

STATE OF NEW YORK

5667

2017-2018 Regular Sessions

IN SENATE

April 24, 2017

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to imposing an additional real estate transfer tax within the county of Cortland

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The tax law is amended by adding a new article 31-H to read
2 as follows:

ARTICLE 31-H

TAX ON REAL ESTATE TRANSFERS IN THE COUNTY OF CORTLAND

Section 1449-aaaaaa. Definitions.

1449-bbbbbbb. Imposition of tax.

1449-ccccccc. Payment of tax.

1449-dddddd. Liability for tax.

1449-eeeeeee. Exemptions.

1449-ffffff. Credit.

1449-gggggg. Cooperative housing corporation transfers.

1449-hhhhhh. Designation of agents.

1449-iiiiii. Liability of recording officer.

1449-jjjjjj. Refunds.

1449-kkkkkk. Deposit and disposition of revenue.

1449-llllll. Judicial review.

1449-mmmmmm. Apportionment.

1449-nnnnnn. Miscellaneous.

1449-oooooo. Returns to be secret.

§ 1449-aaaaaa. Definitions. When used in this article, unless otherwise expressly stated:

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD10924-01-7

1 referee or any other person acting in a fiduciary or representative
2 capacity, whether appointed by a court or otherwise, any combination of
3 individuals, and any other form of unincorporated enterprise owned or
4 conducted by two or more persons.

5 2. "Controlling interest" means (a) in the case of a corporation,
6 either fifty percent or more of the total combined voting power of all
7 classes of stock of such corporation, or fifty percent or more of the
8 capital, profits or beneficial interest in such voting stock of such
9 corporation, and (b) in the case of a partnership, association, trust or
10 other entity, fifty percent or more of the capital, profits or benefi-
11 cial interest in such partnership, association, trust or other entity.

12 3. "Real property" means every estate or right, legal or equitable,
13 present or future, vested or contingent, in lands, tenements or heredi-
14 taments, including buildings, structures and other improvements thereon,
15 which are located in whole or in part within the county of Cortland. It
16 shall not include rights to sepulture.

17 4. "Consideration" means the price actually paid or required to be
18 paid for the real property or interest therein, including payment for an
19 option or contract to purchase real property, whether or not expressed
20 in the deed and whether paid or required to be paid by money, property,
21 or any other thing of value. It shall include the cancellation or
22 discharge of an indebtedness or obligation. It shall also include the
23 amount of any mortgage, purchase money mortgage, lien or other encum-
24 brance, whether or not the underlying indebtedness is assumed or taken
25 subject to.

26 (a) In the case of a creation of a leasehold interest or the granting
27 of an option with use and occupancy of real property, consideration
28 shall include, but not be limited to, the value of the rental and other
29 payments attributable to the use and occupancy of the real property or
30 interest therein, the value of any amount paid for an option to purchase
31 or renew and the value of rental or other payments attributable to the
32 exercise of any option to renew.

33 (b) In the case of a creation of a subleasehold interest, consider-
34 ation shall include, but not be limited to, the value of the sublease
35 rental payments attributable to the use and occupancy of the real prop-
36 erty, the value of any amount paid for an option to renew and the value
37 of rental or other payments attributable to the exercise of any option
38 to renew less the value of the remaining prime lease rental payments
39 required to be made.

40 (c) In the case of a controlling interest in any entity that owns real
41 property, consideration shall mean the fair market value of the real
42 property or interest therein, apportioned based on the percentage of the
43 ownership interest transferred or acquired in the entity.

44 (d) In the case of an assignment or surrender of a leasehold interest
45 or the assignment or surrender of an option or contract to purchase real
46 property, consideration shall not include the value of the remaining
47 rental payments required to be made pursuant to the terms of such lease
48 or the amount to be paid for the real property pursuant to the terms of
49 the option or contract being assigned or surrendered.

50 (e) In the case of (1) the original conveyance of shares of stock in a
51 cooperative housing corporation in connection with the grant or transfer
52 of a proprietary leasehold by the cooperative corporation or cooperative
53 plan sponsor and (2) the subsequent conveyance by the owner thereof of
54 such stock in a cooperative housing corporation in connection with the
55 grant or transfer of a proprietary leasehold for a cooperative unit
56 other than an individual residential unit, consideration shall include a

proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

9. "Recording officer" means the county clerk of the county of Cortland.

10. "Treasurer" means the commissioner of finance of the county of Cortland.

§ 1449-bbbbb. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the county of Cortland, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of two dollars for each five hundred dollars or fractional part thereof. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such legislative body, which is not less than sixty days after the enactment

1 of such local laws, but shall not apply to conveyances made on or after
2 such date pursuant to binding written contracts entered into prior to
3 such date, provided that the date of execution of such contract is
4 confirmed by independent evidence such as the recording of the contract,
5 payment of a deposit or other facts and circumstances as determined by
6 the treasurer.

7 § 1449-cccccc. Payment of tax. 1. The real estate transfer tax imposed
8 pursuant to this article shall be paid to the treasurer or the recording
9 officer acting as the agent of the treasurer upon designation as such
10 agent by the treasurer. Such tax shall be paid at the same time as the
11 real estate transfer tax imposed by article thirty-one of this chapter
12 is required to be paid. Such treasurer or recording officer shall
13 endorse upon each deed or instrument effecting a conveyance a receipt
14 for the amount of the tax so paid.

15 2. A return shall be required to be filed with such treasurer or
16 recording officer for purposes of the real estate transfer tax imposed
17 pursuant to this article at the same time as a return is required to be
18 filed for purposes of the real estate transfer tax imposed by article
19 thirty-one of this chapter. The return, for purposes of the real estate
20 transfer tax imposed pursuant to this article, shall be a photocopy or
21 carbon copy of the real estate transfer tax return required to be filed
22 pursuant to section fourteen hundred nine of this chapter. However, when
23 an apportionment is required to be made pursuant to section fourteen
24 hundred forty-nine-mmmmm of this article, a supplemental form shall
25 also be required to be filed. The real estate transfer tax returns and
26 supplemental forms required to be filed pursuant to this section shall
27 be preserved for three years and thereafter until such treasurer or
28 recording officer orders them to be destroyed.

29 3. The recording officer shall not record an instrument effecting a
30 conveyance unless the return required by this section has been filed and
31 the tax imposed pursuant to this article shall have been paid as
32 provided in this section.

33 § 1449-ddddddd. Liability for tax. 1. The real estate transfer tax
34 shall be paid by the grantor. If the grantor has failed to pay the tax
35 imposed pursuant to this article or if the grantor is exempt from such
36 tax, the grantee shall have the duty to pay the tax. Where the grantee
37 has the duty to pay the tax because the grantor has failed to pay, such
38 tax shall be the joint and several liability of the grantor and the
39 grantee.

40 2. For the purpose of the proper administration of this article and to
41 prevent evasion of the tax hereby authorized, it shall be presumed that
42 all conveyances are taxable. Where the consideration includes property
43 other than money, it shall be presumed that the consideration is the
44 fair market value of the real property or interest therein. These
45 presumptions shall prevail until the contrary is proven, and the burden
46 of proving the contrary shall be on the person liable for payment of the
47 tax.

48 § 1449-eeeeeee. Exemptions. 1. The following shall be exempt from
49 payment of the real estate transfer tax:

50 (a) The state of New York, or any of its agencies, instrumentalities,
51 political subdivisions, or public corporations (including a public
52 corporation created pursuant to agreement or compact with another state
53 or the Dominion of Canada).

54 (b) The United Nations, the United States of America and any of its
55 agencies and instrumentalities.

1 The exemption of such governmental bodies or persons shall not, howev-
2 er, relieve a grantee from them of liability for the tax.

3 2. The tax shall not apply to any of the following conveyances:

4 (a) Conveyances to the United Nations, the United States of America,
5 the state of New York, or any of their instrumentalities, agencies or
6 political subdivisions (or any public corporation, including a public
7 corporation created pursuant to agreement or compact with another state
8 or the Dominion of Canada);

9 (b) Conveyances which are or were used to secure a debt or other obli-
10 gation;

11 (c) Conveyances which, without additional consideration, confirm,
12 correct, modify or supplement a prior conveyance;

13 (d) Conveyances of real property without consideration and otherwise
14 than in connection with a sale, including conveyances conveying realty
15 as bona fide gifts;

16 (e) Conveyances given in connection with a tax sale;

17 (f) Conveyances to effectuate a mere change of identity or form of
18 ownership or organization where there is no change in beneficial owner-
19 ship, other than conveyances to a cooperative housing corporation of the
20 real property comprising the cooperative dwelling or dwellings;

21 (g) Conveyances which consist of a deed of partition;

22 (h) Conveyances given pursuant to the federal bankruptcy act;

23 (i) Conveyances of real property which consist of the execution of a
24 contract to sell real property without the use or occupancy of such
25 property or the granting of an option to purchase real property without
26 the use or occupancy of such property; and

27 (j) Conveyances of an option or contract to purchase real property
28 with the use or occupancy of such property where the consideration is
29 less than two hundred thousand dollars and such property was used solely
30 by the grantor as his personal residence and consists of a one, two or
31 three-family house, an individual residential condominium unit or the
32 sale of stock in a cooperative housing corporation in connection with
33 the grant or transfer of a proprietary leasehold covering an individual
34 residential cooperative unit.

35 § 1449-fffff. Credit. A grantor shall be allowed a credit against the
36 tax due on a conveyance of real property to the extent tax was paid by
37 such grantor on a prior creation of a leasehold of all or a portion of
38 the same real property or on the granting of an option or contract to
39 purchase all or a portion of the same real property, by such grantor.
40 Such credit shall be computed by multiplying the tax paid on the
41 creation of the leasehold or on the granting of the option or contract
42 by a fraction, the numerator of which is the value of the consideration
43 used to compute such tax paid which is not yet due to such grantor on
44 the date of the subsequent conveyance (and which such grantor will not
45 be entitled to receive after such date), and the denominator of which is
46 the total value of the consideration used to compute such tax paid.

47 § 1449-gggggg. Cooperative housing corporation transfers. 1. Notwith-
48 standing the definition of "controlling interest" contained in subdivi-
49 sion two of section fourteen hundred forty-nine-aaaaaa of this article
50 or anything to the contrary contained in subdivision five of section
51 fourteen hundred forty-nine-aaaaaa of this article, the tax imposed
52 pursuant to this article shall apply to (a) the original conveyance of
53 shares of stock in a cooperative housing corporation in connection with
54 the grant or transfer of a proprietary leasehold by the cooperative
55 corporation or cooperative plan sponsor, and (b) the subsequent convey-
56 ance of such stock in a cooperative housing corporation in connection

1 with the grant or transfer of a proprietary leasehold by the owner ther-
2 eof. With respect to any such subsequent conveyance where the property
3 is an individual residential unit, the consideration for the interest
4 conveyed shall exclude the value of any liens on certificates of stock
5 or other evidences of an ownership interest in and a proprietary lease
6 from a corporation or partnership formed for the purpose of cooperative
7 ownership of residential interest in real estate remaining thereon at
8 the time of conveyance. In determining the tax on a conveyance described
9 in paragraph (a) of this subdivision, a credit shall be allowed for a
10 proportionate part of the amount of any tax paid upon the conveyance to
11 the cooperative housing corporation of the real property comprising the
12 cooperative dwelling or dwellings to the extent that such conveyance
13 effectuated a mere change of identity or form of ownership of such prop-
14 erty and not a change in the beneficial ownership of such property. The
15 amount of the credit shall be determined by multiplying the amount of
16 tax paid upon the conveyance to the cooperative housing corporation by a
17 percentage representing the extent to which such conveyance effectuated
18 a mere change of identity or form of ownership and not a change in the
19 beneficial ownership of such property, and then multiplying the result-
20 ing product by a fraction, the numerator of which shall be the number of
21 shares of stock conveyed in a transaction described in paragraph (a) of
22 this subdivision and the denominator of which shall be the total number
23 of shares of stock of the cooperative housing corporation (including any
24 stock held by the corporation). In no event, however, shall such credit
25 reduce the tax, on a conveyance described in paragraph (a) of this
26 subdivision, below zero, nor shall any such credit be allowed for a tax
27 paid more than twenty-four months prior to the date on which occurs the
28 first in a series of conveyances of shares of stock in an offering of
29 cooperative housing corporation shares described in paragraph (a) of
30 this subdivision.

31 2. Every cooperative housing corporation shall be required to file an
32 information return with the treasurer by July fifteenth of each year
33 covering the preceding period of January first through June thirtieth
34 and by January fifteenth of each year covering the preceding period of
35 July first through December thirty-first. The return shall contain such
36 information regarding the conveyance of shares of stock in the cooper-
37 ative housing corporation as the treasurer may deem necessary, includ-
38 ing, but not limited to, the names, addresses and employee identifica-
39 tion numbers or social security numbers of the grantor and the grantee,
40 the number of shares conveyed, the date of the conveyance and the
41 consideration paid for such conveyance.

42 § 1449-hhhhhh. Designation of agents. The treasurer is authorized to
43 designate the recording officer to act as its agent for purposes of
44 collecting the tax authorized by this article. The treasurer shall
45 provide for the manner in which such person may be designated as its
46 agent subject to such terms and conditions as it shall prescribe. The
47 real estate transfer tax shall be paid to such agent as provided in
48 section fourteen hundred forty-nine-cccccc of this article.

49 § 1449-iiiii. Liability of recording officer. A recording officer
50 shall not be liable for any inaccuracy in the amount of tax imposed
51 pursuant to this article that he shall collect so long as he shall
52 compute and collect such tax on the amount of consideration or the value
53 of the interest conveyed as such amounts are provided to him or her by
54 the person paying the tax.

55 § 1449-jjjjjj. Refunds. Whenever the treasurer shall determine that
56 any moneys received under the provisions of the local law enacted pursu-

1 ant to this article were paid in error, it may cause such moneys to be
2 refunded pursuant to such rules and regulations it may prescribe,
3 provided any application for such refund is filed with the treasurer
4 within two years from the date the erroneous payment was made.

5 § 1449-kkkkkk. Deposit and disposition of revenue. All taxes collected
6 or received by the treasurer or his duly authorized agent under the
7 provisions of the local law enacted pursuant to this article shall be
8 deposited in accordance with provisions of a local law adopted by the
9 legislative body of the county of Cortland which local law shall desig-
10 nate proper officers to be responsible for deposit of revenue collected
11 or received under this article. Such local law shall also provide that
12 any officer designated to collect, receive, or deposit such revenue
13 shall maintain a system of accounts showing the revenue collected or
14 received from the tax imposed pursuant to this article. Such local law
15 shall also provide that all revenue derived from the imposition of such
16 tax shall be deposited into the general fund of the county of Cortland.

17 § 1449-llllll. Judicial review. 1. Any final determination of the
18 amount of any tax payable under section fourteen hundred forty-nine-
19 cccccc of this article shall be reviewable for error, illegality or
20 unconstitutionality or any other reason whatsoever by a proceeding under
21 article seventy-eight of the civil practice law and rules if application
22 therefor is made to the supreme court within four months after the
23 giving of the notice of such final determination, provided, however,
24 that any such proceeding under article seventy-eight of the civil prac-
25 tice law and rules shall not be instituted unless (a) the amount of any
26 tax sought to be reviewed, with such interest and penalties thereon as
27 may be provided for by local law shall be first deposited and there is
28 filed an undertaking, issued by a surety company authorized to transact
29 business in this state and approved by the superintendent of financial
30 services of this state as to solvency and responsibility, in such amount
31 as a justice of the supreme court shall approve to the effect that if
32 such proceeding be dismissed or the tax confirmed the petitioner will
33 pay all costs and charges which may accrue in the prosecution of such
34 proceeding or (b) at the option of the petitioner, such undertaking may
35 be in a sum sufficient to cover the taxes, interest and penalties stated
36 in such determination, plus the costs and charges which may accrue
37 against it in the prosecution of the proceeding, in which event the
38 petitioner shall not be required to pay such taxes, interest or penal-
39 ties as a condition precedent to the application.

40 2. Where any tax imposed hereunder shall have been erroneously, ille-
41 gally or unconstitutionally assessed or collected and application for
42 the refund or revision thereof duly made to the proper fiscal officer or
43 officers, and such officer or officers shall have made a determination
44 denying such refund or revision, such determination shall be reviewable
45 by a proceeding under article seventy-eight of the civil practice law
46 and rules; provided, however, that (a) such proceeding is instituted
47 within four months after the giving of the notice of such denial, (b) a
48 final determination of tax due was not previously made, and (c) an
49 undertaking is filed with the proper fiscal officer or officers in such
50 amount and with such sureties as a justice of the supreme court shall
51 approve to the effect that if such proceeding be dismissed or the tax
52 confirmed, the petitioner will pay all costs and charges which may
53 accrue in the prosecution of such proceeding.

54 § 1449-mmmmmm. Apportionment. The local law adopted by the legislative
55 body of the county of Cortland shall provide for a method of apportion-

1 ment for determining the amount of tax due whenever the real property or
2 interest therein is situated within and without the county of Cortland.

3 § 1449-nnnnnn. Miscellaneous. The local law adopted by the legislative
4 body of the county of Cortland may contain such other provisions as such
5 legislative body deems necessary for the proper administration of the
6 tax imposed pursuant to this article, including provisions concerning
7 the determination of tax, the imposition of interest on underpayments
8 and overpayments and the imposition of civil penalties. Such provisions
9 shall be identical to the corresponding provisions of the real estate
10 transfer tax imposed by article thirty-one of this chapter, so far as
11 such provisions can be made applicable to the tax imposed pursuant to
12 this article.

13 § 1449-oooooo. Returns to be secret. 1. Except in accordance with
14 proper judicial order or as otherwise provided by law, it shall be
15 unlawful for the treasurer or any officer or employee of the county of
16 Cortland or any person engaged or retained by such county on an inde-
17 pendent contract basis to divulge or make known in any manner the
18 particulars set forth or disclosed in any return required under a local
19 law enacted pursuant to this article. However, that nothing in this
20 section shall prohibit the recording officer from making a notation on
21 an instrument effecting a conveyance indicating the amount of tax paid.
22 No recorded instrument effecting a conveyance shall be considered a
23 return for purposes of this section.

24 2. The officers charged with the custody of such returns shall not be
25 required to produce any of them or evidence of anything contained in
26 them in any action or proceeding in any court, except on behalf of the
27 county in any action or proceeding involving the collection of a tax due
28 under a local law enacted pursuant to this article to which such county
29 or an officer or employee of such county is a party or a claimant, or on
30 behalf of any party to any action or proceeding under the provisions of
31 a local law enacted pursuant to this article when the returns or facts
32 shown thereby are directly involved in such action or proceeding, in any
33 of which events the court may require the production of, and may admit
34 in evidence, so much of said returns or of the facts shown thereby, as
35 are pertinent to the action or proceeding and no more.

36 3. Nothing herein shall be construed to prohibit the delivery to a
37 grantor or grantee of an instrument effecting a conveyance or the duly
38 authorized representative of a grantor or grantee of a certified copy of
39 any return filed in connection with such instrument or to prohibit the
40 publication of statistics so classified as to prevent the identification
41 of particular returns and the items thereof, or the inspection by the
42 legal representatives of such county of the return of any taxpayer who
43 shall bring action to set aside or review the tax based thereon.

44 4. Any officer or employee of such county who willfully violates the
45 provisions of this section shall be dismissed from office and be incapa-
46 ble of holding any public office in this state for a period of five
47 years thereafter.

48 § 2. This act shall take effect immediately.