

**Notice Regarding New Transferee's/Grantee's Fee on the
Transfer/Purchase of Certain Commercial Real Property Where the
Consideration Exceeds \$1,000,000.00**

July 17, 2006

- New legislation (A-4701 ACS 1R) adopted and signed into law on July 8, 2006, in part amends a section of the Realty Transfer Fee law (N.J.S.A. 46:15-7.2) as follows:
 1. A fee of 1% of consideration where the consideration is in excess of \$1,000,000.00 is imposed on grantees at the time the deed is offered for recording for the purchase of income producing commercial property defined as Class 4A "commercial properties" pursuant to N.J.A.C. 18:12-2.2.
 2. The above fee, as well as the existing fee imposed on grantees for the purchase of residential property as defined in subsections 1a(1)-(3) of the legislation, does not apply to a deed if the transfer is incidental to a corporate merger or acquisition and 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 claim the exemption, the grantee at the time of the recording of the deed, must also file with the county recording officer the affidavit of consideration, the Division's protest form RTF-4 and a copy of the certificate of merger or acquisition.
 3. A conveyance of any Class 4 property (i.e. commercial, industrial or apartment) as defined in N.J.A.C. 18:12-2.2 requires the grantor to file an affidavit of consideration for recording with the deed.
 4. The fee imposed on grantees for the purchase of Class 4A property does not apply where the sales/purchase contract was fully executed before July 1, 2006, and recorded on or before November 15, 2006. However, in such situations, the fee must still be paid by the grantee at the time of the recording of the deed. Thereafter, the grantee may apply for a refund with the Division of Taxation within one year of the date of the recording of the deed.
- The above legislation also imposes a new tax to be governed by the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., for real property transfers which are included in the transfer of controlling interests in the case of corporations, partnerships, associations, trust or other organizations, as follows:
 1. A fee of 1% of consideration upon the sale or transfer where the consideration is in excess of \$1,000,000.00 of a controlling interest in an entity which possesses a controlling interest in Class 4A "commercial properties" as defined in N.J.A.C. 18:12-2.2, which fee is to be paid by the purchaser of the controlling interest, provided, however, that in the case of the sale or transfer of a controlling interest in an entity which possesses, directly or indirectly, an interest in classified real property and an interest in other property, real or personal, there shall be paid a tax upon the sale only if the equalized assessed value of the classified real property exceeds \$1,000,000.00 which shall be paid by the purchaser of the controlling interest and which shall be equal to 1% of that percentage of the equalized assessed value of the classified real property that is equal to the percentage of the ownership interest transferred.
 2. The sale or transfer of a controlling interest referred to above, may occur in one transaction or in a series of transactions, which, if occurring within six months of each other, are presumed to be a series of transactions constituting a single sale or transfer.
 3. Sale or transfer of a controlling interest referred to above, may be accomplished by one purchaser or may be made by a group of purchasers acting in concert.
 4. The purchaser is to file a return with the Division of Taxation in a form to be prescribed by the Division with payment of the tax accompanying the return.
 5. The tax does not apply to: (A) transfers by or to the United States of America or State of New Jersey, (B) a purchaser that is an organization determined by the Internal Revenue

Service to be exempt from federal income taxation pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.501, (C) transactions enumerated in N.J.S.A. 46:15-10, (D) transactions subject to the fee imposed pursuant N.J.S.A. 46:15-7.2) or (E) 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.

6. The tax herein imposed on purchasers/transferees does not apply where the purchase/transfer contract or other binding agreement was fully executed before July 1, 2006, and the actual transfer of the controlling interest occurred on or before November 15, 2006.
- **Important:** Any questions regarding this legislation in so far as it pertains to the conveyance of deeds, may be directed to the Realty Transfer Fee section at (609) 292-7974. Any questions regarding this legislation in so far as it pertains to the non-deed transfer/purchase of controlling interests in real property, may be sent to the Division by completing the e-mail contact form at http://www.state.nj.us/treasury/taxation/contactus_tyttaxa.html. In the "Topic" box, please click on the word "Business."