 7:

1. Enter the Federal Identification Number of the transferor.
2. Enter street address and town of real property.
3. Check box if exempt. (See exemptions from Part 6.)
4. Enter county/municipal code. The code can be accessed at <http://www.state.nj.us/treasury/taxation/pdf/lpt/cntycode.pdf>.
5. Enter the “assessed value” of the real property in Column A.
6. Enter the “director’s ratio” in Column B. It can be accessed at <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>. Divide Column A by Column B. This is the “equalized assessed value” which should be entered in Column C. If the amount in Column C is over \$1,000,000, tax is due.
7. Multiply Column C by 1% and enter result in Column D.
8. Enter the applicable ownership percentage of the entity in Column E. Enter 100% if the entire ownership is transferred.
9. Multiply Column D by Column E and enter in the final column.
10. Enter the amount of tax due on Line 4, Tax Column and on Part 5, Line 2.

Part 8:

List the name, business address and Social Security Number or Federal Employee ID Number of all direct owners of New Jersey real property indirectly owned by the entity in which a controlling interest was transferred.

Part 9:

List all transactions that either the Transferor or Transferee has participated in within the past 6 months. Include the name, business address and Social Security Number or Federal Employee ID Number of all parties.

Make check payable to Treasurer, State of New Jersey.

Mail the completed return, attached schedule, and check to:

State of New Jersey
Division of Taxation
Revenue Processing Center
PO Box 629
Trenton, New Jersey 08646-0629

Definitions

“Classified Real Property” means commercial property as defined in N.J.A.C. 18:12-2.2(e) are income-producing real property other than property classified as vacant land, residential property, farm property, industrial properties and apartments designed for the use of five or more families including residential cooperatives and mutual housing corporations.

“Consideration” means the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer including the remaining amount of any prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the purchaser;

“Controlling interest” means, in the case of a corporation, more than fifty per cent of the total combined voting power of all classes of stock of that corporation, and in the case of an entity that is a partnership, association, trust or other organization more than fifty percent of the beneficial ownership of classified real property of that partnership, association, trust or other organization.

“Equalized Assessed Value” means the assessed value of the property in the year that the transfer is made divided by the Director’s equalization ratio which changes each year based on a sales study. It is published annually on or before October 1 by the Director, Division of Taxation pursuant to N.J.S.A. 54:1-35.1. The resulting amount is the equalized assessed value. Since assessed value, which is the value on the tax roles, does not change very often, the calculation is needed to approximate the current fair market value of the property.

“Related parties” means parties that have the relationship necessary for attribution of constructive ownership of stock pursuant to IRC § 318 and members of an affiliated group or a controlled group pursuant to IRC § 1504 or IRC § 1563.