



Tax payment obligations of sellers, transferors or assignors, and purchasers, transferees or assignees

TB-60(R) – Issued October 21, 2010

Tax: Bulk Sales, Transfers, or Assignments Tax Compliance

Section 3 of P.L. 1995, Chapter 161, (C.54:50-28), as amended by P.L. 2007, Chapter 100, signed into law June 28, 2007 and Section 5 of P.L. 2007, Chapter 100 (C.54:50-38), signed into law June 28, 2007, and effective August 1, 2007, provides that all State taxes are subject to review when the Director of the Division of Taxation reviews the records of alcoholic beverage retail licenses and the records of sellers, transferors, or assignors of business assets. The law further states that "the director shall notify the purchaser, transferee, or assignee that a possible claim for State taxes exists and include the amount of the State's claim."

For the purposes of this Technical Bulletin, the term "transferor(s)" includes "seller(s), transferor(s), or assignor(s), and the term "transferee(s)" includes "purchaser(s), transferee(s), or assignee(s).

"Bulk sale, transfer, or assignment" means any sale, transfer, or assignment, in whole or in part, of a person's business assets, not made in the ordinary course of business.

"Business" means any endeavor from which revenue or consideration is realized for the purpose of generating a profit or loss.

"Business assets," "tangible or intangible, include, but are not limited to, goodwill, materials, supplies, licenses, patents, copyrights, equipment, leases, merchandise or other inventory and realty if a use of the realty is to support a business on its premises which includes, but is not limited to, renting space to another.

"State tax debts" mean deficiencies (i.e. underpayments), delinquencies (i.e. unfiled tax returns), assessments, penalties, interest, fees, and costs.

The following are procedures and guidelines that may be followed in implementing the above law:

Upon receipt of an effective bulk sale notice, the Director, Division of Taxation will notify the transferee of any possible claim for State taxes.

In order for the bulk sale notice to be effective, it must be filed (a) by the transferee, (b) on the form prescribed by the Director ([C-9600](#)) and be accompanied by an executed contract(s) enumerating the price, terms and conditions thereof, and (c) received by the Director at least ten days before the proposed transaction closes.

Following receipt of the notice of bulk sale transfer, the Director will review the transferor's account to identify outstanding tax liabilities. Within 10 days, the Director will forward a notice of the amount of escrow to be held at the time of transfer to the attorney/designee of the

transferee. The escrow amount will include deficiencies (i.e. underpayments), delinquencies (i.e. unfiled tax returns), audit assessment(s) (fixed or pending) and the tax on the gain from the transfer of the asset(s). When an Alcoholic Beverage Retail license is being sold, transferred, or assigned, in order to secure a Clearance Certificate for Transfer, the transferee's attorney/designee must sign the notice of escrow and return it to the Division.

To assist the Director in estimating the gain on the transfer of asset(s) and the estimated tax on the gain, the transferor must complete an [Asset Transfer Tax Declaration](#) provided by the Division of Taxation. Upon receipt by the Division of the completed form TDD, the escrow may be adjusted, if appropriate.

If the transferor has no State tax debts, then the Division will issue a letter of clearance to the transferee permitting the release of any previously requested escrow to the transferor. After the transaction closes, the Division will demand from the attorney/designee of the transferee, payment out of the escrow for any state tax debts that exist and/or a payment for the transferor's declared estimated tax on the gain from the transfer of assets. The Division will issue a receipt indicating the application of the payment of the estimated tax on the gain to the transferor's attorney/designee.

After all final returns have been filed and all final payments of State tax debts are remitted, the Division will authorize the release of the remaining portion of escrow held by the attorney/designee of the transferee by issuing the Division's letter of clearance. This letter pertains solely to and permits the release of the balance of funds held, as directed by the Division's notice of escrow, to the transferor and relieves the transferee of any further liability.

This letter does not release the transferor from any liabilities that may be determined to be due at some future date as a result of an audit of the books and records of the transferor.

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.