

STATE OF NEW YORK

7496

2023-2024 Regular Sessions

IN ASSEMBLY

May 25, 2023

Introduced by M. of A. BARRETT, THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to authorizing cities and towns, except a city with a population of one million or more, to establish community housing funds; and to amend the tax law, in relation to authorizing cities and towns, except a city with a population of one million or more, to impose a real estate transfer tax with revenues therefrom to be deposited in such funds

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

1 Section 1. The general municipal law is amended by adding a new
2 section 6-w to read as follows:

3 § 6-w. Community housing fund. 1. Definitions. As used in this
4 section, the following words and terms shall have the following mean-
5 ings:

6 (a) "City or town" means a city, except a city with a population of
7 one million or more, or a town.

8 (b) "Community housing" means a primary residential property for an
9 eligible individual. The governing body shall establish, by local law,
10 purchase price limit for community housing, provided that limit shall
11 not exceed one hundred fifty percent of the purchase price limits estab-
12 lished by the state of New York mortgage agency low interest rate loan
13 program in non-target categories for the county in effect on the
14 contract date for the sale of such property. Community housing shall
15 include apartments that are accessory to a legally established residen-
16 tial or commercial use.

17 (c) "Board" means the advisory board created pursuant to subdivision
18 six of this section.

19 (d) "Fund" means the community housing fund authorized pursuant to
20 subdivision two of this section.

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

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1 (e) "First-time homebuyer" means an eligible individual who has not
2 owned a primary residential property and is not married to a person who
3 has owned a residential property during the three-year period prior to
4 his or her purchase of the primary residential property, and who does
5 not own a vacation or investment home.

6 (f) "Primary residential property" means any one or two family house,
7 townhouse, or condominium, including accessory apartments.

8 (g) "Eligible individual" shall be defined by the governing body, by
9 local law, provided that the definition of household income in such
10 local law shall not exceed one hundred percent of the income limits as
11 established by the state of New York mortgage agency low interest rate
12 loan program in non-target categories for the county in effect on the
13 contract date for the sale of such property.

14 (h) "Governing body" means a city council or town board.

15 2. Fund authorized. Cities and towns are authorized to establish, by
16 local law, a community housing fund, pursuant to the provisions of this
17 section. Deposits into the fund may include revenues of the local
18 government from whatever source, including but not limited to: (a) all
19 revenues from the supplemental real estate transfer tax authorized by
20 subdivision two of section one thousand five hundred seventy-six of the
21 tax law; (b) all proceeds from any indebtedness or obligations issued
22 pursuant to the local finance law for community housing opportunity
23 purposes as authorized in subdivision three of this section; (c) general
24 fund balances or surpluses; (d) any proceeds received by the local
25 government from the sale or rental of community housing produced from
26 revenues of the fund; (e) the repayment of any loans issued from
27 proceeds of the fund; (f) any gifts of interests in land or funds; and
28 (g) any state or federal grants received by the city or town for provid-
29 ing affordable homes.

30 3. Purposes of the fund. The proceeds of the fund established pursuant
31 to subdivision two of this section shall be utilized for the following
32 purposes:

33 (a) the provision of financial assistance to first-time homebuyers who
34 are residents of the city or town for the purchase of a first home. Such
35 financial assistance may be in the form of a grant or a loan and such
36 program shall meet the following criteria:

37 (1) A city or town may provide financial assistance for the purchase
38 of a first home to a first-time homebuyer who is a resident of the city
39 or town or who is employed in the city or town. A resident of the city
40 or town shall include a person who is currently a resident of the town
41 or a non-resident who has been a resident within the past five years.

42 (2) Such financial assistance shall not exceed fifty percent of the
43 purchase price of the home.

44 (3) If such financial assistance is in the form of a loan, such loan
45 shall be repayable to the city or town pursuant to the terms agreed to
46 between the recipient and the city or town, provided that any loan shall
47 be fully repaid by the recipient upon the resale of the home.

48 (4) For the purposes of calculating city or town real property tax
49 liability for such property, only, the dollar amount of any financial
50 assistance for the purchase of a first home made by the city or town
51 pursuant to this section shall be subtracted from the full equalized
52 assessed value of such property.

53 (5) All revenues received by the city or town from the repayment of a
54 loan shall be deposited in the fund.

1 (6) A city or town may provide financial assistance for community
2 housing in conjunction with a public/private partnership for employer
3 assisted housing.

4 (b) the actual production of community housing for sale to eligible
5 individuals by the city or town;

6 (c) the actual production of community housing for sale to eligible
7 individuals in conjunction with a public/private partnership, where the
8 private partner agrees to comply with the profit guidelines of the New
9 York state affordable housing corporation and the provisions of this
10 section;

11 (d) the actual production and maintenance of community housing,
12 including accessory apartments for rental to eligible individuals either
13 by the city or town or its housing authority; or in conjunction with a
14 public/private partnership, where the private partner agrees to comply
15 with the profit guidelines of the New York state affordable housing
16 corporation and the provisions of this section;

17 (e) the rehabilitation of existing buildings and structures in the
18 city or town for the purpose of conversion to community housing for sale
19 or rental to eligible individuals;

20 (f) the acquisition of interests in real property in existing housing
21 stock, which will result in the production of community housing for sale
22 or rental to eligible individuals; and

23 (g) the provision of housing counseling services by not-for-profit
24 corporations who are authorized by the United States department of hous-
25 ing and urban development to provide such services.

26 4. Fund management. Interest accrued by monies deposited into the fund
27 shall be credited to the fund. In no event shall monies deposited into
28 the fund be transferred to any other account. Nothing contained in this
29 section shall be construed to prevent the financing in whole or in part,
30 pursuant to the local finance law, of any purpose authorized pursuant to
31 this section. Monies from the fund may be utilized to repay indebtedness
32 or obligations incurred pursuant to the local finance law consistent
33 with effectuating the purposes of this section.

34 5. Eligible expenses. For the purposes of this section, eligible
35 expenses relating to the production of community housing and the reha-
36 bilitation of existing buildings and structures under the fund shall
37 include but not be limited to land acquisition, planning, engineering,
38 construction costs, and other hard and soft costs directly related to
39 the construction, rehabilitation, purchase or rental of housing pursuant
40 to this section. All revenues received by the city or town from the sale
41 or rental of community housing, or the repayment of loans shall be
42 deposited in the fund.

43 6. Advisory board established. The governing body of any city or town
44 which has established a community housing fund pursuant to this section
45 shall create an advisory board to review and make recommendations
46 regarding the town's community housing plan required by subdivision
47 seven of this section. Such board shall consist of not less than seven
48 nor more than fifteen legal residents of the municipality who shall
49 serve without compensation. No member of the local legislative body
50 shall serve on the board. The board shall include a representative of:
51 (a) the construction industry; (b) the real estate industry; (c) the
52 banking industry; and three representatives of local housing advocacy or
53 human services organizations. Where a village or villages, located with-
54 in a town, elect to participate in the fund, as provided in subdivision
55 eight of this section, the board shall include at least one resident of
56 a participating village or villages. Where an Indian nation is located

1 within the boundaries of a city or town, the board shall include at
2 least one member from such nation. The board shall act in an advisory
3 capacity to the governing body.

4 7. Adoption of housing plan. (a) Before a city or town may expend any
5 funds pursuant to this section, the governing body shall first adopt a
6 housing plan which establishes an implementation plan for the provision
7 of community housing opportunities by the fund. Said plan shall be
8 adopted by local law. Such plan shall adhere to the following princi-
9 ples:

10 (1) Public investment. To account for and minimize social, economic,
11 and environmental costs of new development, including infrastructure
12 costs such as transportation, sewers, and wastewater treatment, water,
13 schools, recreation, and loss of open space and agricultural land;

14 (2) Development. To encourage development in areas where transporta-
15 tion, water, and sewage infrastructure are available or practical;

16 (3) Conservation. To protect, preserve, and enhance the state's
17 resources, including agricultural land, forests, surface waters, ground-
18 water, recreation and open space, scenic areas, and significant historic
19 and archeological sites;

20 (4) Coordination. To promote coordination of state and local govern-
21 ment decisions and cooperation among communities to work toward the most
22 efficient, planned and cost-effective delivery of government services
23 by, among other means, facilitating cooperative agreements among adja-
24 cent communities, and to coordinate planning to ensure compatibility of
25 one's community development with development of neighboring communities;

26 (5) Community design. To strengthen communities through development
27 and redevelopment strategies that include integration of all income and
28 age groups, mixed land uses, and compact development, traditional neigh-
29 borhood development, planned unit development, open space districts,
30 downtown revitalization, brownfield redevelopment, enhanced beauty in
31 public spaces, and diverse and community housing in close proximity to
32 places of employment, recreation, and commercial development;

33 (6) Transportation. To provide transportation choices, including
34 increasing public transit and alternative modes of transportation, in
35 order to reduce automobile dependency, traffic congestion, and automo-
36 bile pollution;

37 (7) Consistency. To ensure predictability in building and land use
38 codes; and

39 (8) Community collaboration. To provide for and encourage local
40 governments to develop, through a collaborative community-based effort,
41 plans that include long term land use and permit predictability and
42 coordination, efficient decision making and planning implementation.

43 (b) Such plan may include the establishment of a map or maps that
44 delineate the housing implementation recommendations proposed by the
45 town.

46 (c) Such plan shall be updated at least once every five years.

47 (d) The housing plan shall be an element of the city or town compre-
48 hensive plan.

49 (e) Such plan shall ensure that all community housing, created pursu-
50 ant to this section, remains affordable. Subsequent purchasers of such
51 community housing, at the time of purchase, shall be eligible individ-
52 uals as defined herein.

53 (f) Such plan shall provide for the equitable distribution of communi-
54 ty housing opportunities among all the communities of the town. The plan
55 shall ensure that no community has an undue concentration of community
56 housing opportunities that would substantially alter the character of

1 the community. In determining equitable distribution of community hous-
2 ing opportunities, existing community housing opportunities in a commu-
3 nity shall be considered.

4 8. Village participation. (a) The participation of any village, where
5 there is a town community housing fund, in the production of community
6 housing authorized by this section, shall be at the option of the
7 village. In order to participate, a village shall pass a resolution
8 opting into the program and shall submit said resolution to the town
9 board.

10 (b) Where a village opts to participate pursuant to this subdivision,
11 an intergovernmental agreement shall be executed pursuant to article
12 five-G of the general municipal law or other applicable legal authority,
13 in order to establish the rights and responsibilities of each government
14 regarding community housing opportunities.

15 (c) Regardless of whether a village participates in the program
16 authorized by this section, properties in the village shall be subject
17 to the supplemental real estate transfer tax authorized by section four-
18 teen hundred forty-nine-bb of the tax law.

19 § 2. The tax law is amended by adding a new article 33-C to read as
20 follows:

21 ARTICLE 33-C

22 TAX ON REAL ESTATE TRANSFERS IN CITIES OR TOWNS

23 Section 1575. Definitions.

24 1576. Imposition of tax.

25 1577. Payment of tax.

26 1578. Liability for tax.

27 1579. Exemptions.

28 1580. Credit.

29 1581. Cooperative housing corporation transfers.

30 1582. Designation of agents.

31 1583. Liability of recording officer.

32 1584. Deposit and disposition of revenue.

33 1585. Judicial review.

34 1586. Apportionment.

35 1587. Miscellaneous.

36 1588. Returns to be secret.

37 § 1575. Definitions. When used in this article, unless otherwise
38 expressly stated, the following words and terms shall have the following
39 meanings:

40 1. "Person" means an individual, partnership, limited liability compa-
41 ny, society, association, joint stock company, corporation, estate,
42 receiver, trustee, assignee, referee or any other person acting in a
43 fiduciary or representative capacity, whether appointed by a court or
44 otherwise, any combination of individuals, and any other form of unin-
45 corporated enterprise owned or conducted by two or more persons.

46 2. "Controlling interest" means (a) in the case of a corporation,
47 either fifty percent or more of the total combined voting power of all
48 classes of stock of such corporation, or fifty percent or more of the
49 capital, profits or beneficial interest in such voting stock of such
50 corporation, and (b) in the case of a partnership, association, trust or
51 other entity, fifty percent or more of the capital, profits or benefi-
52 cial interest in such partnership, association, trust or other entity.

53 3. "Real property" means every estate or right, legal or equitable,
54 present or future, vested or contingent, in lands, tenements or heredi-
55 taments, including buildings, structures and other improvements thereon,

1 which are located in whole or in part within any city or town. It shall
2 not include rights to sepulture.

3 4. "Consideration" means the price actually paid or required to be
4 paid for the real property or interest therein, including payment for an
5 option or contract to purchase real property, whether or not expressed
6 in the deed and whether paid or required to be paid by money, property,
7 or any other thing of value. It shall include the cancellation or
8 discharge of an indebtedness or obligation. It shall also include the
9 amount of any mortgage, purchase money mortgage, lien or other encum-
10 brance, whether or not the underlying indebtedness is assumed or taken
11 subject to.

12 (a) In the case of a creation of a leasehold interest or the granting
13 of an option with use and occupancy of real property, consideration
14 shall include, but not be limited to, the value of the rental and other
15 payments attributable to the use and occupancy of the real property or
16 interest therein, the value of any amount paid for an option to purchase
17 or renew and the value of rental or other payments attributable to the
18 exercise of any option to renew.

19 (b) In the case of a creation of a subleasehold interest, consider-
20 ation shall include, but not be limited to, the value of the sublease
21 rental payments attributable to the use and occupancy of the real prop-
22 erty, the value of any amount paid for an option to renew and the value
23 of rental or other payments attributable to the exercise of any option
24 to renew less the value of the remaining prime lease rental payments
25 required to be made.

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

30 (d) In the case of an assignment or surrender of a leasehold interest
31 or the assignment or surrender of an option or contract to purchase real
32 property, consideration shall not include the value of the remaining
33 rental payments required to be made pursuant to the terms of such lease
34 or the amount to be paid for the real property pursuant to the terms of
35 the option or contract being assigned or surrendered.

36 (e) In the case of (1) the original conveyance of shares of stock in a
37 cooperative housing corporation in connection with the grant or transfer
38 of a proprietary leasehold by the cooperative corporation or cooperative
39 plan sponsor, and (2) the subsequent conveyance by the owner thereof of
40 such stock in a cooperative housing corporation in connection with the
41 grant or transfer of a proprietary leasehold for a cooperative unit
42 other than an individual residential unit, consideration shall include a
43 proportionate share of the unpaid principal of any mortgage on the real
44 property of the cooperative housing corporation comprising the cooper-
45 ative dwelling or dwellings. Such share shall be determined by multiply-
46 ing the total unpaid principal of the mortgage by a fraction, the numer-
47 ator of which shall be the number of shares of stock being conveyed in
48 the cooperative housing corporation in connection with the grant or
49 transfer of a proprietary leasehold and the denominator of which shall
50 be the total number of shares of stock in the cooperative housing corpo-
51 ration.

52 5. "Conveyance" means the transfer or transfers of any interest in
53 real property by any method, including but not limited to, sale,
54 exchange, assignment, surrender, mortgage foreclosure, transfer in lieu
55 of foreclosure, option, trust indenture, taking by eminent domain,
56 conveyance upon liquidation or by a receiver, or transfer or acquisition

1 of a controlling interest in any entity with an interest in real proper-
2 ty. Transfer of an interest in real property shall include the creation
3 of a leasehold or sublease only where (a) the sum of the term of the
4 lease or sublease and any options for renewal exceeds forty-nine years,
5 (b) substantial capital improvements are or may be made by or for the
6 benefit of the lessee or sublessee, and (c) the lease or sublease is for
7 substantially all of the premises constituting the real property.
8 Notwithstanding the foregoing, conveyance of real property shall not
9 include a conveyance made pursuant to devise, bequest or inheritance;
10 the creation, modification, extension, spreading, severance, consol-
11 idation, assignment, transfer, release or satisfaction of a mortgage; a
12 mortgage subordination agreement, a mortgage severance agreement, an
13 instrument given to perfect or correct a recorded mortgage; or a release
14 of lien of tax pursuant to this chapter or the internal revenue code.

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

22 7. "Grantor" means the person making the conveyance of real property
23 or interest therein. Where the conveyance consists of a transfer or an
24 acquisition of a controlling interest in an entity with an interest in
25 real property, "grantor" means the entity with an interest in real prop-
26 erty or a shareholder or partner transferring stock or partnership
27 interest, respectively.

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

30 9. "Community housing fund" means a community fund created pursuant to
31 section six-w of the general municipal law.

32 10. "Recording officer" means the county clerk.

33 11. "City or town" means a city or town, except a city of one million
34 or more.

35 12. "Treasurer" means the county treasurer.

36 § 1576. Imposition of tax. 1. Notwithstanding any other provisions of
37 law to the contrary, any city or town, acting through its local govern-
38 ing body, is hereby authorized and empowered to adopt a local law impos-
39 ing in such city or town a tax on each conveyance of real property or
40 interest therein where the consideration exceeds five hundred dollars,
41 at a rate of up to two percent of the consideration for such conveyance.
42 Provided, however, any such local law imposing, repealing or reimposing
43 such tax shall be subject to a mandatory referendum pursuant to section
44 twenty-three of the municipal home rule law. Such local law shall only
45 be submitted for the approval of the electors at a general election.
46 Notwithstanding the foregoing, prior to adoption of such local law, the
47 city or town must establish a community preservation fund. Revenues
48 from such tax shall be deposited in such fund and may be used solely for
49 the purposes of such fund. Such local law shall apply to any conveyance
50 occurring on or after the first day of a month to be designated by such
51 local governing body, which is not less than sixty days after the enact-
52 ment of such local law, but shall not apply to conveyances made on or
53 after such date pursuant to binding written contracts entered into prior
54 to such date, provided that the date of execution of such contract is
55 confirmed by independent evidence such as the recording of the contract,

1 payment of a deposit or other facts and circumstances as determined by
2 the treasurer.

3 2. Notwithstanding any other provisions of law to the contrary, in
4 addition to the tax authorized by subdivision one of this section, any
5 city or town, acting through its governing body, is hereby authorized
6 and empowered to adopt a local law imposing in such city or town a
7 supplemental tax on each conveyance of real property or interest therein
8 where the consideration exceeds five hundred dollars, at the rate of up
9 to one half of one percent of the consideration for such conveyance.
10 Provided, however, any such local law imposing, repealing or re-imposing
11 such supplemental tax shall be subject to a mandatory referendum pursu-
12 ant to section twenty-three of the municipal home rule law. Notwith-
13 standing the foregoing, prior to adoption of such local law, the town
14 must establish a community housing fund pursuant to section six-w of the
15 general municipal law. Revenues from such supplemental tax shall be
16 deposited in such community housing fund and may be used solely for the
17 purposes of such community housing fund. Such local law shall apply to
18 any conveyance occurring on or after the first day of a month to be
19 designated by the governing board, which is not less than sixty days
20 after the enactment of such local law, but shall not apply to conveyanc-
21 es made on or after such date pursuant to binding written contracts
22 entered into prior to such date, provided that the date of execution of
23 such contract is confirmed by independent evidence such as the recording
24 of the contract, payment of a deposit or other facts and circumstances
25 as determined by the treasurer. Any tax imposed pursuant to this subdivi-
26 vision shall be administered and collected in a like manner as the tax
27 imposed by subdivision one of this section.

28 § 1577. Payment of tax. 1. The real estate transfer tax imposed pursu-
29 ant to this article shall be paid to the treasurer or the recording
30 officer acting as the agent of the treasurer upon designation as such
31 agent by the treasurer. Such tax shall be paid at the same time as the
32 real estate transfer tax imposed by article thirty-one of this chapter
33 is required to be paid. Such treasurer or recording officer shall
34 endorse upon each deed or instrument effecting a conveyance a receipt
35 for the amount of the tax so paid.

36 2. A return shall be required to be filed with such treasurer or
37 recording officer for purposes of the real estate transfer tax imposed
38 pursuant to this article at the same time as a return is required to be
39 filed for purposes of the real estate transfer tax imposed by article
40 thirty-one of this chapter. The treasurer shall prescribe the form of
41 return, the information which it shall contain, and the documentation
42 that shall accompany the return. Said form shall be identical to the
43 real estate transfer tax return required to be filed pursuant to section
44 fourteen hundred nine of this chapter, except that the treasurer shall
45 adapt said form to reflect the provisions in this chapter that are
46 inconsistent, different, or in addition to the provisions of article
47 thirty-one of this chapter. The real estate transfer tax returns
48 required to be filed pursuant to this section shall be preserved for
49 three years and thereafter until such treasurer or recording officer
50 orders them to be destroyed.

51 3. The recording officer shall not record an instrument effecting a
52 conveyance unless the return required by this section has been filed and
53 the tax imposed pursuant to this article shall have been paid as
54 required in this section.

55 § 1578. Liability for tax. 1. The real estate transfer tax shall be
56 paid by the grantee. If the grantee has failed to pay the tax imposed

1 pursuant to this article or if the grantee is exempt from such tax, the
2 grantor shall have the duty to pay the tax. Where the grantor has the
3 duty to pay the tax because the grantee has failed to pay the tax, such
4 tax shall be the joint and several liability of the grantee and the
5 grantor.

6 2. For the purpose of the proper administration of this article and to
7 prevent evasion of the tax hereby imposed, it shall be presumed that all
8 conveyances are taxable. Where the consideration includes property other
9 than money, it shall be presumed that the consideration is the fair
10 market value of the real property or interest therein. These presump-
11 tions shall prevail until the contrary is proven, and the burden of
12 proving the contrary shall be on the person liable for payment of the
13 tax.

14 § 1579. Exemptions. 1. The following shall be exempt from the payment
15 of the real estate transfer tax: (a) the state of New York, or any of
16 its agencies, instrumentalities, political subdivisions, or public
17 corporations (including a public corporation created pursuant to an
18 agreement or compact with another state or Dominion of Canada); and

19 (b) the United Nations, the United States of America or any of its
20 agencies or instrumentalities.

21 2. The tax shall not apply to any of the following conveyances: (a)
22 conveyances to the United Nations, the United States of America, the
23 state of New York, or any of their instrumentalities, agencies or poli-
24 tical subdivisions (or any public corporation, including a public corpo-
25 ration created pursuant to agreement or compact with another state or
26 the Dominion of Canada); (b) conveyances which are or were used to
27 secure a debt or other obligation; (c) conveyances which, without addi-
28 tional consideration, confirm, correct, modify or supplement a deed
29 previously recorded; (d) conveyances of real property without consider-
30 ation and otherwise than in connection with a sale, including deeds
31 conveying realty as bona fide gifts; (e) conveyances given in connection
32 with a tax sale; (f) conveyances to effectuate a mere change of identity
33 or form of ownership or organization where there is no change in benefi-
34 cial ownership, other than conveyances to a cooperative housing corpo-
35 ration of the real property comprising the cooperative dwelling or
36 dwellings; (g) conveyances which consist of a deed of partition; (h)
37 conveyances given pursuant to the federal bankruptcy act; (i) conveyanc-
38 es of real property which consist of the execution of a contract to sell
39 real property without the use or occupancy of such property or the
40 granting of an option to purchase real property without the use or occu-
41 pancy of such property; (j) conveyances of real property, where the
42 entire parcel of real property to be conveyed is the subject of one or
43 more of the following development restrictions: (1) agricultural,
44 conservation, scenic, or an open space easement, (2) covenants or
45 restrictions prohibiting development, (3) a purchase of development
46 rights agreement, (4) a transfer of development rights agreement, where
47 the property being conveyed has had its development rights removed, (5)
48 said real property is subject to the development restriction of an agri-
49 cultural district or individual commitment, pursuant to article twenty-
50 five-AA of the agriculture and markets law, (6) real property subject to
51 any locally adopted land preservation agreement, provided said exemption
52 is included in the local law imposing the tax authorized by this arti-
53 cle; (k) conveyances of real property, where the property is viable
54 agricultural land as defined in subdivision seven of section three
55 hundred one of the agriculture and markets law and the entire property
56 to be conveyed is to be made subject to one of the development

1 restrictions provided for in subparagraph two of paragraph (j) of this
2 subdivision provided that said development restriction precludes the
3 conversion of the property to a non-agricultural use for at least three
4 years from the date of transfer, and said development restriction is
5 evidenced by an easement, agreement, or other suitable instrument which
6 is to be conveyed to the city or town simultaneously with the conveyance
7 of the real property; or (1) conveyances of real property for open
8 space, parks, community housing, or historic preservation purposes to
9 any not-for-profit tax exempt corporation operated for conservation,
10 environmental, community housing or historic preservation purposes.

11 3. The governing body of a city or town, by local law may establish a
12 community housing exemption. Such exemption may not exceed an amount
13 equal to the residential median sale price of the county in which the
14 city or town is located, as determined by the office of real property
15 services within the department of taxation and finance. Such exemption
16 shall be allowed on the consideration of the conveyance of improved real
17 property or an interest therein. The exemption granted pursuant to the
18 provisions of this subdivision shall only apply to conveyances for resi-
19 dential property where the consideration is two million dollars or less.

20 § 1580. Credit. A grantee shall be allowed a credit against the tax
21 due on a conveyance of real property to the extent tax was paid by such
22 grantee on a prior creation of a leasehold of all or a portion of the
23 same real property or on the granting of an option or contract to
24 purchase all or a portion of the same real property by such grantee.
25 Such credit shall be computed by multiplying the tax paid on the
26 creation of the leasehold or on the granting of the option or contract
27 by a fraction, the numerator of which is the value of the consideration
28 used to compute such tax paid which is not yet due to such grantor on
29 the date of the subsequent conveyance (and which such grantor will not
30 be entitled to receive after such date), and the denominator of which is
31 the total value of the consideration used to compute such tax paid.

32 § 1581. Cooperative housing corporation transfers. 1. Notwithstanding
33 the definition of "controlling interest" contained in subdivision two of
34 section fifteen hundred seventy-five of this article or anything to the
35 contrary contained in subdivision five of section fifteen hundred seven-
36 ty-five of this article, the tax imposed pursuant to this article shall
37 apply to (a) the original conveyance of shares of stock in a cooperative
38 housing corporation in connection with the grant or transfer of a
39 proprietary leasehold by the cooperative corporation or cooperative plan
40 sponsor, and (b) the subsequent conveyance of such stock in a cooper-
41 ative housing corporation in connection with the grant or transfer of a
42 proprietary leasehold by the owner thereof. With respect to any such
43 subsequent conveyance where the property is an individual residential
44 unit, the consideration for the interest conveyed shall exclude the
45 value of any liens on certificates of stock or other evidences of an
46 ownership interest in and a proprietary lease from a corporation or
47 partnership formed for the purpose of cooperative ownership of residen-
48 tial interest in real estate remaining thereon at the time of convey-
49 ance. In determining the tax on a conveyance described in paragraph (a)
50 of this subdivision, a credit shall be allowed for a proportionate part
51 of the amount of any tax paid upon the conveyance to the cooperative
52 housing corporation of the real property comprising the cooperative
53 dwelling or dwellings to the extent that such conveyance effectuated a
54 mere change of identity or form of ownership of such property and not a
55 change in the beneficial ownership of such property. The amount of the
56 credit shall be determined by multiplying the amount of tax paid upon

1 the conveyance to the cooperative housing corporation by a percentage
2 representing the extent to which such conveyance effectuated a mere
3 change of identity or form of ownership and not a change in the benefi-
4 cial ownership of such property, and then multiplying the resulting
5 product by a fraction, the numerator of which shall be the number of
6 shares of stock conveyed in a transaction described in paragraph (a) of
7 this subdivision, and the denominator of which shall be the total number
8 of shares of stock of the cooperative housing corporation (including any
9 stock held by the corporation). In no event, however, shall such credit
10 reduce the tax, on a conveyance described in paragraph (a) of this
11 subdivision, below zero, nor shall any such credit be allowed for a tax
12 paid more than twenty-four months prior to the date on which occurs the
13 first in a series of conveyances of shares of stock in an offering of
14 cooperative housing corporation shares described in paragraph (a) of
15 this subdivision.

16 2. Every cooperative housing corporation shall be required to file an
17 information return with the treasurer by July fifteenth of each year
18 covering the preceding period of January first through June thirtieth
19 and by January fifteenth of each year covering the preceding period of
20 July first through December thirty-first. The return shall contain such
21 information regarding the conveyance of shares of stock in the cooper-
22 ative housing corporation as the treasurer may deem necessary, includ-
23 ing, but not limited to, the names, addresses and employee identifica-
24 tion numbers or social security numbers of the grantor and the grantee,
25 the number of shares conveyed, the date of the conveyance and the
26 consideration paid for such conveyance.

27 § 1582. Designation of agents. The treasurer is authorized to desig-
28 nate the recording officer to act as his or her agent for purposes of
29 collecting the tax authorized by this article. The treasurer shall
30 provide for the manner in which such person may be designated as his or
31 her agent subject to such terms and conditions as the treasurer shall
32 prescribe. The real estate transfer tax shall be paid to such agent as
33 provided in section fifteen hundred seventy-seven of this article.

34 § 1583. Liability of recording officer. A recording officer shall not
35 be liable for any inaccuracy in the amount of tax imposed pursuant to
36 this article that he or she shall collect so long as he or she shall
37 compute and collect such tax on the amount of consideration or the value
38 of the interest conveyed as such amounts are provided to him or her by
39 the person paying the tax.

40 § 1584. Deposit and disposition of revenue. 1. All taxes, penalties
41 and interest imposed by the city or town under the authority of section
42 fifteen hundred seventy-six of this article, which are collected by the
43 treasurer or his or her agents, shall be deposited in trust funds as
44 provided by this section for the city or town and shall be kept in trust
45 and separate and apart from all other monies in possession of the treas-
46 urer. The treasurer or his or her agents shall provide for separate
47 trust funds for community preservation and community housing revenues.
48 Moneys in such fund shall be deposited and secured in the manner
49 provided by section ten of the general municipal law. Pending expendi-
50 ture from such fund, moneys therein may be invested in the manner
51 provided in section eleven of the general municipal law. Any interest
52 earned or capital gain realized on the moneys so deposited or invested
53 shall accrue to and become part of such fund.

54 2. The treasurer shall retain such amount as he or she may determine
55 to be necessary for refunds with respect to the tax imposed by the city
56 or town, under the authority of section fifteen hundred seventy-six of

1 this article, out of which the treasurer shall pay any refunds of such
2 taxes to those taxpayers entitled to a refund pursuant to the provisions
3 of this article.

4 3. The treasurer, after reserving such refunds, shall on or before the
5 twelfth day of each month pay to the city comptroller or the town super-
6 visor the taxes, penalties and interest imposed by the town under the
7 authority of section fifteen hundred seventy-six of this article,
8 collected by the treasurer, pursuant to this article during the next
9 preceding calendar month. The amount so payable shall be certified to
10 the city comptroller or the town supervisor by the treasurer, who shall
11 not be held liable for any inaccuracy in such certification. Provided,
12 however, any such certification may be based on such information as may
13 be available to the treasurer at the time such certification must be
14 made under this section. Where the amount so paid over to the city or
15 town in any such distribution is more or less than the amount due to the
16 city or town, the amount of the overpayment or underpayment shall be
17 certified to the city comptroller or the town supervisor by the treasur-
18 er, who shall not be held liable for any inaccuracy in such certif-
19 ication. The amount of the overpayment or underpayment shall be so
20 certified to the city comptroller or the town supervisor as soon after
21 the discovery of the overpayment or underpayment as reasonably possible
22 and subsequent payments and distributions by the treasurer to such city
23 or town shall be adjusted by subtracting the amount of any such overpay-
24 ment from or by adding the amount of any such underpayment to such
25 number of subsequent payments and distributions as the treasurer and
26 city comptroller or town supervisor shall consider reasonable in view of
27 the overpayment or underpayment and all other facts and circumstances.

28 4. All monies received from the treasurer shall be deposited in the
29 appropriate fund of the city or town, pursuant to section six-w of the
30 general municipal law.

31 § 1585. Judicial review. 1. Any final determination of the amount of
32 any tax payable under section fifteen hundred seventy-eight of this
33 article shall be reviewable for error, illegality or unconstitutionality
34 or any other reason whatsoever by a proceeding under article seventy-
35 eight of the civil practice law and rules if application therefor is
36 made to the supreme court within four months after the giving of the
37 notice of such final determination, provided, however, that any such
38 proceeding under article seventy-eight of the civil practice law and
39 rules shall not be instituted unless (a) the amount of any tax sought to
40 be reviewed, with such interest and penalties thereon as may be provided
41 for by local law shall be first deposited and there is filed an under-
42 taking, issued by a surety company authorized to transact business in
43 this state and approved by the state superintendent of insurance as to
44 solvency and responsibility, in such amount as a justice of the supreme
45 court shall approve to the effect that if such proceeding be dismissed
46 or the tax confirmed the petitioner will pay all costs and charges which
47 may accrue in the prosecution of such proceeding or (b) at the option of
48 the petitioner, such undertaking may be in a sum sufficient to cover the
49 taxes, interest and penalties stated in such determination, plus the
50 costs and charges which may accrue against it in the prosecution of the
51 proceeding, in which event the petitioner shall not be required to pay
52 such taxes, interest or penalties as a condition precedent to the appli-
53 cation.

54 2. Where any tax imposed hereunder shall have been erroneously, ille-
55 gally or unconstitutionally assessed or collected and application for
56 the refund or revision thereof duly made to the proper fiscal officer or

1 officers, and such officer or officers shall have made a determination
2 denying such refund or revision, such determination shall be reviewable
3 by a proceeding under article seventy-eight of the civil practice law
4 and rules; provided, however, that (a) such proceeding is instituted
5 within four months after the giving of the notice of such denial, (b) a
6 final determination of tax due was not previously made, and (c) an
7 undertaking is filed with the proper fiscal officer or officers in such
8 amount and with such sureties as a justice of the supreme court shall
9 approve to the effect that if such proceeding be dismissed or the tax
10 confirmed, the petitioner will pay all costs and charges which may
11 accrue in the prosecution of such proceeding.

12 § 1586. Apportionment. A local law adopted by any city or town, pursu-
13 ant to this article, shall provide for a method of apportionment for
14 determining the amount of tax due whenever the real property or interest
15 therein is situated within and without the city or town.

16 § 1587. Miscellaneous. A local law adopted by any city or town, pursu-
17 ant to this article, may contain such other provisions as the city or
18 town deems necessary for the proper administration of the tax imposed
19 pursuant to this article, including provisions concerning the determi-
20 nation of tax, the imposition of interest on underpayments and overpay-
21 ments and the imposition of civil penalties. Such provisions shall be
22 identical to the corresponding provisions of the real estate transfer
23 tax imposed by article thirty-one of this chapter, so far as such
24 provisions can be made applicable to the tax imposed pursuant to this
25 article.

26 § 1588. Returns to be secret. 1. Except in accordance with proper
27 judicial order or as otherwise provided by law, it shall be unlawful for
28 the treasurer or any officer or employee of the county, city or town,
29 including any person engaged or retained on an independent contract
30 basis, to divulge or make known in any manner the particulars set forth
31 or disclosed in any return required under a local law enacted pursuant
32 to this article. Provided, however, that nothing in this section shall
33 prohibit the recording officer from making a notation on an instrument
34 affecting a conveyance indicating the amount of tax paid. No recorded
35 instrument affecting a conveyance shall be considered a return for
36 purposes of this section.

37 2. The officers charged with the custody of such returns shall not be
38 required to produce any of them or evidence of anything contained in
39 them in any action or proceeding in any court, except on behalf of the
40 county, city, or town in any action or proceeding involving the
41 collection of a tax due under a local law enacted pursuant to this arti-
42 cle to which such county, city, or town is a party, or a claimant, or on
43 behalf of any party to any action or proceeding under the provisions of
44 a local law enacted pursuant to this article when the returns or facts
45 shown thereby are directly involved in such action or proceeding, in any
46 of which events the court may require the production of, and may admit
47 in evidence, so much of said returns or of the facts shown thereby, as
48 are pertinent to the action or proceeding and no more.

49 3. Nothing in this section shall be construed to prohibit the delivery
50 to a grantor or grantee of an instrument effecting a conveyance or the
51 duly authorized representative of a grantor or grantee of a certified
52 copy of any return filed in connection with such instrument or to
53 prohibit the publication of statistics so classified as to prevent the
54 identification of particular returns and the items thereof, or the
55 inspection by the legal representatives of such county, city, or town of

1 the return of any taxpayer who shall bring action to set aside or review
2 the tax based thereon.

3 § 3. Severability. If any provision of this act or the application
4 thereof shall for any reason be adjudged by any court of competent
5 jurisdiction to be invalid, such judgment shall not affect, impair, or
6 invalidate the remainder of this act, but shall be confined in its oper-
7 ation to the provision thereof directly involved in the controversy in
8 which such judgment shall have been rendered.

9 § 4. This act shall take effect immediately.