

New Jersey Mansion Tax Amended to Exempt Certain Types of Transfers of Real Property

On January 19, 2005, New Jersey Acting Governor Codey signed into law P.L. 2005, c.19, to exempt from the applicability of the “Mansion Tax” set forth in N.J.S.A. 46:15-7.2 certain types of transfers, including transfers of apartment buildings and vacant farmland, and transfers to organizations that are exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. The act takes effect on February 1, 2005.

Background

N.J.S.A. 46:15-7.2, which became effective on August 1, 2004, required the purchaser of property “zoned for residential use, whether improved or not” for consideration in excess of \$1,000,000 to pay a fee (the “Mansion Tax”) equal to one percent (1%) of the entire amount of consideration as a condition of recording the deed of conveyance. The statute was controversial, not only because it imposed an entirely new class of tax on purchasers of real property, but also because the Mansion Tax applied to property that was zoned residential, regardless of the actual use of the property. For example, on the face of the statute, the Mansion Tax would be applicable to vacant land, farmland and even industrial property located in a residential zone, even if there is no house on the property. The new act cures some of the confusion surrounding the Mansion Tax.

Summary of Revised Statute

The revised statute limits the scope of the Mansion Tax to property conveyed for consideration in excess of \$1,000,000:

- (1) that is classified pursuant to the requirements of N.J.A.C 18:12-2.2 as Class 2 “residential”;
- (2) (a) that includes property classified pursuant to the requirements of N.J.A.C 18:12-2.2 as Class 3A “farm property (regular),” but only if the property includes a building or structure intended or suited for residential use, and
(b) any other real property, regardless of class, that is effectively transferred to the same grantee in conjunction with the property described in subparagraph (a) of this paragraph; or
- (3) that is a cooperative unit as defined in section 3 of P.L. 1987, c.381 (C. 46:8D-13).

Accordingly, under the revised statute, the actual use of the property, as opposed to the property’s zoning, will be used to determine whether the Mansion Tax is applicable. Those uses are now expressly stated to be only to Class 2 “residential” – a dwelling designed for use and enjoyment by not more than four families; Class 3A “farm property (regular)” – farm property not assessed as farmland under the Farmland Assessment Act, provided that such property has a dwelling on it, and any other property conveyed to the same, or effectively the same, purchaser, and cooperative units (condominium units would be included in Class 2 “residential” property).

The revised statute also exempts from the Mansion Tax any purchase of property by an entity that is exempt

from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code – which generally includes charitable, religious and educational organizations.

Further, the revised statute provides that any person who paid the Mansion Tax pursuant to the prior statute in a transaction that would be exempt under the revised statute is entitled to refund of such tax. In order to obtain a refund, the person must file an application on the form prescribed by the Division of Taxation between February 1, 2005 and May 1, 2005. Accordingly, any purchaser of property after August 1, 2004 is strongly urged to determine whether it is entitled to a refund of any Mansion Tax that may have been paid in that transaction.

The revised statute is good news for purchasers of real property, because the Mansion Tax no longer applies to vacant land, farmland on which no dwelling is located, apartment and condominium buildings having more than four units, and property used for office, commercial or industrial use that is located in a residential zone. Developers should be aware, however, that the Mansion Tax would still be payable in connection with the purchase of an entire farm, as long as a dwelling exists on any portion of the farm property, even if the farmhouse is worthless and will be torn down to make way for a commercial development.

For Further Information

If you have any questions about the information in this Alert, please contact one of the members of the Duane Morris Real Estate Practice Group or the lawyer in the firm with whom you are regularly in contact.

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