

AMENDED MEMORANDUM

Property Administration
Fax: (609) 292-9439

**TO: COUNTY CLERKS / RECORDING OFFICERS,
COUNTY CHIEF FINANCIAL OFFICERS,
ATTORNEYS AND TITLE OFFICERS**

**FROM: STEPHEN M. SYLVESTER, ASSISTANT DIRECTOR
DIVISION OF TAXATION**

**SUBJECT: REALTY TRANSFER FEE LEGISLATION:
CHAPTER 33, LAWS OF 2006**

DATE: AUGUST 11, 2006

As you are aware, Chapter 33, Laws of 2006 was enacted on July 8, 2006. The new law imposes the 1% fee on buyers in transfers of Class 4A "commercial property" and continues to impose the fee on property classes 2 "residential," 3A "farm property (regular)" but only if the property includes a building or structure intended or suited for residential use transferred to the same grantee with the farm property; and cooperative units, for an entire consideration recited in the deed in excess of \$1 million. **Procedural revisions have been made since our July 18, 2006 memo was issued to facilitate the law's provisions in the most practical way. Take note of the boldfaced language highlighting these revisions in this memorandum.**

Chapter 33 was effective on August 1, 2006 and applies to transfers of property on or after that date. However, Chapter 33 contains a special provision for Class 4A property sales. **Buyers in deeds involving Class 4A "commercial property" sales recorded on or before November 15, 2006 that were transferred pursuant to a contract that was fully executed before July 1, 2006 who remit the 1% fee shall have it refunded by filing a claim with the Division of Taxation within one year following the recording date of the deed.** The Division requires the filing of a completed Claim for Refund (form RTF-3); copy of the deed; complete copy of the fully executed contract of sale signed by all parties; the official, fully executed settlement statement from the transaction (such as a HUD-1); and any additional documentation necessary to process the refund claim. **When filing a Claim for Refund, please note that the contract of sale does not need to be recorded at the county offices.**

The revised Affidavit of Consideration for Use by Seller (form RTF-1) is required to be annexed to and recorded with deeds conveying Class 4 properties of any type (Class 4A - Commercial properties, Class 4B - Industrial properties, or Class 4C- Apartments) as a prerequisite for recording, whether the real property transfer is taxable or exempt from payment of the 1% fee. This is in addition to use of the form for total and partial exemption claims. The RTF-1 now contains a new Section 3 field for the deponent to state whether the property transferred is classified as either Class 4A, 4B, or 4C. If Class 4A property is conveyed, the “equalized value” calculation in Section 3A must be completed but does not form the basis for imposition of the Realty Transfer Fee. In accordance with N.J.S.A. 46:15-7.2(4), the Realty Transfer Fee on Class 4A transactions is calculated upon the “consideration” amount recited in the deed. The Division will employ “equalized value” calculations for quarterly audits of Class 4A sales submitted by municipal assessors through the SR-1A/equalization process to determine whether a Class 4A transaction was recorded without proper documentation and the required Affidavits of Consideration. The Director’s Ratio is promulgated annually on or before October 1 in the Table of Equalized Valuations and is available on the Division’s Website at <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>.

Deponents filing either the Affidavit of Consideration for Use by Seller (form RTF-1) or the Affidavit of Consideration for Use by Buyer (form RTF-1EE) for recording with the deed must now clearly and entirely state the consideration, county and municipality of property location, county and municipal codes, and the block and lot description of the real property conveyed. The county/municipal codes may be found at <http://www.state.nj.us/treasury/taxation/pdf/lpt/cntycode.pdf>. County recording officers will continue to forward copies of all RTF-1EE forms filed and recorded with deeds to the Director of the Division of Taxation on the tenth day of the month following the filing of the deed.

The 1% fee shall not apply to a deed if a real property transfer is incidental to a corporate merger or acquisition and the equalized assessed value of the real property transferred is less than 20% of the total value of all assets exchanged in the merger or acquisition. A grantee claiming an exemption from the 1% fee in such instances, when the deed is offered for recording, is now required to file a merger document in addition to an Affidavit of Consideration for Use by Buyer. Therefore, on transfers of real property incidental to a corporate merger or acquisition, the grantee, legal representative, corporate officer or deponent must file a stamped, approved merger document at the county recording office with form RTF-4, “Filing of Protest of Fee Assessment” and remit any other recording fees that are not exempt. Merger documents (Certificates of Merger) are filed in duplicate with the Commercial Recording Unit in the Division of Revenue. The Website for the Records Unit is www.nj.gov/njbgs. First, click on “I want to obtain copies of public records,” then click on “Corporate & Business Entities” under the “Search & Photocopy” heading. The Division of Revenue can also be reached by mail: NJ Division of Revenue, Records Unit, PO Box 450, Trenton, NJ 08646. The direct Internet Website for the New Jersey Division of Revenue is <http://www.nj.gov/treasury/revenue/copiesentities.htm>. County recording officers must forward the RTF-4 form, stamped merger document and grantee’s Affidavit of Consideration for Use by Buyer to the Division of Taxation. This

has the effect of a protest of a deficiency of fee payment filed on the date on which the deed is recorded.

The 1% fee is not imposed if the real property is transferred to a purchaser that is an organization determined by the federal Internal Revenue Service to be exempt from federal income taxation pursuant to the federal Internal Revenue Code of 1986, or if the transfer meets the requirements of the exempt transactions provided in **N.J.S.A. 46:15-10**.

Questions regarding the deed transfer aspects of Chapter 33 should be directed to (609) 292-7974.

In non-deed transfers, a 1% fee shall be imposed on the sale, for consideration in excess of \$1,000,000, of a controlling interest in an entity which possesses, directly or indirectly, a controlling interest in classified real property, which shall be paid by the purchaser of the controlling interest; provided however that in the case of the sale or transfer of a controlling interest in an entity which possesses, directly or indirectly, an interest in classified real property and an interest in other property, real or personal, the 1% fee shall be paid only if the equalized assessed value of the classified real property exceeds \$1,000,000 which shall be paid by the purchaser of the controlling interest and which shall be equal to 1% of the equalized assessed value of the classified real property that is equal to the percentage of the ownership interest transferred. Such purchasers must remit this fee on or before the last day of the month following the month in which the sale of a controlling interest subject to the tax is completed by filing a return with the Director of the Division of Taxation with accompanying payment. The Director may extend this filing time and may examine the books and records of an entity regarding the sale of a controlling interest. Transfers of a controlling interest on or before November 15, 2006 shall not be subject to the tax if the interest was transferred pursuant to a contract or other binding agreement that was fully executed before July 1, 2006.

You may direct any inquiries regarding non-deed transfers of controlling interests in real property to the Division of Taxation by completing the e-mail contact form at http://www.state.nj.us/treasury/taxation/contactus_tyttaxa.html. In the "Topic" box, please click on the word "Business."

Revisions to the Affidavit of Consideration for Use by Seller (RTF-1) and Affidavit of Consideration for Use by Buyer (RTF-1EE) may be ongoing for the next few weeks. The latest versions of these forms will contain a month, date, and year of the revisions. Continue to check the Division's Website for the most updated version of all Realty Transfer Fee forms and official information at:

<http://www.state.nj.us/treasury/taxation/lpt/localtax.shtml> (Property Administration)

<http://www.state.nj.us/treasury/taxation> (Division of Taxation)

Thank you for your cooperation in implementing the provisions of this law.

