

46:15-7.4

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2006 **CHAPTER:** 33

NJSA: 46:15-7.4 (Imposes a 1% fee, or 1% tax, on certain purchasers of certain commercial property for over \$1 million)

BILL NO: A4701 (Substituted for S1982)

SPONSOR(S) MeKeon and others

DATE INTRODUCED: June 22, 2006

COMMITTEE: **ASSEMBLY:** Budget

SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** July 8, 2006

SENATE: July 8, 2006

DATE OF APPROVAL: July 8, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute (1R) enacted)

A4701

[SPONSOR'S STATEMENT](#): (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [Budget 7-7-2006](#)
[Budget 6-23-2006](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL NOTE](#): [Yes](#)

S1982

[SPONSOR'S STATEMENT](#): (Begins on page 6 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL NOTE](#): [Yes](#)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

§2 - C.46:15-7.4
Title 54.
Chapter 15C.
(New) Taxation
on Purchasers of
Controlling
Interests in
Certain
Commercial
Property.
§3 - C.54:15C-1
§4 - Note to §§1-3

P.L. 2006, CHAPTER 33, *approved July 8, 2006*
Assembly Committee Substitute (*First Reprint*) for
Assembly, No. 4701

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

7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10
11 1. Section 8 of P.L.2004, c.66 (C.46:15-7.2) is amended to read
12 as follows:

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

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

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

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

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

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

29 that is transferred for consideration in excess of \$1,000,000 recited
30 in the deed, which fee shall be an amount equal to 1 percent of the
31 entire amount of such consideration, which fee shall be collected by

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:

¹ Assembly ABU committee amendments adopted July 7, 2006.

1 the county recording officer at the time the deed is offered for
2 recording and remitted to the State Treasurer not later than the 10th
3 day of the month following the month of collection for deposit into
4 the General Fund.

5 b. '(1)' The fee imposed by subsection a. of this section shall
6 not apply to a deed if the grantee of the deed for the transfer of real
7 property is an organization determined by the federal Internal
8 Revenue Service to be exempt from federal income taxation
9 pursuant to paragraph (3) of subsection (c) of section 501 of the
10 federal Internal Revenue Code of 1986, 26 U.S.C. s.501.

11 '(2) The fee imposed by subsection a. of this section shall not
12 apply to a deed if the transfer of real property is incidental to a
13 corporate merger or acquisition and the equalized assessed value of
14 the real property transferred is less than 20% of the total value of all
15 assets exchanged in the merger or acquisition. A grantee shall
16 claim this exemption from imposition of the fee at the time the deed
17 is offered for recording by filing with the county recording officer
18 such information, in addition to the affidavit of consideration filed
19 by one or more of the grantee parties named in the deed or by the
20 grantee's legal representative pursuant to subsection d. of this
21 section, as the Director of the Division of Taxation in the
22 Department of Treasury may prescribe as to constitute a filing of a
23 protest of the assessment of the fee and by paying any other
24 recording fees not exempted pursuant to this paragraph. This
25 additional information shall be forwarded by the county recording
26 officer to the director along with the grantee's affidavit of
27 consideration, and shall be deemed to be and have the effect of a
28 protest of a finding by the director of a deficiency of payment of the
29 fee filed on the date on which the deed is recorded.'¹

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

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

46 (2) Whether or not the transfer is exempt, pursuant to subsection
47 b. of this section or any other provision of law, from payment of the

1 fee pursuant to subsection a. of this section, if a transfer includes
2 property otherwise subject to subsection a. of this section, then an
3 affidavit of consideration shall be filed by one or more of the
4 grantee parties named in the deed or by the grantee's legal
5 representative declaring the consideration and shall be annexed to
6 and recorded with the deed as a prerequisite for the recording of the
7 deed. The filing of an affidavit of consideration pursuant to this
8 paragraph shall be in addition to the filing, if any, pursuant to
9 paragraph (1) of this subsection.

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

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

20 (cf.: P.L.2005, c.19, s.1)

21

22 2 (New section) Notwithstanding the provisions of section 8
23 of P.L.2004, c.66 (C.46:15-7.2), for the transfer of real property that
24 was classified pursuant to the requirements of N.J.A.C.18:12-2.2 as
25 Class 4A "commercial properties" at the time of the recording of
26 the deed, provided that the deed was recorded on or before
27 ¹~~November 1~~ November 15 , 2006, and that was transferred
28 pursuant to a contract that was fully executed before July 1, 2006,
29 the fee imposed pursuant to section 8 of P.L.2004, c.66 shall be
30 refunded to the grantee by the filing, within one year following the
31 date of the recording of the deed, of a claim with the New Jersey
32 Division of Taxation for a refund of the fee paid. Proof of claim for
33 refund shall be made by the submission of such documentation as
34 the Director of the Division of Taxation may require.

35

36 3. (New section) (1) There is imposed and shall be paid a tax
37 upon the sale or transfer for consideration in excess of \$1,000,000
38 of a controlling interest in an entity which possesses, directly or
39 indirectly, ¹~~an~~ a controlling interest in classified real property,
40 which shall be paid by the purchaser of the controlling interest and
41 which shall be equal to 1% of the consideration paid on the sale or
42 transfer; provided however that in the case of the sale or transfer of
43 a controlling interest in an entity which possesses, directly or
44 indirectly, an interest in classified real property and an interest in
45 other property, real or personal, there shall be paid a tax upon the
46 sale only if the equalized assessed value of the classified real
47 property exceeds \$1,000,000 which shall be paid by the purchaser

1 of the controlling interest and which shall be equal to 1% of 'that
2 percentage of' the equalized assessed value of the classified real
3 property 'that is equal to the percentage of the ownership interest
4 transferred'.

5 (2) The sale or transfer of a controlling interest subject to
6 taxation pursuant to paragraph (1) of this subsection may occur in
7 one transaction or in a series of transactions. Transactions which
8 occur within six months of each other are presumed, unless shown
9 to the contrary, to be a series of transactions constituting a single
10 sale or transfer.

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

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

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

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

26 (2) to a purchaser that is an organization determined by the
27 federal Internal Revenue Service to be exempt from federal income
28 taxation pursuant to paragraph (3) of subsection (c) of section 501
29 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.501;

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

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

34 '(5) that is incidental to a corporate merger or acquisition if the
35 equalized assessed value of the real property transferred is less than
36 20% of the total value of all assets exchanged in the merger or
37 acquisition.'¹

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

45 e. (1) The director may require all purchasers subject to a tax
46 imposed under this section to keep such records as the director may
47 prescribe, and the director may require the production of books,

1 papers, documents and other data, to provide or secure information
2 pertinent to the determination of the taxes imposed by this section
3 and the enforcement and collection thereof.

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

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

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

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

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

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

32 g. As used in this section:

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

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

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

44 "Controlling interest" means, in the case of an entity that is a
45 corporation, more than fifty per cent of the total combined voting
46 power of all classes of stock of that corporation, and in the case of
47 an entity that is a partnership, association, trust or other
48 organization, more than fifty per cent of the ¹capital, profits or

1 beneficial interest in] beneficial ownership of classified real
2 property of¹ that partnership, association, trust or other
3 organization.

4 “Related parties” means parties that have the relationship
5 necessary for attribution of constructive ownership of stock
6 pursuant to section 318 of the federal Internal Revenue Code of
7 1986, 26 U.S.C. s.218, and members of an affiliated group or a
8 controlled group pursuant to section 1504 or 1563 of the federal
9 Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563.

10

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

13

14

15

16

17 Imposes a 1% fee, or 1% tax, on certain purchasers of certain
18 commercial property for over \$1 million.

ASSEMBLY, No. 4701

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 22, 2006

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Imposes 1% fee on purchaser of certain commercial property for over \$1 million.

CURRENT VERSION OF TEXT

As introduced.



A4701 MCKEON

2

1 AN ACT imposing a fee upon grantees under certain deeds
2 conveying commercial property, amending P.L.2004, c.66.

3

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

6

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

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

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

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

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

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

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

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

32 b. The fee imposed by subsection a. of this section shall not
33 apply to a deed if the grantee of the deed for the transfer of real
34 property is an organization determined by the federal Internal
35 Revenue Service to be exempt from federal income taxation
36 pursuant to paragraph (3) of subsection (c) of section 501 of the
37 federal Internal Revenue Code of 1986, 26 U.S.C. s.501.

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

45 (cf.: P.L.2005, c.19, s.1)

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 2. This act shall take effect July 1, 2006.

2

3

4

STATEMENT

5

6 This bill imposes upon the grantee (buyer) of commercial real
7 property classified for real property tax purposes as Class 4A
8 “commercial properties”, for consideration in excess of \$1 million,
9 a separate fee equal to 1 percent of the full amount of the
10 consideration. Class 4A “commercial properties” are any kind of
11 income-producing real property other than property classified as
12 vacant land, residential property, farm property, industrial
13 properties, and apartments.

14 The revenue generated by this fee will also be used for general
15 State purposes.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 4701**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JULY 7, 2006

The Assembly Budget Committee reports favorably Assembly Bill No. 4701 (ACS), with committee amendments.

Assembly Bill No. 4701 (ACS), as amended, imposes upon the grantee (buyer) of commercial real property classified for real property tax purposes as Class 4A “commercial properties”, for consideration in excess of \$1 million, a fee for the recording of the deed separate from the realty transfer fee imposed on the grantor (seller) equal to 1 percent of the full amount of the consideration paid. Class 4A “commercial properties” are any kind of income-producing real property other than property classified as vacant land, residential property, farm property, industrial properties, and apartments.

The bill also imposes a parallel tax on the purchaser in a non-deed transfer of a controlling interest in an entity that owns Class 4A “commercial properties” if the total consideration for the transfer is in excess of \$1 million. That tax is equal to 1 percent of the full amount paid for the transfer of the controlling interest.

The bill applies to deed and non-deed transfers occurring on and after August 1, 2006; however, special provisions are made for transactions that were “under contract” before July 1, 2006 and for which the transaction was recorded by November 15, 2006 so that, in the case of a deed transaction, the fee will be refunded after recording and in the case of a non-deed transaction no tax will be due.

The bill also provides for increased reporting through the system of affidavits of consideration filed by the buyer or the seller, or both, with the recording of a deed to improve the administration of the fee on deed recording.

FISCAL IMPACT:

The Executive has estimated the revenue from the changes pursuant to the bill as \$17 million for State Fiscal Year 2006-2007. The Office of Legislative Services (OLS) has estimated that imposing a 1% fee on the selling price of commercial properties transferred by deed for more than \$1 million would increase annual State General

Fund collections by at least \$43.1 million in fiscal year 2007 and at least \$50.9 million in fiscal years 2008 and 2009. The OLS notes that its projection represents a minimum revenue estimate, as it includes only commercial property sales resulting in the recording of a deed; as the bill also imposes a tax on the non-deed transfer of a controlling interest in classified real property, total revenue would be expected to exceed the amount from deed transfers alone. The OLS has no information to generate an estimate of the revenues from non-deed transfers.

COMMITTEE AMENDMENTS:

The amendments provide exemptions from the realty transfer fee and the non-deed transfer tax for transfers of realty incident to a merger or acquisition in which real property is less than 20% of the value of the assets exchanged.

The amendments extend, from November 1, 2006 to November 15, 2006 the date by which transactions "under contract" by July 1, 2006 must be recorded in order to avoid the taxes imposed under the bill.

The amendments clarify that, for purposes of the non-deed transfer tax, a controlling interest of an unincorporated entity is more than fifty per cent of the beneficial ownership of classified real property of the entity and that the transfer of ownership of an entity that possesses a controlling interest (not a minimal interest) in property is subject to tax. The amendments also correct an alternative measure of tax liability based on the equalized assessed value of property, so that the tax is measured by the portion of the equalized assessed value that is proportional to the percentage of the total interest in the property transferred.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 4701

STATE OF NEW JERSEY

DATED: JUNE 23, 2006

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4701.

This Assembly Committee Substitute for Assembly Bill No. 4701 imposes upon the grantee (buyer) of commercial real property classified for real property tax purposes as Class 4A “commercial properties”, for consideration in excess of \$1 million, a fee for the recording of the deed separate from the realty transfer fee imposed on the grantor (seller) equal to 1 percent of the full amount of the consideration paid. Class 4A “commercial properties” are any kind of income-producing real property other than property classified as vacant land, residential property, farm property, industrial properties, and apartments.

The substitute also imposes a parallel tax on the purchaser in a non-deed transfer of a controlling interest in an entity that owns Class 4A “commercial properties” if the total consideration for the transfer is in excess of \$1 million. That tax is equal to 1 percent of the full amount paid for the transfer of the controlling interest.

The substitute applies to deed and non-deed transfers occurring on and after August 1, 2006; however, special provisions are made for transactions that were “under contract” before July 1, 2006 and for which the transaction was recorded or accomplished by November 1, 2006 so that, in the case of a deed transaction, the fee will be refunded after recording and in the case of a non-deed transaction no tax will be due.

The substitute also provides for increased reporting through the system of affidavits of consideration filed by the buyer or the seller, or both, with the recording of a deed to improve the administration of the fee on deed recording.

FISCAL IMPACT:

The Executive has estimated the revenue from the changes pursuant to the substitute as \$17 million for State Fiscal Year 2006-2007.

FISCAL NOTE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4701
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: AUGUST 1, 2006

SUMMARY

- Synopsis:** Imposes a 1% fee, or 1% tax, on certain purchasers of certain commercial property for over \$1 million.
- Type of Impact:** Annually Recurring Revenue Gain to the State General Fund.
- Agencies Affected:** Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>Fiscal Year 2007</u>	<u>Fiscal Year 2008</u>	<u>Fiscal Year 2009</u>
State Revenue	\$17,000,000 per Fiscal Year		

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2007</u>	<u>Fiscal Year 2008</u>	<u>Fiscal Year 2009</u>
State Revenue	\$43,100,000	At least \$50,900,000	At least \$50,900,000

- The Office of Legislative Services (OLS) **disagrees** with the Executive estimate. Given that the Executive has not provided any information on the method and data underlying its projection, the OLS cannot reconcile the discrepancy between the two estimates.
- The OLS projection represents a minimum, as it includes only commercial property sales resulting in the recording of a deed. The bill, however, would also tax non-deed commercial property transfers occurring within the scope of a transfer of a controlling interest in an entity possessing an interest in classified real property. The OLS has no information to generate an estimate of this provision.
- For fiscal year 2007, the OLS adjusts the expected revenue increase to \$43.1 million because of the bill's delayed effective date of August 1, 2006.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 4701 of 2006 imposes a fee equal to 1 percent of the purchase price upon the buyer of commercial real property that is (a) classified for real property tax purposes as Class 4A “commercial property” and (b) acquired for a purchase price in excess of \$1 million. Class 4A “commercial properties” are any kind of income-producing real property other than property classified as vacant land, residential property, farm property, industrial property, and apartments. The fee applies to transfers recorded on or after August 1, 2006, except that a transfer pursuant to a contract that was fully executed before July 1, 2006 remains exempt if recorded before November 1, 2006. The fee also applies to non-deed transfers occurring within the scope of a transfer of a controlling interest in an entity possessing an interest in classified real property.

FISCAL ANALYSIS

EXECUTIVE BRANCH

In the Governor’s Fiscal Year 2007 Budget, the Executive projected that a 1 percent assessment on the selling price of commercial property transacted for more than \$1 million would yield \$17 million in annual State General Fund revenues. The Executive has not provided any information on the method and data underlying this estimate.

OFFICE OF LEGISLATIVE SERVICES

The OLS disagrees with the Executive estimate and projects that imposing a 1 percent fee on the selling price of commercial properties transferred for more than \$1 million would increase annual State General Fund collections by at least \$43.1 million in fiscal year 2007 and at least \$50.9 million in fiscal years 2008 and 2009. Given that the Executive has not provided any information on the method and data underlying its estimate, the OLS cannot reconcile the discrepancy between the two projections.

To arrive at its estimate, the OLS relies on Division of Taxation data of fiscal year 2005 property sales based on sale codes. Upon reviewing the different categories, the OLS gauges that Class 4A commercial property sales totaled about \$5.1 billion in fiscal year 2005. This amount includes \$3.7 billion in Class 4A categories and \$1.4 billion in the unclassified category. Total non-categorized property sales, which include unclassified Class 4A property sales, were \$2.4 billion. The OLS assumes that Class 4A properties account for 60 percent of non-categorized property sales. Next, the agency applies the 1 percent tax rate to the estimated \$5.1 billion in Class 4A commercial property sales and thus obtains an annual \$50.9 million State revenue gain.

Lastly, for fiscal year 2007, the OLS adjusts the expected revenue increase to \$43.1 million. Because of the August 1, 2006 effective date, one month of collections would be foregone and other pending transactions would be moved into July to avoid payment of the fee. When the equivalent fee was established for residential properties effective August 1, 2004, August collections were about ten percent and September collections about half of the monthly average for the remaining months in fiscal year 2005. For the fee on commercial properties, the OLS anticipates the same impact. In addition, the agency assumes that October collections would also

be half of the expected monthly average as transactions recorded in October may be exempt from the fee if they occur pursuant to a contract that was fully executed before July 1, 2006.

The OLS notes that its projection represents a minimum, as it includes only commercial property sales resulting in the recording of a deed. The bill, however, would also tax non-deed commercial property transfers occurring within the scope of a transfer of a controlling interest in an entity possessing an interest in classified real property. The OLS has no information to generate an estimate of this provision.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Associate Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L. 1980, c.67.

SENATE, No. 1982

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 22, 2006

Sponsored by:

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

Imposes a 1% fee, or 1% tax, on certain purchasers of certain commercial property for over \$1 million.

CURRENT VERSION OF TEXT

As introduced.



S1982 BRYANT

2

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

7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10
11 1. Section 8 of P.L.2004, c.66 (C.46:15-7.2) is amended to read
12 as follows:

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

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

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

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

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

27 (4) that is classified pursuant to the requirements of
28 N.J.A.C.18:12-2.2 as Class 4A "commercial properties" that is
29 transferred for consideration in excess of \$1,000,000 recited in the
30 deed, which fee shall be an amount equal to 1 percent of the entire
31 amount of such consideration, which fee shall be collected by the
32 county recording officer at the time the deed is offered for
33 recording and remitted to the State Treasurer not later than the 10th
34 day of the month following the month of collection for deposit into
35 the General Fund.

36 b. The fee imposed by subsection a. of this section shall not
37 apply to a deed if the grantee of the deed for the transfer of real
38 property is an organization determined by the federal Internal
39 Revenue Service to be exempt from federal income taxation
40 pursuant to paragraph (3) of subsection (c) of section 501 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.501.

42 c. The fee imposed by subsection a. of this section shall be
43 subject to the provisions of the State Uniform Tax Procedure Law,
44 R.S.54:48-1 et seq.; provided however, that notwithstanding the
45 provisions of subsection a. of R.S.54:49-14, a taxpayer may file 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.

1 claim under oath for refund at any time within 90 days after the
2 payment of any original fee and that subsection b. of R.S.54:49-14
3 shall not apply to any additional fee assessed.

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

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

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

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

34 (cf.: P.L.2005, c.19, s.1)

35
36 2. (New section) Notwithstanding the provisions of section 8 of
37 P.L.2004, c.66 (C.46:15-7.2), for the transfer of real property that
38 was classified pursuant to the requirements of N.J.A.C.18:12-2.2 as
39 Class 4A "commercial properties" at the time of the recording of
40 the deed, provided that the deed was recorded before October 1,
41 2006, and that was transferred pursuant to a contract that was fully
42 executed before July 1, 2006, the fee imposed pursuant to section 8
43 of P.L.2004, c.66 shall be refunded to the grantee by the filing,
44 within one year following the date of the recording of the deed, of a
45 claim with the New Jersey Division of Taxation for a refund of the
46 fee paid. Proof of claim for refund shall be made by the submission
47 of such documentation as the Director of the Division of Taxation
48 may require.

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1 3. (New section) a. (1) There is imposed and shall be paid a tax
2 upon the sale or transfer for consideration in excess of \$1,000,000
3 of a controlling interest in an entity which possesses, directly or
4 indirectly, an interest in classified real property, which shall be paid
5 by the purchaser of the controlling interest and which shall be equal
6 to 1% of the consideration paid on the sale or transfer; provided
7 however that in the case of the sale or transfer of a controlling
8 interest in an entity which possesses, directly or indirectly, an
9 interest in classified real property and an interest in other property,
10 real or personal, there shall be paid a tax upon the sale only if the
11 equalized assessed value of the classified real property exceeds
12 \$1,000,000 which shall be paid by the purchaser of the controlling
13 interest and which shall be equal to 1% of the equalized assessed
14 value of the classified real property.

15 (2) The sale or transfer of a controlling interest subject to
16 taxation pursuant to paragraph (1) of this subsection may occur in
17 one transaction or in a series of transactions. Transactions which
18 occur within six months of each other are presumed, unless shown
19 to the contrary, to be a series of transactions constituting a single
20 sale or transfer.

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

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

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

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

36 (2) to a purchaser that is an organization determined by the
37 federal Internal Revenue Service to be exempt from federal income
38 taxation pursuant to paragraph (3) of subsection (c) of section 501
39 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.501;

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

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

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

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

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

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

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

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

29 f. As used in this section:

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

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

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

41 "Controlling interest" means, in the case of an entity that is a
42 corporation, more than fifty per cent of the total combined voting
43 power of all classes of stock of that corporation, and in the case of
44 an entity that is a partnership, association, trust or other
45 organization, more than fifty per cent of the capital, profits or
46 beneficial interest in that partnership, association, trust or other
47 organization.

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1 “Related parties” means parties that have the relationship
2 necessary for attribution of constructive ownership of stock
3 pursuant to section 318 of the federal Internal Revenue Code of
4 1986, 26 U.S.C. s.218, and members of an affiliated group or a
5 controlled group pursuant to section 1504 or 1563 of the federal
6 Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563.

7

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

10

11

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STATEMENT

13

14 This bill imposes a 1% fee, or 1% tax, on certain purchasers of
15 certain commercial property for over \$1 million.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1982

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2006

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1982, with committee amendments.

As amended, the bill imposes upon the grantee (buyer) of commercial real property classified for real property tax purposes as Class 4A “commercial properties”, for consideration in excess of \$1 million, a fee for the recording of the deed separate from the realty transfer fee imposed on the grantor (seller) equal to 1 percent of the full amount of the consideration paid. Class 4A “commercial properties” are any kind of income-producing real property other than property classified as vacant land, residential property, farm property, industrial properties, and apartments.

The bill also imposes a parallel tax on the purchaser in a non-deed transfer of a controlling interest in an entity that owns Class 4A “commercial properties” if the total consideration for the transfer is in excess of \$1 million. That tax is equal to 1 percent of the full amount paid for the transfer of the controlling interest.

As amended, the bill applies to deed and non-deed transfers occurring on and after August 1, 2006; however, special provisions are made for transactions that were “under contract” before July 1, 2006 and for which the transaction was recorded or accomplished by November 1, 2006 so that, in the case of a deed transaction, the fee will be refunded after recording and in the case of a non-deed transaction no tax will be due.

The bill also provides for increased reporting through the system of affidavits of consideration filed by the buyer or the seller, or both, with the recording of a deed to improve the administration of the fee on deed recording.

As amended and reported, this bill is identical to Assembly Bill No. 4701 (1R).

COMMITTEE AMENDMENTS:

The committee amendments to be bill would:

- 1) Extend, from October 1, 2006 to November 1, 2006 the date by which transactions "under contract" by July 1, 2006 must be recorded or accomplished in order to avoid the tax imposed under the bill; and
- 2) Exempt from the tax those deeds which are currently exempt from additional fees pursuant to N.J.S.A. 46:15-10.

FISCAL IMPACT:

The Executive has estimated the revenue from the changes pursuant to the substitute as \$17 million for State Fiscal Year 2006-2007.

FISCAL NOTE
 [First Reprint]
SENATE, No. 1982
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: JULY 28, 2006

SUMMARY

- Synopsis:** Imposes a 1% fee, or 1% tax, on certain purchasers of certain commercial property for over \$1 million.
- Type of Impact:** Annually Recurring Revenue Gain to the State General Fund.
- Agencies Affected:** Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>Fiscal Year 2007</u>	<u>Fiscal Year 2008</u>	<u>Fiscal Year 2009</u>
State Revenue	\$17,000,000 per Fiscal Year		

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2007</u>	<u>Fiscal Year 2008</u>	<u>Fiscal Year 2009</u>
State Revenue	\$43,100,000	At least \$50,900,000	At least \$50,900,000

- The Office of Legislative Services (OLS) **disagrees** with the Executive estimate. Given that the Executive has not provided any information on the method and data underlying its projection, the OLS cannot reconcile the discrepancy between the two estimates.
- The OLS projection represents a minimum, as it includes only commercial property sales resulting in the recording of a deed. The bill, however, would also tax non-deed commercial property transfers occurring within the scope of a transfer of a controlling interest in an entity possessing an interest in classified real property. The OLS has no information to generate an estimate of this provision.
- For fiscal year 2007, the OLS adjusts the expected revenue increase to \$43.1 million because of the bill's delayed effective date of August 1, 2006.

BILL DESCRIPTION

Senate Bill No. 1982 (1R) of 2006 imposes a fee equal to 1 percent of the purchase price upon the buyer of commercial real property that is (a) classified for real property tax purposes as Class 4A “commercial property” and (b) acquired for a purchase price in excess of \$1 million. Class 4A “commercial properties” are any kind of income-producing real property other than property classified as vacant land, residential property, farm property, industrial property, and apartments. The fee applies to transfers recorded on or after August 1, 2006, except that a transfer pursuant to a contract that was fully executed before July 1, 2006 remains exempt if recorded before November 1, 2006. The fee also applies to non-deed transfers occurring within the scope of a transfer of a controlling interest in an entity possessing an interest in classified real property.

FISCAL ANALYSIS

EXECUTIVE BRANCH

In the Governor’s Fiscal Year 2007 Budget, the Executive projected that a one percent assessment on the selling price of commercial property transacted for more than \$1 million would yield \$17 million in annual State General Fund revenues. The Executive has not provided any information on the method and data underlying this estimate.

OFFICE OF LEGISLATIVE SERVICES

The OLS disagrees with the Executive estimate and projects that imposing a 1 percent fee on the selling price of commercial properties transferred for more than \$1 million would increase annual State General Fund collections by at least \$43.1 million in fiscal year 2007 and at least \$50.9 million in fiscal years 2008 and 2009. Given that the Executive has not provided any information on the method and data underlying its estimate, the OLS cannot reconcile the discrepancy between the two projections.

To arrive at its estimate, the OLS relies on Division of Taxation data of fiscal year 2005 property sales based on sale codes. Upon reviewing the different categories, the OLS gauges that Class 4A commercial property sales totaled about \$5.1 billion in fiscal year 2005. This amount includes \$3.7 billion in Class 4A categories and \$1.4 billion in the unclassified category. Total non-categorized property sales, which include unclassified Class 4A property sales, were \$2.4 billion. The OLS assumes that Class 4A properties account for 60 percent of non-categorized property sales. Next, the agency applies the 1 percent tax rate to the estimated \$5.1 billion in Class 4A commercial property sales and thus obtains an annual \$50.9 million State revenue gain.

Lastly, for fiscal year 2007, the OLS adjusts the expected revenue increase to \$43.1 million. Because of the August 1, 2006 effective date, one month of collections would be foregone and other pending transactions would be moved into July to avoid payment of the fee. When the equivalent fee was established for residential properties effective August 1, 2004, August collections were about ten percent and September collections about half of the monthly average for the remaining months in fiscal year 2005. For the fee on commercial properties, the OLS anticipates the same impact. In addition, the agency assumes that October collections would also

be half of the expected monthly average as transactions recorded in October may be exempt from the fee if they occur pursuant to a contract that was fully executed before July 1, 2006.

The OLS notes that its projection represents a minimum, as it includes only commercial property sales resulting in the recording of a deed. The bill, however, would also tax non-deed commercial property transfers occurring within the scope of a transfer of a controlling interest in an entity possessing an interest in classified real property. The OLS has no information to generate an estimate of this provision.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Associate Fiscal Analyst*

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

This fiscal note has been prepared pursuant to P.L. 1980, c.67.