

**[FOURTH CORRECTED COPY]**  
**CHAPTER 33**

**AN ACT** imposing a fee upon grantees under certain deeds conveying certain commercial real property, imposing a tax on certain purchasers of controlling interests in certain commercial real; property, amending P.L.2004, c.66 and supplementing P.L.1968, c.49 (C.46:15-5 et seq.) and Title 54 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 8 of P.L.2004, c.66 (C.46:15-7.2) is amended to read as follows:

C.46:15-7.2 Additional fee on certain transfers of real property over \$1,000,000.

8. a. In addition to all other fees imposed under P.L.1968, c.49 (C.46:15-5 et seq.), there is imposed a fee upon the grantee of a deed for the transfer of real property:

(1) that is classified pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 2 "residential";

(2) (a) that includes property classified pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 3A: "farm property (regular)" but only if the property includes a building or structure intended or suited for residential use, and

(b) any other real property, regardless of class, that is effectively transferred to the same grantee in conjunction with the property described in subparagraph (a) of this paragraph;

(3) that is a cooperative unit as defined in section 3 of P.L.1987, c.381 (C.46:8D-3); or

(4) that is classified pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 4A "commercial properties"

that is transferred for consideration in excess of \$1,000,000 recited in the deed, which fee shall be an amount equal to 1 percent of the entire amount of such consideration, which fee shall be collected by the county recording officer at the time the deed is offered for recording and remitted to the State Treasurer not later than the 10th day of the month following the month of collection for deposit into the General Fund.

b. (1) The fee imposed by subsection a. of this section shall not apply to a deed if the grantee of the deed for the transfer of real property is an organization determined by the federal 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.

(2) The fee imposed by subsection a. of this section shall not apply to a deed if the transfer of real property 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. A grantee shall claim this exemption from imposition of the fee at the time the deed is offered for recording by filing with the county recording officer such information, in addition to the affidavit of consideration filed by one or more of the grantee parties named in the deed or by the grantee's legal representative pursuant to subsection d. of this section, as the Director of the Division of Taxation in the Department of the Treasury may prescribe as to constitute a filing of a protest of the assessment of the fee and by paying any other recording fees not exempted pursuant to this paragraph. This additional information shall be forwarded by the county recording officer to the director along with the grantee's affidavit of consideration, and shall be deemed to be and have the effect of a protest of a finding by the director of a deficiency of payment of the fee filed on the date on which the deed is recorded.

c. The fee imposed by subsection a. of this section shall be subject to the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.; provided however, that notwithstanding the provisions of subsection a. of R.S.54:49-14, a taxpayer may file a claim under oath for refund at any time within 90 days after the payment of any original fee and that subsection b. of R.S.54:49-14 shall not apply to any additional fee assessed.

d. (1) If a transfer includes property classified pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 4 property of any type, an affidavit of consideration shall be filed by one or more of the grantor parties named in the deed or by the grantor's legal representative declaring the consideration and shall be annexed to and recorded with the deed as a prerequisite for the recording of the deed. The filing of an affidavit of consideration pursuant to this paragraph shall be in addition to the filing, if any, pursuant to paragraph (2) of this subsection.

(2) Whether or not the transfer is exempt, pursuant to subsection b. of this section or any other provision of law, from payment of the fee pursuant to subsection a. of this section, if a transfer includes property otherwise subject to subsection a. of this section, then an affidavit of consideration shall be filed by one or more of the grantee parties named in the deed or by the grantee's legal representative declaring the consideration and shall be annexed to and recorded with the deed as a prerequisite for the recording of the deed. The filing of an affidavit of consideration pursuant to this paragraph shall be in addition to the filing, if any, pursuant to paragraph (1) of this subsection.

(3) An affidavit of consideration filed pursuant to paragraph (1) or paragraph (2) of this subsection shall clearly and entirely state the consideration, the county and municipality in which the property is situate, and the block and lot description of the real property conveyed.

(4) One copy of each affidavit of consideration filed and recorded with deeds pursuant to this subsection shall be forwarded by the county recording officer to the Director of the Division of Taxation in the Department of the Treasury on the tenth day of the month following the month of the filing of the deed.

#### C.46:15-7.4 Refunding of fee on certain property transfers.

2. Notwithstanding the provisions of section 8 of P.L.2004, c.66 (C.46:15-7.2), for the transfer of real property that was classified pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 4A "commercial properties" at the time of the recording of the deed, provided that the deed was recorded on or before November 15, 2006, and that was transferred pursuant to a contract that was fully executed before July 1, 2006, the fee imposed pursuant to section 8 of P.L.2004, c.66 shall be refunded to the grantee by the filing, within one year following the date of the recording of the deed, of a claim with the New Jersey Division of Taxation for a refund of the fee paid. Proof of claim for refund shall be made by the submission of such documentation as the Director of the Division of Taxation may require.

#### C.54:15C-1 Tax on transfer over \$1,000,000 of controlling interest in certain commercial property.

3. a. (1) There is imposed and shall be paid a tax upon the sale or transfer for consideration in excess of \$1,000,000 of a controlling interest in an entity which possesses, directly or indirectly, a controlling interest in classified real property, which shall be paid by the purchaser of the controlling interest and which shall be equal to 1% of the consideration paid on the sale or transfer; 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 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 subject to taxation pursuant to paragraph (1) of this subsection may occur in one transaction or in a series of transactions. Transactions which occur within six months of each other are presumed, unless shown to the contrary, to be a series of transactions constituting a single sale or transfer.

Sale or transfer of a controlling interest subject to taxation pursuant to paragraph (1) of this subsection may be accomplished by one purchaser or may be made by a group of purchasers acting in concert. Purchasers who are related parties are presumed, unless shown to the contrary, to be acting in concert.

b. On or before the last day of the month following the month in which the sale or transfer of a controlling interest which is subject to the tax imposed by subsection a. of this section is completed, the purchaser shall file a return with the director, in such form as the director may prescribe. Payment of the tax shall accompany the return.

c. The tax imposed by subsection a. of this section shall not apply to any sale or transfer:

(1) by or to the United States of America, this State, or any instrumentality, agency, or subdivision thereof;

(2) to a purchaser that is an organization determined by the federal 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;

(3) having the underlying characteristics of the transactions enumerated in section 6 of P.L.1968, c.49 (C.46:15-10);

(4) that is subject to the fee imposed tax pursuant to section 8 of P.L.2004, c.66 (C.46:15-7.2); or

(5) that is 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.

d. Notwithstanding the provisions of subsection a. of this section, the transfer of a controlling interest on or before November 15, 2006 in an entity which possesses, directly or indirectly, an interest in classified real property shall not be subject to tax if the interest was transferred pursuant to a contract or other binding agreement that was fully executed before July 1, 2006.

e. (1) The director may require all purchasers subject to a tax imposed under this section to keep such records as the director may prescribe, and the director may require the production of books, papers, documents and other data, to provide or secure information pertinent to the determination of the taxes imposed by this section and the enforcement and collection thereof.

(2) An entity with respect to which there is a sale or transfer of a controlling interest in that entity, shall keep a record of every transfer of a controlling interest in its stock or in its capital, profits or beneficial interests, as the case may be, and such other information as the director may prescribe. An entity shall report that information to the director in such form and at such times as the director may prescribe.

(3) The director may examine the books, papers, records and equipment of an entity with respect to which there is a sale or transfer of a controlling interest in that entity or of a purchaser liable under the provisions of this section.

(4) The director shall collect and administer the tax imposed pursuant to this section. The director is authorized to adopt rules and regulations to effectuate the purposes of this section pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(5) The director may extend, for cause shown by general regulation or individual authorization, the time of filing any return on such terms and conditions as the director may require, and may, for cause shown, remit or waive penalties and interest as provided for in the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

(6) The director may delegate the director's functions hereunder to any officer or employee of the director's division such of the director's powers as the director may deem necessary to carry out efficiently the provisions of this section.

f. The tax imposed pursuant to this section shall be governed by the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

g. As used in this section:

"Classified real property" means property that is classified pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 4A "commercial properties".

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Consideration" means the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer including the remaining amount of any prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the purchaser.

"Controlling interest" means, in the case of an entity that is a corporation, more than fifty per cent of the total combined voting power of all classes of stock of that corporation, and in the case of an entity that is a partnership, association, trust or other organization, more than fifty per cent of the beneficial ownership of classified real property of that partnership, association, trust or other organization.

"Related parties" means parties that have the relationship necessary for attribution of constructive ownership of stock pursuant to section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, and members of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563.

4. This act shall take effect August 1, 2006 and apply to transfers of property on or after that date.

Approved July 8, 2006.