

Title Tips - "Bulk Sales Requirements"

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Question: My client in a commercial transaction has asked me about Bulk Sales requirements. Can he get coverage under a title policy for a Bulk Sale?

Answer: No. Under New Jersey law (N.J.S.A. 54:32B-1 et seq.), whenever a person who is required to collect and remit sales tax makes a "bulk sale" (i.e. a sale of all or a part of its assets other than in the ordinary course of business), the buyer had to notify the Division of Taxation of such "bulk sale" at least 10 days prior to the close of the transaction. A buyer who failed to do this could become liable to the State for any past due sales tax obligations of their seller.

In the summer of 2007, Governor Corzine signed P.L. 2007, Chapter 100 which expanded this bulk sale notice provision to any seller making a "bulk sale", not just those who are required to collect and remit sales tax (N.J.S.A. 54:50-38). The penalty for non-compliance was also expanded - under this law, the buyer is potentially liable for all of the seller's state tax obligations - not solely sales tax obligations.

The reason for the request for specific coverage on this issue is found in the New Jersey Division of Taxation's Technical Bulletin (TB-60). TB-60 issued in July of 2008 defines certain terms used in the statute. Of particular note is the definition of "Business assets" which states that Business assets "...include, but are not limited to, goodwill, materials, supplies, licenses... and realty if the primary use of the realty is to support a business on its premises." (emphasis added)

Please note, however, that this is not a title issue, and thus requests for such coverage cannot be honored. Furthermore, this is not an appropriate subject of a B-I requirement nor of a B-II exception. This is a matter which is solely within the control of the parties. In addition, it is not a matter which can be discovered nor determined through a reasonable search of the land records.

Should a client need further information, the Technical Bulletin (TB-60) and the forms for reporting these transactions are available on the Division of Taxation's website. Please feel free to contact our Underwriting staff if you have any questions.

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