

Mansion Tax Amendments; Assembly Bill No. 4701

By

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The mansion tax was expanded to impose a 1% tax on certain purchases of certain commercial property for over \$1 million . This Act will take effect August 1, 2006 and applies to transfers of commercial property on or after that date. The mansion tax does not apply to property transfers if the conveyance documents were recorded no later than July 31, 2006.

- Under the new law, the “mansion tax” is payable by the purchaser of
 - **Class 4A "Commercial properties"** (N.J.A.C. 18:12-2.2) for consideration in excess of \$1 million and/or
 - a controlling interest in an entity which directly or indirectly possesses a controlling interest in Class 4A commercial properties for consideration in excess of \$1 million.

- Class 4A “Commercial properties” **DO NOT** include:
 - Class 1: "**Vacant Land**" means land itself above and under water in its original, indestructible, immobile state. Vacant land is idle land, not actively used for agricultural or any other purpose; unused acreage; and is land in an approved subdivision actively on the market for sale or being held for sale.
 - Class 2: "**Residential**" means property described generally as a dwelling house including the lot or parcel of land on which the dwelling house is situated. The dwelling is functionally designed for use and enjoyment by not more than four families. This class includes residential condominiums. A dwelling functionally designed for use and enjoyment by more than four families should be designated Class 4C.
 - Class 3A: "**Farm property (Regular)**" means land being used for agricultural or horticultural purposes, including its use for the breeding, pasturing and production of livestock and animal products. Farm property also includes land, together with improvements, where the use of the land and function of the buildings thereon are for agricultural or horticultural purposes, as well as farm houses and the lots or parcels of land on which they are situated. For definitions of agricultural use and horticultural use, see N.J.A.C. 18:15-1.1, adopted under the "Farmland Assessment Act of 1964," N.J.S.A. 54:4-23.1 et seq.
 - Class 3B: "**Farm property (Qualified)**" means land which has qualified and is assessed under the Farmland Assessment Act, P.L. 1964, c. 48.
 - Class 4B: "**Industrial properties**" means land or land and improvements adaptable for industrial use; ideally, a combination of land, improvements, and machinery which has been integrated into a functioning unit intended for the assembling, processing, and manufacturing of finished or partially finished products from raw materials or fabricated parts, such as factories; or a similar combination intended for rendering service, such as laundries, dry cleaners or storage warehouses.

- Class 4C: "**Apartments**" designed for the use and enjoyment of five families or more. This class includes residential co-operatives and mutual housing corporations.
- **Exemptions:**
 - Any purchase of property by an entity that is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code.
 - Any transfer of real property which is incidental to 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.
- **Affidavit requirements:**
 - The Seller must file an affidavit of consideration and attach it to and record it with the deed for commercial property regardless of the consideration amount.
 - Likewise, the Buyer must file an affidavit of consideration and attach it to and record it with the deed for commercial property regardless of the consideration amount and regardless of whether the transfer may be exempt from the new mansion tax.
 - Affidavit must state the consideration, the county and municipality in which the property is located, and the block and lot description of the real property conveyed.
- **Grandfather clauses:**
 - For Class 4A "commercial properties," if the deed is recorded on or before November 15, 2006 and the real estate sales contract was fully executed before July 1, 2006, the purchaser is eligible for a refund. In order to obtain a refund, the purchaser must file the claim with the New Jersey Division of Taxation within one year following the date of the recording of the deed.
 - If a controlling interest in an entity which directly or indirectly possesses an interest in Class 4A properties is transferred on or before November 15, 2006 and the contract or other binding agreement was fully executed before July 1, 2006, the purchaser will not be subject to tax.