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TUESDAY, FEBRUARY 26, 2008

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ASK A LAWYER

'Mansion tax' due on commercial properties, too

Q. When is a purchaser of commercial property required to pay the so-called commercial mansion tax on the purchase?

In 2006, the New Jersey Legislature adopted a law imposing a tax (the "commercial mansion tax") on buyers of certain "commercial properties" where the purchase price recited in the deed is more than \$1 million. The commercial mansion tax is equal to 1 percent of the purchase price of the property and must be paid upon presentation of the deed for recording.

The commercial mansion tax is in addition to the realty transfer tax imposed upon the seller of certain real property in New Jersey.

"Commercial properties" subject to the commercial mansion tax are defined as income-producing property other than: (a) vacant land; (b) residential land (with four or fewer dwellings); (c) apartments (five families or more); (d) farmland and (e) industrial properties. Thus, for example, the sale of an office building or retail shopping center is subject to payment of the commercial mansion tax, but the sale of a warehouse or manufacturing facility is exempt.

A number of transactions are specifically excluded from the commercial mansion tax. For example, a purchase by a Section 501(c)3 tax-exempt organization is not subject to the tax.

Importantly, a buyer cannot

avoid the commercial mansion tax by acquiring the equity interest in an entity that owns property that would otherwise be subject to the tax. The state of New Jersey also imposes a levy on certain transactions involving the acquisition of a controlling interest in an entity that owns such property.

This tax is also paid by the purchaser and is equal to 1 percent of the consideration paid on the sale. Unlike the commercial mansion tax, which is paid upon recording of the deed, this levy is paid by filing a tax return, along with the tax payment, with the director of the Division of Taxation of New Jersey before the end of the month in which the sale occurs.

Buyers and sellers alike must consider the increased costs posed by the commercial mansion tax when negotiating and structuring transactions involving certain commercial property located in New Jersey.

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This column is not intended to offer legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.