

54:50-38

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 124

NJSA: 54:50-38 (Exempts sales of certain homes and seasonal rentals from the bulk sale notification requirements)

BILL NO: A2748 (Substituted for S2313)

SPONSOR(S) Diegnan and others

DATE INTRODUCED: May 13, 2010

COMMITTEE: **ASSEMBLY:** Commerce and Economic Development

SENATE: Commerce
Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 23, 2011

SENATE: June 9, 2011

DATE OF APPROVAL: September 14, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

A2748

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes Budget and Approp.
Commerce

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes 6-15-10
6-3-11
6-27-11

S2313

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Commerce
Budget and Approp.

FLOOR AMENDMENT STATEMENT: No

(continued)

LEGISLATIVE FISCAL NOTE:

Yes

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

LAW/RWH

P.L.2011, CHAPTER 124, *approved September 14, 2011*
Assembly, No. 2748 (*Second Reprint*)

1 AN ACT exempting sales of certain ¹homes and¹ seasonal rentals
2 ¹[and other dwelling units]¹ from the bulk sale notification
3 requirements, amending P.L.2007, c.100.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 5 of P.L.2007, c.100 (C.54:50-38) is amended to
9 read as follows:

10 5. a. (1) Whenever a person shall make a sale, transfer, or
11 assignment in bulk of any part or the whole of the person's business
12 assets except as provided by paragraph (2) of this subsection,
13 otherwise than in the ordinary course of business, the purchaser,
14 transferee or assignee shall, at least 10 days before taking
15 possession of the subject of the sale, transfer or assignment, or
16 paying therefor, notify the director by registered mail, or other such
17 method as the director may prescribe, of the proposed sale and of
18 the price, terms and conditions thereof whether or not the seller,
19 transferor or assignor has represented to, or informed the
20 purchaser, transferee or assignee that the seller, transferor or
21 assignor owes any State tax and whether or not the purchaser,
22 transferee, or assignee has knowledge that such taxes are owing,
23 and whether any such taxes are in fact owing. Within 10 days of
24 receiving such notice, the director shall notify the purchaser,
25 transferee or assignee by such means as the director may prescribe
26 that a possible claim for State taxes exists and include the amount
27 of the State's claim.

28 (2) (a) Paragraph (1) of this section shall not apply to the sale,
29 transfer or assignment of a simple dwelling house ¹if the seller,
30 transferor or assignor is an "individual," "estate," or "trust" as
31 those terms are used for the purposes of the "New Jersey Gross
32 Income Tax Act," N.J.S.54A:1-1 et seq. ²[,or if the seller,
33 transferor or assignor is a limited liability company]² ; paragraph
34 (1) shall apply to the sale, transfer or assignment of a simple
35 dwelling house if the seller, transferor or assignor is a business
36 entity, including but not limited to a corporation or a partnership¹ .
37 "Simple dwelling house" means a dwelling unit, attached or
38 detached, and land appurtenant thereto, including but not limited to
39 a one-family or ¹two-family¹ building or structure, a unit of a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted January 20, 2011.

²Senate SBA committee amendments adopted June 6, 2011.

1 horizontal property regime established pursuant to the "Horizontal
2 Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), a unit in a
3 housing cooperative as defined under "The Cooperative Recording
4 Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et seq.), or a unit
5 of a condominium property established pursuant to the
6 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), but does
7 not include a structure or structures containing more than ¹["one
8 unit] two units¹ of dwelling space or containing, according to the
9 records of the municipal property tax assessor, commercial
10 property including, or in addition to, ¹["a unit] the units¹ of
11 dwelling space.

12 (b) Paragraph (1) of this ¹["section] subsection¹ shall not apply
13 to the sale, transfer or assignment of a seasonal rental unit or the
14 sale, transfer or assignment of a lease for the seasonal use or rental
15 of real property ¹if the seller, transferrer or assignor is an
16 "individual," "estate," or "trust" as those terms are used for the
17 purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-
18 1 et seq. ²[" ², or if the seller transferrer or assignor is a limited
19 liability company ²]; paragraph (1) shall apply to the sale, transfer
20 or assignment of a seasonal rental unit or the sale, transfer or
21 assignment of a lease for the seasonal use or rental of real property
22 if the seller, transferrer or assignor is a business entity, including
23 but not limited to a corporation or a partnership¹ .

24 For the purposes of this paragraph ²[" ²];²
25 "seasonal rental unit" means
26 ²(i)² a " ¹["time share] timeshare¹ estate" as that term is defined
27 by section 2 of P.L.2006, c.63 (C.45:15-16.51) ²;² and
28 ²["means] (ii)² a dwelling unit rented for a term of not more than
29 125 consecutive days for residential purposes by a person having a
30 permanent residence elsewhere ²;² and
31 "lease for the seasonal use or rental of real property" means
32 ²(i)² a " ¹["time share] timeshare¹ use" as that term is defined by
33 section 2 of P.L.2006, c.63 (C.45:15-16.51) ²;² and
34 ²["means] (ii)² the use or rental for a term of not more than 125
35 consecutive days for residential purposes by a person having a
36 permanent place of residence elsewhere.

37 b. If, upon receiving timely notice of a sale, transfer or
38 assignment from a purchaser, transferee or assignee, the director
39 fails to provide timely notice to the purchaser, transferee or
40 assignee that a possible claim for such State tax or taxes exists, the
41 purchaser, transferee or assignee may transfer over to the seller,
42 transferrer or assignor any sums of money, property or choses in
43 action, or other consideration to the extent of the amount of the
44 State's claim. The purchaser, transferee or assignee shall not be
45 subject to the liabilities and remedies imposed under the provisions
46 of the uniform commercial code, Title 12A of the Revised Statutes

1 of New Jersey, and shall not be personally liable for the payment to
2 the State of any such taxes theretofore or thereafter determined to
3 be due to the State from the seller, transferrer or assignor.

4 c. If the purchaser, transferee or assignee shall fail to give
5 notice to the director as required by the preceding paragraph, or if
6 the director shall inform the purchaser, transferee or assignee that a
7 possible claim for such State tax or taxes exists, any sums of
8 money, property or choses in action, or other consideration, which
9 the purchaser, transferee or assignee is required to transfer over to
10 the seller, transferrer or assignor shall be subject to a first priority
11 right and lien for any such State taxes theretofore or thereafter
12 determined to be due from the seller, transferrer or assignor to the
13 State, and the purchaser, transferee or assignee is forbidden to
14 transfer to the seller, transferrer or assignor any such sums of
15 money, property or choses in action to the extent of the amount of
16 the State's claim. For failure to comply with the provisions of this
17 section the purchaser, transferee or assignee, in addition to being
18 subject to the liabilities and remedies imposed under the provisions
19 of the uniform commercial code, Title 12A of the Revised Statutes
20 of New Jersey, shall be personally liable for the payment to the
21 State of any such taxes theretofore or thereafter determined to be
22 due to the State from the seller, transferrer or assignor, and such
23 liability may be assessed and enforced in the same manner as the
24 liability for any State tax under the State Uniform Tax Procedure
25 Law, R.S.54:48-1 et seq.
26 (cf: P.L.2007, c.100, s.5)

27
28 2. This act shall take effect immediately, and shall apply
29 retroactively to sales, transfers and assignments on or after August
30 1, 2007.

31

32

33

34

35 Exempts sales of certain homes and seasonal rentals from the
36 bulk sale notification requirements.`

ASSEMBLY, No. 2748

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 13, 2010

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Assemblyman JACK CONNERS

District 7 (Burlington and Camden)

Co-Sponsored by:

Assemblymen Milam, Albano, Rible and Assemblywoman Greenstein

SYNOPSIS

Exempts sales of certain seasonal rentals and other dwelling units from the bulk sale notification requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2010)

1 AN ACT exempting sales of certain seasonal rentals and other
2 dwelling units from the bulk sale notification requirements,
3 amending P.L.2007, c.100.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 5 of P.L.2007, c.100 (C.54:50-38) is amended to
9 read as follows:

10 5. a. (1) Whenever a person shall make a sale, transfer, or
11 assignment in bulk of any part or the whole of the person's business
12 assets except as provided by paragraph (2) of this subsection,
13 otherwise than in the ordinary course of business, the purchaser,
14 transferee or assignee shall, at least 10 days before taking
15 possession of the subject of the sale, transfer or assignment, or
16 paying therefor, notify the director by registered mail, or other such
17 method as the director may prescribe, of the proposed sale and of
18 the price, terms and conditions thereof whether or not the seller,
19 transferrer or assignor has represented to, or informed the
20 purchaser, transferee or assignee that the seller, transferrer or
21 assignor owes any State tax and whether or not the purchaser,
22 transferee, or assignee has knowledge that such taxes are owing,
23 and whether any such taxes are in fact owing. Within 10 days of
24 receiving such notice, the director shall notify the purchaser,
25 transferee or assignee by such means as the director may prescribe
26 that a possible claim for State taxes exists and include the amount
27 of the State's claim.

28 (2) (a) Paragraph (1) of this section shall not apply to the sale,
29 transfer or assignment of a simple dwelling house. "Simple
30 dwelling house" means a dwelling unit, attached or detached, and
31 land appurtenant thereto, including but not limited to a one-family
32 building or structure, a unit of a horizontal property regime
33 established pursuant to the "Horizontal Property Act," P.L.1963,
34 c.168 (C.46:8A-1 et seq.), a unit in a housing cooperative as defined
35 under "The Cooperative Recording Act of New Jersey," P.L.1987,
36 c.381 (C.46:8D-1 et seq.), or a unit of a condominium property
37 established pursuant to the "Condominium Act," P.L.1969, c.257
38 (C.46:8B-1 et seq.), but does not include a structure or structures
39 containing more than one unit of dwelling space or containing,
40 according to the records of the municipal property tax assessor,
41 commercial property including, or in addition to, a unit of dwelling
42 space.

43 (b) Paragraph (1) of this section shall not apply to the sale,
44 transfer or assignment of a seasonal rental unit or the sale, transfer
45 or assignment of a lease for the seasonal use or rental of real

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 property. For the purposes of this paragraph, “seasonal rental unit”
2 means a “time share estate” as that term is defined by section 2 of
3 P.L.2006, c.63 (C.45:15-16.51) and means a dwelling unit rented
4 for a term of not more than 125 consecutive days for residential
5 purposes by a person having a permanent residence elsewhere and
6 “lease for the seasonal use or rental of real property” means a “time
7 share use” as that term is defined by section 2 of P.L.2006, c.63
8 (C.45:15-16.51) and means the use or rental for a term of not more
9 than 125 consecutive days for residential purposes by a person
10 having a permanent place of residence elsewhere.

11 b. If, upon receiving timely notice of a sale, transfer or
12 assignment from a purchaser, transferee or assignee, the director
13 fails to provide timely notice to the purchaser, transferee or
14 assignee that a possible claim for such State tax or taxes exists, the
15 purchaser, transferee or assignee may transfer over to the seller,
16 transferrer or assignor any sums of money, property or choses in
17 action, or other consideration to the extent of the amount of the
18 State's claim. The purchaser, transferee or assignee shall not be
19 subject to the liabilities and remedies imposed under the provisions
20 of the uniform commercial code, Title 12A of the Revised Statutes
21 of New Jersey, and shall not be personally liable for the payment to
22 the State of any such taxes theretofore or thereafter determined to
23 be due to the State from the seller, transferrer or assignor.

24 c. If the purchaser, transferee or assignee shall fail to give
25 notice to the director as required by the preceding paragraph, or if
26 the director shall inform the purchaser, transferee or assignee that a
27 possible claim for such State tax or taxes exists, any sums of
28 money, property or choses in action, or other consideration, which
29 the purchaser, transferee or assignee is required to transfer over to
30 the seller, transferrer or assignor shall be subject to a first priority
31 right and lien for any such State taxes theretofore or thereafter
32 determined to be due from the seller, transferrer or assignor to the
33 State, and the purchaser, transferee or assignee is forbidden to
34 transfer to the seller, transferrer or assignor any such sums of
35 money, property or choses in action to the extent of the amount of
36 the State's claim. For failure to comply with the provisions of this
37 section the purchaser, transferee or assignee, in addition to being
38 subject to the liabilities and remedies imposed under the provisions
39 of the uniform commercial code, Title 12A of the Revised Statutes
40 of New Jersey, shall be personally liable for the payment to the
41 State of any such taxes theretofore or thereafter determined to be
42 due to the State from the seller, transferrer or assignor, and such
43 liability may be assessed and enforced in the same manner as the
44 liability for any State tax under the State Uniform Tax Procedure
45 Law, R.S.54:48-1 et seq.
46 (cf: P.L.2007, c.100, s.5)

A2748 DIEGNAN, SCHAER

5

1 residence elsewhere. To clarify that those terms are intended to
2 apply to timeshares, the bill explicitly makes time shares exempt
3 from the bulk sale notification requirements.

4 The bill is retroactive to August 1, 2007, the date on which the
5 bulk sale notification requirements first took effect.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2748

STATE OF NEW JERSEY

DATED: JUNE 10, 2010

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 2748.

This bill exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller’s taxes.

While these procedures ensure the proper payment of tax in commercial transactions, they add an unnecessary layer of complication to home sales. Neither the seller or the purchaser of a home may be aware that some prior owner of the property rented out the property as a vacation home and failed to make proper payment of related tax liabilities, and either the seller or the purchaser could potentially be held liable for that prior owner’s taxes unless they go through the trouble and expense of filing the notice with the Director of the Division of Taxation and delaying the sale until the expiration of the period in which the director can respond.

This bill provides an exemption from the bulk sale notification requirements for sales of single noncommercial dwelling units, whether those units are detached single-family homes, condominiums or coops. That exemption under this bill does not extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of seasonal rental units and for sales of seasonal leases. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

FISCAL NOTE
ASSEMBLY, No. 2748
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JUNE 15, 2010

SUMMARY

Synopsis: Exempts sales of certain seasonal rentals and other dwelling units from the bulk sale notification requirements.

Type of Impact: Annual State revenue loss to the Property Tax Relief Fund and the General Fund.

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>Annual Impact</u>
State Revenue	Significant, Unknown Annual State Revenue Loss

- The Department of the Treasury, Division of Taxation, has indicated a potentially significant annual revenue loss from this bill, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available.
- The Office of Legislative Services (OLS) agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions.

BILL DESCRIPTION

Assembly Bill No. 2748 of 2010 exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the

sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller's taxes.

This bill provides an exemption from the bulk sale notification requirements for sales of single *noncommercial dwelling units*, whether those units are detached single-family homes, condominiums or coops. That noncommercial exemption under this bill does not extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of *seasonal rental units and for sales of seasonal leases*. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements. The seasonal rental and seasonal lease exemption under this bill does extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury, Division of Taxation, has indicated a potentially significant annual revenue loss from this bill, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available. Current law governing bulk sale notification has allowed the State to increase tax enforcement collections from taxpayers who have unpaid State tax liabilities. According to the Division, over \$21.4 million in revenue was received in 2009, and nearly \$30.0 million has been received in FY 2010, from the personal income of taxpayers through tax enforcement via their bulk sales transactions. These annual enforcement collections would be reduced by an unknown, but significant amount under this bill. In addition, the bill is retroactive to August 2007, which may generate significant refund claims.

The Division cannot segregate the proportion of annual and prior year tax enforcement revenues from bulk sales transactions which are attributable to the types of sales defined in this bill. However, the Division believes far fewer taxpayers would voluntarily report bulk sales and as such the potential State revenue loss may constitute a substantial proportion of the total amount of enforcement revenues received by the State.

OFFICE OF LEGISLATIVE SERVICES

The OLS agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement

revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions. The OLS does not believe the retroactive portions of the bill will have a measurable *fiscal* impact, since State tax enforcement revenues previously collected due to *legitimate* taxpayer liabilities are unlikely to be refunded. However, there may be legal benefits to certain taxpayers from the provisions of the bill that provide retroactive relief from notification requirements.

Section: Revenue, Finance and Appropriations

*Analyst: Martin Poethke
Lead Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2748

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 20, 2011

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 2748.

This bill, with committee amendments, exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller’s taxes.

While these procedures ensure the proper payment of tax in commercial transactions, they add an unnecessary layer of complication to home sales. Neither the seller nor the purchaser of a home may be aware that some prior owner of the property rented out the property as a vacation home and failed to make proper payment of related tax liabilities, and either the seller or the purchaser could potentially be held liable for that prior owner’s taxes unless they go through the trouble and expense of filing the notice with the Director of the Division of Taxation and delaying the sale until the expiration of the period in which the director can respond.

This bill, with committee amendments, provides an exemption from the bulk sale notification requirements for sales of single and two-family noncommercial dwelling units, whether those units are detached single or two family homes, condominiums or coops. That exemption under this bill does not extend to transactions that transfer

more than two dwelling units or that transfer the dwelling unit or units along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of seasonal rental units and for sales of seasonal leases. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

The committee amended the bill to:

- extend the exemption from the bulk sale notification requirements to two-family homes in addition to single family homes; and
- clarify that the exemptions for dwelling units and rental units apply to units purchased from individuals, estates and trusts and limited liability companies, but not to units purchased from business entities, including corporations and partnerships.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 2748
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JUNE 3, 2011

SUMMARY

Synopsis: Exempts sales of certain seasonal rentals and other dwelling units from the bulk sale notification requirements.

Type of Impact: Annual State revenue loss to the Property Tax Relief Fund and the General Fund.

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>Annual Impact</u>
State Revenue	Unknown Annual State Revenue Loss

- The Department of the Treasury, Division of Taxation, has indicated a potentially significant annual revenue loss from this bill, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available.
- The Office of Legislative Services (OLS) agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions.

BILL DESCRIPTION

Assembly Bill No. 2748 (1R) of 2010 exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes. These exemptions apply to units purchased from individuals, estates and trusts, and limited liability companies, but not to units purchased from business entities, including corporations and partnerships.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the

sale at least ten days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within ten days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller's taxes.

This bill provides an exemption from the bulk sale notification requirements for sales of single *noncommercial dwelling units*, whether those units are detached single or two family homes, condominiums or co-ops. That noncommercial exemption under this bill does not extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of *seasonal rental units and for sales of seasonal leases*. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements. The seasonal rental and seasonal lease exemption under this bill does extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury, Division of Taxation, has indicated a potentially significant annual revenue loss from this bill, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available. Current law governing bulk sale notification has allowed the State to increase tax enforcement collections from taxpayers who have unpaid State tax liabilities. According to the Division, over \$21.4 million in revenue was received in 2009, and nearly \$30.0 million has been received in FY 2010, from the personal income of taxpayers through tax enforcement via their bulk sales transactions. These annual enforcement collections would be reduced by an unknown, but significant amount under this bill. In addition, the bill is retroactive to August 2007, which may generate significant refund claims.

The Division cannot segregate the proportion of annual and prior year tax enforcement revenues from bulk sales transactions which are attributable to the types of sales defined in this bill. However, the Division believes far fewer taxpayers would voluntarily report bulk sales and as such the potential State revenue loss may constitute a substantial proportion of the total amount of enforcement revenues received by the State.

OFFICE OF LEGISLATIVE SERVICES

The OLS agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement

revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions. The OLS does not believe the retroactive portions of the bill will have a measurable *fiscal* impact, since State tax enforcement revenues previously collected due to *legitimate* taxpayer liabilities are unlikely to be refunded. However, there may be legal benefits to certain taxpayers from the provisions of the bill that provide retroactive relief from notification requirements.

Section: Revenue, Finance and Appropriations

Analyst: Martin Poethke
Lead Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2748

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 2011

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2748 (1R), with committee amendments.

As amended, this bill exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller’s taxes.

While these procedures ensure the proper payment of tax in commercial transactions, they add an unnecessary layer of complication to home sales. Neither the seller nor the purchaser of a home may be aware that some prior owner of the property rented out the property as a vacation home and failed to make proper payment of related tax liabilities, and either the seller or the purchaser could potentially be held liable for that prior owner’s taxes unless they go through the trouble and expense of filing the notice with the Director of the Division of Taxation and delaying the sale until the expiration of the period in which the director can respond.

This bill provides an exemption from the bulk sale notification requirements for sales of one- and two-family homes and single noncommercial dwelling units, whether those units are detached homes, condominiums or coops. That exemption under this bill does

not extend to transactions that transfer more than two dwelling units or that transfer the dwelling unit or units along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of seasonal rental units and for sales of seasonal leases. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements.

The exemptions for dwelling units and rental units apply to units purchased from individuals, estates and trusts. The exemptions do not apply to units purchased from business entities, including corporations and partnerships.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

As amended and reported, this bill is identical to Senate Bill No. 2313, as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments delete the exemption for sellers that are limited liability companies. The amendments also clarify the separate definitions used to describe the exemptions allowed for “seasonal rental unit” and “lease for the seasonal use or rental of real property.”

FISCAL IMPACT:

Current law governing bulk sale notification has allowed the State to increase tax enforcement collections from taxpayers who have unpaid State tax liabilities. According to information provided by the Division of Taxation for a similar bill, Senate Bill No. 1941 of 2010, over \$21.4 million in revenue was received from the personal income of taxpayers through tax enforcement via their bulk sales transactions in 2009, and nearly \$30.0 million has been received in FY 2010. These annual enforcement collections would be reduced by an unknown, but potentially significant amount under this bill. In addition, the bill is retroactive to August 2007, which may generate significant refund claims.

The Division cannot segregate the proportion of annual and prior year tax enforcement revenues from bulk sales transactions which are attributable to the types of sales defined in this bill. However, the Division believes far fewer taxpayers would voluntarily report bulk sales and as such the potential State revenue loss may constitute a substantial proportion of the total amount of enforcement revenues received by the State.

The OLS agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions. Also, the OLS cannot distinguish between bulk sales purchased from individuals, estates and trusts applicable under this bill, as opposed to bulk sales purchased from business entities, including corporations, partnerships and limited liability companies, not applicable under this bill. Lastly, the OLS does not believe the retroactive portions of the bill will have a measurable *fiscal* impact, since State tax enforcement revenues previously collected due to *legitimate* taxpayer liabilities are unlikely to be refunded. However, there may be legal benefits to certain taxpayers from the provisions of the bill that provide retroactive relief from notification requirements.

FISCAL NOTE
[Second Reprint]
ASSEMBLY, No. 2748
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JUNE 27, 2011

SUMMARY

Synopsis: Exempts sales of certain seasonal rentals and other dwelling units from the bulk sale notification requirements.

Type of Impact: Annual State revenue loss to the Property Tax Relief Fund and the General Fund.

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>Annual Impact</u>
State Revenue	Unknown Annual State Revenue Loss

- The Department of the Treasury, Division of Taxation, has indicated a potentially significant annual revenue loss from this bill, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available.
- The Office of Legislative Services (OLS) agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions.

BILL DESCRIPTION

Assembly Bill No. 2748 (2R) of 2010 exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes. These exemptions apply to units purchased from individuals and estates and trusts, but not to units purchased from business entities, including corporations and partnerships.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law

requires the purchaser of those assets to notify the Director of the Division of Taxation of the sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller's taxes.

This bill provides an exemption from the bulk sale notification requirements for sales of single *noncommercial dwelling units*, whether those units are detached single or two family homes, condominiums or coops. That noncommercial exemption under this bill does not extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of *seasonal rental units and for sales of seasonal leases*. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements. The seasonal rental and seasonal lease exemption under this bill does extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury, Division of Taxation, has indicated a potentially significant annual revenue loss from this bill, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available. Current law governing bulk sale notification has allowed the State to increase tax enforcement collections from taxpayers who have unpaid State tax liabilities. According to the Division, over \$21.4 million in revenue was received in 2009, and nearly \$30.0 million has been received in FY 2010, from the personal income of taxpayers through tax enforcement via their bulk sales transactions. These annual enforcement collections would be reduced by an unknown, but significant amount under this bill. In addition, the bill is retroactive to August 2007, which may generate significant refund claims.

The Division cannot segregate the proportion of annual and prior year tax enforcement revenues from bulk sales transactions which are attributable to the types of sales defined in this bill. However, the Division believes far fewer taxpayers would voluntarily report bulk sales and as such the potential State revenue loss may constitute a substantial proportion of the total amount of enforcement revenues received by the State.

OFFICE OF LEGISLATIVE SERVICES

The OLS agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions. The OLS does not believe the retroactive portions of the bill will have a measurable *fiscal* impact, since State tax enforcement revenues previously collected due to *legitimate* taxpayer liabilities are unlikely to be refunded. However, there may be legal benefits to certain taxpayers from the provisions of the bill that provide retroactive relief from notification requirements.

Section: Revenue, Finance and Appropriations
Analyst: Martin Poethke
Lead Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2313

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED SEPTEMBER 30, 2010

Sponsored by:

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

Co-Sponsored by:

Senators Oroho and Whelan

SYNOPSIS

Exempts sales of certain homes and seasonal rentals from the bulk sale notification requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/12/2011)

1 AN ACT exempting sales of certain homes and seasonal rentals from
2 the bulk sale notification requirements, amending P.L.2007,
3 c.100.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 5 of P.L.2007, c.100 (C.54:50-38) is amended to
9 read as follows:

10 5. a. (1) Whenever a person shall make a sale, transfer, or
11 assignment in bulk of any part or the whole of the person's business
12 assets except as provided by paragraph (2) of this subsection,
13 otherwise than in the ordinary course of business, the purchaser,
14 transferee or assignee shall, at least 10 days before taking
15 possession of the subject of the sale, transfer or assignment, or
16 paying therefor, notify the director by registered mail, or other such
17 method as the director may prescribe, of the proposed sale and of
18 the price, terms and conditions thereof whether or not the seller,
19 transferrer or assignor has represented to, or informed the
20 purchaser, transferee or assignee that the seller, transferrer or
21 assignor owes any State tax and whether or not the purchaser,
22 transferee, or assignee has knowledge that such taxes are owing,
23 and whether any such taxes are in fact owing. Within 10 days of
24 receiving such notice, the director shall notify the purchaser,
25 transferee or assignee by such means as the director may prescribe
26 that a possible claim for State taxes exists and include the amount
27 of the State's claim.

28 (2) (a) Paragraph (1) of this subsection shall not apply to the
29 sale, transfer or assignment of a simple dwelling house if the seller,
30 transferrer or assignor is an "individual," "estate," or "trust" as
31 those terms are used for the purposes of the "New Jersey Gross
32 Income Tax Act," N.J.S.54A:1-1 et seq., or if the seller, transferrer
33 or assignor is a limited liability company: paragraph (1) shall apply
34 to the sale, transfer or assignment of a simple dwelling house if the
35 seller, transferrer or assignor is a business entity, including but not
36 limited to a corporation or a partnership. "Simple dwelling house"
37 means a dwelling unit, attached or detached, and land appurtenant
38 thereto, including but not limited to a one-family or two-family
39 building or structure, a unit of a horizontal property regime
40 established pursuant to the "Horizontal Property Act," P.L.1963,
41 c.168 (C.46:8A-1 et seq.), a unit in a housing cooperative as defined
42 under "The Cooperative Recording Act of New Jersey," P.L.1987,
43 c.381 (C.46:8D-1 et seq.), or a unit of a condominium property
44 established pursuant to the "Condominium Act," P.L.1969, c.257
45 (C.46:8B-1 et seq.), but does not include a structure or structures

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 containing more than two units of dwelling space or containing,
2 according to the records of the municipal property tax assessor,
3 commercial property including, or in addition to, the units of
4 dwelling space.

5 (b) Paragraph (1) of this subsection shall not apply to the sale,
6 transfer or assignment of a seasonal rental unit or the sale, transfer
7 or assignment of a lease for the seasonal use or rental of real
8 property if the seller, transferrer or assignor is an "individual,"
9 "estate," or "trust" as those terms are used for the purposes of the
10 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or if
11 the seller transferrer or assignor is a limited liability company;
12 paragraph (1) shall apply to the sale, transfer or assignment of a
13 seasonal rental unit or the sale, transfer or assignment of a lease for
14 the seasonal use or rental of real property if the seller, transferrer or
15 assignor is a business entity, including but not limited to a
16 corporation or a partnership. For the purposes of this paragraph,
17 "seasonal rental unit" means a "timeshare estate" as that term is
18 defined by section 2 of P.L.2006, c.63 (C.45:15-16.51) and means a
19 dwelling unit rented for a term of not more than 125 consecutive
20 days for residential purposes by a person having a permanent
21 residence elsewhere and "lease for the seasonal use or rental of real
22 property" means a "timeshare use" as that term is defined by section
23 2 of P.L.2006, c.63 (C.45:15-16.51) and means the use or rental for
24 a term of not more than 125 consecutive days for residential
25 purposes by a person having a permanent place of residence
26 elsewhere.

27 b. If, upon receiving timely notice of a sale, transfer or
28 assignment from a purchaser, transferee or assignee, the director
29 fails to provide timely notice to the purchaser, transferee or
30 assignee that a possible claim for such State tax or taxes exists, the
31 purchaser, transferee or assignee may transfer over to the seller,
32 transferrer or assignor any sums of money, property or choses in
33 action, or other consideration to the extent of the amount of the
34 State's claim. The purchaser, transferee or assignee shall not be
35 subject to the liabilities and remedies imposed under the provisions
36 of the uniform commercial code, Title 12A of the Revised Statutes
37 of New Jersey, and shall not be personally liable for the payment to
38 the State of any such taxes theretofore or thereafter determined to
39 be due to the State from the seller, transferrer or assignor.

40 c. If the purchaser, transferee or assignee shall fail to give
41 notice to the director as required by the preceding paragraph, or if
42 the director shall inform the purchaser, transferee or assignee that a
43 possible claim for such State tax or taxes exists, any sums of
44 money, property or choses in action, or other consideration, which
45 the purchaser, transferee or assignee is required to transfer over to
46 the seller, transferrer or assignor shall be subject to a first priority
47 right and lien for any such State taxes theretofore or thereafter
48 determined to be due from the seller, transferrer or assignor to the

1 State, and the purchaser, transferee or assignee is forbidden to
2 transfer to the seller, transferrer or assignor any such sums of
3 money, property or choses in action to the extent of the amount of
4 the State's claim. For failure to comply with the provisions of this
5 section the purchaser, transferee or assignee, in addition to being
6 subject to the liabilities and remedies imposed under the provisions
7 of the uniform commercial code, Title 12A of the Revised Statutes
8 of New Jersey, shall be personally liable for the payment to the
9 State of any such taxes theretofore or thereafter determined to be
10 due to the State from the seller, transferrer or assignor, and such
11 liability may be assessed and enforced in the same manner as the
12 liability for any State tax under the State Uniform Tax Procedure
13 Law, R.S.54:48-1 et seq.
14 (cf: P.L.2007, c.100, s.5)

15

16 2. This act shall take effect immediately, and shall apply
17 retroactively to sales, transfers and assignments on or after August
18 1, 2007.

19

20

21

STATEMENT

22

23 This bill exempts sales of seasonal rentals, and some sales of
24 other dwellings that might at one time have been vacation homes,
25 from the "bulk sale" notification requirements that are used to
26 administer State taxes.

27 To help assure that a business pays all of its State taxes due
28 before the sale of a substantial part of the assets (a "bulk sale" of
29 assets) of the business is completed, recently enacted law requires
30 the purchaser of those assets to notify the Director of the Division
31 of Taxation of the sale at least 10 days before the transfer of goods
32 or payment, or the purchaser can become liable for taxes owed by
33 the seller.

34 If the director notifies the purchaser that the seller owes State
35 taxes, the purchaser must hold back from the seller any sums owed
36 the State. If the purchaser fails to notify the director, the purchaser
37 can be held liable for any taxes of the seller. The director must
38 respond within 10 days of receiving the notice, and if the director
39 fails to respond to the notice within the allowed time the sale can
40 continue and the purchaser has no liability for the seller's taxes.

41 While these procedures ensure the proper payment of tax in
42 commercial transactions, they add an unnecessary layer of
43 complication to home sales. Neither the seller or the purchaser of a
44 home may be aware that some prior owner of the property rented
45 out the property as a vacation home and failed to make proper
46 payment of related tax liabilities, and either the seller or the
47 purchaser could potentially be held liable for that prior owner's
48 taxes unless they go through the trouble and expense of filing the

1 notice with the Director of the Division of Taxation and delaying
2 the sale until the expiration of the period in which the director can
3 respond.

4 This bill provides an exemption from the bulk sale notification
5 requirements for sales of one- and two-family homes and single
6 noncommercial dwelling units, whether those units are detached
7 homes, condominiums or coops. That exemption under this bill
8 does not extend to transactions that transfer more than two dwelling
9 units or that transfer a single dwelling unit along with commercial
10 property.

11 This bill also provides exemptions from the bulk sale notification
12 requirements for sales of seasonal rental units and for sales of
13 seasonal leases. Seasonal rental unit and seasonal lease are defined
14 in parallel with other statutory uses of those terms to refer to a
15 dwelling unit rented for a term of not more than 125 consecutive
16 days for residential purposes by a person having a permanent
17 residence elsewhere. To clarify that those terms are intended to
18 apply to timeshares, the bill explicitly makes time shares exempt
19 from the bulk sale notification requirements.

20 The exemptions for dwelling units and rental units apply to units
21 purchased from individuals, estates and trusts and from limited
22 liability companies. The exemptions do not apply to units purchased
23 from business entities, including corporations and partnerships.

24 The bill is retroactive to August 1, 2007, the date on which the
25 bulk sale notification requirements first took effect.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2313

STATE OF NEW JERSEY

DATED: JANUARY 20, 2011

The Senate Commerce Committee reports favorably Senate Bill No. 2313.

This bill exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller’s taxes.

While these procedures ensure the proper payment of tax in commercial transactions, they add an unnecessary layer of complication to home sales. Neither the seller nor the purchaser of a home may be aware that some prior owner of the property rented out the property as a vacation home and failed to make proper payment of related tax liabilities, and either the seller or the purchaser could potentially be held liable for that prior owner’s taxes unless they go through the trouble and expense of filing the notice with the Director of the Division of Taxation and delaying the sale until the expiration of the period in which the director can respond.

This bill provides an exemption from the bulk sale notification requirements for sales of one- and two-family homes and single noncommercial dwelling units, whether those units are detached homes, condominiums or coops. That exemption under this bill does not extend to transactions that transfer more than two dwelling units or that transfer the dwelling unit or units along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of seasonal rental units and for sales of seasonal

leases. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements.

The exemptions for dwelling units and rental units apply to units purchased from individuals, estates and trusts and from limited liability companies. The exemptions do not apply to units purchased from business entities, including corporations and partnerships.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

FISCAL NOTE
SENATE, No. 2313
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: MAY 16, 2011

SUMMARY

Synopsis: Exempts sales of certain homes and seasonal rentals from the bulk sale notification requirements.

Type of Impact: Annual State revenue loss to the Property Tax Relief Fund and the General Fund.

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>Annual Impact</u>
State Revenue	Unknown Annual State Revenue Loss

- The Department of the Treasury, Division of Taxation, has indicated a potentially significant annual revenue loss from a bill similar to this bill, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available.
- The Office of Legislative Services (OLS) agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions.

BILL DESCRIPTION

Senate Bill No. 2313 of 2010 exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller's taxes.

This bill provides an exemption from the bulk sale notification requirements for sales of single *noncommercial dwelling units*, whether those units are detached single-family homes, condominiums or coops. That noncommercial exemption under this bill does not extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of *seasonal rental units and for sales of seasonal leases*. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements. The seasonal rental and seasonal lease exemption under this bill does extend to transactions that transfer multiple dwelling units or that transfer a single dwelling unit along with commercial property.

The exemptions for dwelling units and rental units *apply to* units purchased from individuals, estates and trusts and from limited liability companies. The exemptions *do not apply to* units purchased from business entities, including corporations and partnerships.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury, Division of Taxation, has not provided a fiscal estimate for this bill. However, for a similar bill (S-1941 of 2010) Taxation has indicated a potentially significant annual revenue loss, primarily from the gross income tax (Property Tax Relief Fund), although precise numbers are not available. Current law governing bulk sale notification has allowed the State to increase tax enforcement collections from taxpayers who have unpaid State tax liabilities. According to the Division, over \$21.4 million in revenue was received in 2009, and nearly \$30.0 million has been received in FY 2010, from the personal income of taxpayers through tax enforcement via their bulk sales transactions. These annual enforcement collections would be reduced by an unknown, but significant amount under this bill. In addition, the bill is retroactive to August 2007, which may generate significant refund claims.

The Division cannot segregate the proportion of annual and prior year tax enforcement revenues from bulk sales transactions which are attributable to the types of sales defined in this bill. However, the Division believes far fewer taxpayers would voluntarily report bulk sales and as such the potential State revenue loss may constitute a substantial proportion of the total amount of enforcement revenues received by the State.

OFFICE OF LEGISLATIVE SERVICES

The OLS agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions. Also, the OLS cannot distinguish between bulk sales purchased from individuals, estates and trusts, and from limited liability companies applicable under this bill, as opposed to bulk sales purchased from business entities, including corporations and partnerships, not applicable under this bill. Lastly, the OLS does not believe the retroactive portions of the bill will have a measurable *fiscal* impact, since State tax enforcement revenues previously collected due to *legitimate* taxpayer liabilities are unlikely to be refunded. However, there may be legal benefits to certain taxpayers from the provisions of the bill that provide retroactive relief from notification requirements.

Section: Revenue, Finance and Appropriations

Analyst: Martin Poethke
Lead Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2313

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2313, with committee amendments.

As amended, this bill exempts sales of seasonal rentals, and some sales of other dwellings that might at one time have been vacation homes, from the “bulk sale” notification requirements that are used to administer State taxes.

To help assure that a business pays all of its State taxes due before the sale of a substantial part of the assets (a “bulk sale” of assets) of the business is completed, recently enacted law requires the purchaser of those assets to notify the Director of the Division of Taxation of the sale at least 10 days before the transfer of goods or payment, or the purchaser can become liable for taxes owed by the seller.

If the director notifies the purchaser that the seller owes State taxes, the purchaser must hold back from the seller any sums owed the State. If the purchaser fails to notify the director, the purchaser can be held liable for any taxes of the seller. The director must respond within 10 days of receiving the notice, and if the director fails to respond to the notice within the allowed time the sale can continue and the purchaser has no liability for the seller’s taxes.

While these procedures ensure the proper payment of tax in commercial transactions, they add an unnecessary layer of complication to home sales. Neither the seller nor the purchaser of a home may be aware that some prior owner of the property rented out the property as a vacation home and failed to make proper payment of related tax liabilities, and either the seller or the purchaser could potentially be held liable for that prior owner’s taxes unless they go through the trouble and expense of filing the notice with the Director of the Division of Taxation and delaying the sale until the expiration of the period in which the director can respond.

This bill provides an exemption from the bulk sale notification requirements for sales of one- and two-family homes and single noncommercial dwelling units, whether those units are detached homes, condominiums or coops. That exemption under this bill does

not extend to transactions that transfer more than two dwelling units or that transfer the dwelling unit or units along with commercial property.

This bill also provides exemptions from the bulk sale notification requirements for sales of seasonal rental units and for sales of seasonal leases. Seasonal rental unit and seasonal lease are defined in parallel with other statutory uses of those terms to refer to a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere. To clarify that those terms are intended to apply to timeshares, the bill explicitly makes time shares exempt from the bulk sale notification requirements.

The exemptions for dwelling units and rental units apply to units purchased from individuals, estates and trusts. The exemptions do not apply to units purchased from business entities, including corporations and partnerships.

The bill is retroactive to August 1, 2007, the date on which the bulk sale notification requirements first took effect.

As amended and reported, this bill is identical to Assembly Bill No. 2748 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments delete the exemption for sellers that are limited liability companies. The amendments also clarify the separate definitions used to describe the exemptions allowed for “seasonal rental unit” and “lease for the seasonal use or rental of real property.”

FISCAL IMPACT:

Current law governing bulk sale notification has allowed the State to increase tax enforcement collections from taxpayers who have unpaid State tax liabilities. According to information provided by the Division of Taxation for a similar bill, Senate Bill No. 1941 of 2010, over \$21.4 million in revenue was received from the personal income of taxpayers through tax enforcement via their bulk sales transactions in 2009, and nearly \$30.0 million has been received in FY 2010. These annual enforcement collections would be reduced by an unknown, but potentially significant amount under this bill. In addition, the bill is retroactive to August 2007, which may generate significant refund claims.

The division cannot segregate the proportion of annual and prior year tax enforcement revenues from bulk sales transactions which are attributable to the types of sales defined in this bill. However, the division believes far fewer taxpayers would voluntarily report bulk sales and as such the potential State revenue loss may constitute a substantial proportion of the total amount of enforcement revenues received by the State.

The OLS agrees that there may be an annual revenue loss to the State under this bill. A precise amount cannot be estimated due to the lack of data distinguishing the tax enforcement revenues received from taxpayers with the types of property defined under this bill from total tax enforcement revenues under all types of bulk sales transactions. Also, the OLS cannot distinguish between bulk sales purchased from individuals, estates and trusts applicable under this bill, as opposed to bulk sales purchased from business entities, including corporations, partnerships and limited liability companies, not applicable under this bill. Lastly, the OLS does not believe the retroactive portions of the bill will have a measurable *fiscal* impact, since State tax enforcement revenues previously collected due to *legitimate* taxpayer liabilities are unlikely to be refunded. However, there may be legal benefits to certain taxpayers from the provisions of the bill that provide retroactive relief from notification requirements.

Governor Chris Christie Signs Legislation to Cut Red Tape and Ease the Individual Sale of Homes

Friday, September 16, 2011 Tags: [Jobs and the Economy](#)

Trenton, NJ – On Wednesday, Governor Christie signed legislation to boost New Jersey’s real estate market and cut red tape in order to ease the individual sale of homes and seasonal rentals by providing an exemption from New Jersey’s bulk sales notification process. The bulk sales notification process was established in 2007 to ensure the State was able to collect outstanding tax liability from businesses before they left the State or disposed of a large portion of assets.

Because of the manner in which the law was written, the sale of single family homes from individual sellers was made subject to the requirements, resulting in home purchasers having to file paperwork and provide ten days notice to the Division of Taxation for every real estate transaction, or else risk being held liable by the State for the seller’s delinquent taxes. Under A-2748, the sale by individual sellers of any dwelling unit, primarily one- and two- family homes, will no longer be subject to the bulk sales notification requirements.

BILL SIGNED:

A-2748/S-2313 (Diegnan, Schaer, Lampitt, Connors/Van Drew, T. Kean) – Exempts sales of certain homes and seasonal rentals from the bulk sale notification requirements

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