

1979 Legislation

Taxpayer's Bill Of Rights In Relation To Bulk Sales

Chapter 714 - Approved July 13, 1979- Effective January 1, 1980

This chapter amends the Tax Law to provide certain rights to the purchaser in a bulk sale transaction which were not previously granted.

Section 2 amends section 1138(a) to provide for four numbered paragraphs, of which only numbers 3 and 4 pertain to bulk sale transactions.

a) Paragraph 3 is added to subdivision (a) of section 1138 to extend to the purchaser, transferee or assignee of business assets in a bulk sale transaction, the right to a hearing to review his sales tax liability where it has been determined that the seller owes tax pursuant to section 1141(c) of the Tax Law. The request for such hearing must be made within 90 days after the Tax Commission has given the purchaser notice of the tax due.

Paragraph 3 also allows the Tax Commission to redetermine the seller's tax liability, and if the redetermination results in assessing a lesser amount of tax than would otherwise have been due, the Commission may, for the purchaser's benefit, reduce the liability accordingly, whether or not such taxes have been finally and irrevocably fixed.

b) Paragraph 4 has been expanded to provide for an Article 78 proceeding for a bulk sale purchaser when, after application for a hearing he disagrees with the Tax Commission's determination resulting from such hearing.

Section 3 adds a new subdivision (d) to section 1138 specifically providing that:

1) The Tax Commission may not issue a jeopardy assessment (section 1138(b)) against a bulk sale purchaser.

2) A bulk sale purchaser is not entitled to sign a consent, fixing the tax finally and irrevocably, prior to the ninety day period allowed for filing a hearing application (section 1138(c)).

Section 4 amends section 1139(a) by extending to the purchaser in a bulk sale transaction the right to file for a credit or refund of tax determined to be due from the seller and paid by the purchaser. The period in which to file for a refund or credit is limited to two years after the Tax Commission gives the purchaser notice of such tax due. The right to a hearing upon denial of a credit or refund application, as provided in section 1139(b), applies to the purchaser in a bulk sale transaction.

Section 6 amends section 1146(a), which relates to the secrecy provisions of the Tax Law, by granting a purchaser in a bulk sale transaction access to that portion of a return or report (filed in connection with the tax due) which contains information pertinent to the determination of the purchaser's tax liability, but no more than is necessary for this purpose.