

Controlling Interest Transfer Tax - Buyer Beware

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Greenbaum, Rowe, Smith & Davis LLP 2018 Real Estate Update: Trending Issues & Topics of Interest

February 2018

At the recording of a deed for the transfer of real property in New Jersey, the Realty Transfer Fee is imposed on the seller and the Mansion Tax may be imposed on the buyer. However, non-deed transfers of interests in certain entities that own real property may result in a Controlling Interest Transfer Tax being imposed on the buyer.

The Controlling Interest Transfer Tax was enacted in 2006. Essentially, upon the sale or transfer of a controlling interest in an entity which possesses, directly or indirectly, an interest in "classified" real property for consideration in excess of \$1,000,000, a tax is payable by the buyer of the controlling interest in the amount of 1% of the consideration. A "controlling interest" is defined to mean, in the case of a corporation, more than 50% of the total combined voting power of all classes of stock of the corporation; and, in the case of a partnership, association, trust or other organization, more than 50% of the beneficial ownership of the commercial real property of that entity. Classified real property means Class 4A commercial property (e.g., office buildings and shopping centers). It does not apply to vacant land, multi-family or industrial properties.

In the case of a sale or transfer of a controlling interest in an entity which, in addition to an interest in classified real property, also possesses, directly or indirectly, interests in other property (real or personal), a tax is due on the sale or transfer only if the equalized assessed value of the classified real property exceeds \$1,000,000, in which event the buyer pays a tax equal to 1% of the equalized assessed value of the classified real property that is equal to the percentage of the ownership interest sold or transferred.

If a series of transactions occurs over a period of six months in either of the two foregoing sale or transfer scenarios, the series of transactions is presumed to be a single sale or transfer and is subject to the Controlling

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Interest Transfer Tax.

The Controlling Interest Transfer Tax is due on or before the last day of the month following the month in which the sale or transfer of the controlling interest is completed. The buyer must file a return on Form CITT-1 with the New Jersey Division of Taxation. A separate statement of waiver, Form CITT-1E, must be filed if an exemption is claimed.

The Controlling Interest Transfer Tax does not apply in the following situations: (a) transfers by or to the United States, the State of New Jersey, or any of their instrumentalities, agencies or subdivisions; (b) a purchase by a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code; (c) transactions exempt from the Realty Transfer Fee enumerated in N.J.S.A 46:15-10; and transactions incidental to a corporate merger or acquisition if the equalized assessed value of the real property transferred is less than 20% of the total value of all assets exchanged in the merger or acquisition.

In order to avoid any possible adverse financial impact that may result from failure to comply with the filing of the necessary forms and payment of the Controlling Interest Transfer Tax, if applicable, competent legal advice should be sought when contemplating a non-deed sale or transfer of a controlling interest of an entity in New Jersey.