

NEW JERSEY DIVISION OF TAXATION

TECHNICAL BULLETIN

TB- 60

ISSUED: 7-3-08

**TAX: BULK SALES, TRANSFERS, OR ASSIGNMENTS TAX
COMPLIANCE**

**TOPIC: TAX PAYMENT OBLIGATIONS OF SELLERS, TRANSFERORS OR
ASSIGNORS, AND PURCHASERS, TRANSFEREES OR ASSIGNEES**

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 licensees 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 the *primary* use of the realty is to support a business on its premises.

“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) be *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), any 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 (see form [TTD](#) below) provided by the Division of Taxation. Upon receipt by the Division of the completed [form TTD](#), 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.

*Issued by Regulatory Services Branch
New Jersey Division of Taxation*



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 08695-0245

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

Party Information

Seller's Name: _____

Seller's FID/EIN _____

Purchaser's Name: _____

Business Type (check one)

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

Return type filed to report gain: CBT PART NJ1040 NJ1040NR SS# _____

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

Realty Location

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 / Purchase 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 No (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 _____

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 price or consideration of all assets 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:

