

STATE OF NEW YORK

4712--A

2023-2024 Regular Sessions

IN SENATE

February 13, 2023

Introduced by Sen. WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the town law, in relation to authorizing the town of Orangetown, county of Rockland to establish community preservation funds; to amend the tax law, in relation to authorizing the town of Orangetown to impose a real estate transfer tax with revenues therefrom to be deposited in said community preservation fund; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. The town law is amended by adding a new section 64-1 to
2 read as follows:

3 § 64-1. Town of Orangetown preservation funds. 1. As used in this
4 section, the following words and terms shall have the following mean-
5 ings:

6 (a) "Town" means the town of Orangetown.

7 (b) "Community preservation" shall mean and include any of the
8 purposes outlined in subdivision five of this section.

9 (c) "Board" means the advisory board required pursuant to subdivision
10 six of this section.

11 (d) "Fund" means the community preservation fund created pursuant to
12 subdivision two of this section.

13 (e) "Tax" shall mean the real estate transfer tax imposed pursuant to
14 section fourteen hundred thirty-nine-bbb of the tax law or, if the
15 context clearly indicates, shall mean the real estate transfer tax
16 imposed pursuant to article thirty-one of the tax law.

17 2. The town board of the town of Orangetown is authorized to establish
18 by local law a community preservation fund pursuant to the provisions of
19 this section. Deposits into the fund may include revenues of the local

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

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1 government from whatever source and shall include, at a minimum, all
2 revenues from a tax imposed upon the transfer of real property interests
3 in such town pursuant to article thirty-one-A-four of the tax law. The
4 fund shall also be authorized to accept gifts of any such interests in
5 land or of funds. Interest accrued by monies deposited into the fund
6 shall be credited to the fund. In no event shall monies deposited in the
7 fund be transferred to any other account. Nothing contained in this
8 section shall be construed to prevent the financing in whole or in part,
9 pursuant to the local finance law, of any acquisition authorized pursu-
10 ant to this section. Monies from the fund may be utilized to repay any
11 indebtedness or obligations incurred pursuant to the local finance law
12 consistent with effectuating the purposes of this section.

13 3. The purposes of the fund shall be exclusively: (a) to implement a
14 plan for the preservation of community character as required by this
15 section, (b) to acquire interests or rights in real property for the
16 preservation of community character within the town including villages
17 therein in accordance with such plan and in cooperation with willing
18 sellers, (c) to establish a bank pursuant to a transfer of development
19 rights program consistent with section two hundred sixty-one-a of this
20 chapter, and (d) to provide a management and stewardship program for
21 such interests and rights consistent with subdivision ten of this
22 section and in accordance with such plan designed to preserve community
23 character. Not more than ten percent of the fund shall be utilized for
24 the management and stewardship program.

25 4. If the implementation of the community preservation project plan,
26 adopted by the town board, as provided in subdivision seven of this
27 section, has been completed, and funds are no longer needed for the
28 purposes outlined in this subdivision, then any remaining monies in the
29 fund shall be applied to reduce any bonded indebtedness or obligations
30 incurred to effectuate the purposes of this section.

31 5. Preservation of community character shall involve one or more of
32 the following:

- 33 (a) preservation of open space;
- 34 (b) establishment of parks, nature preserves, or recreation areas;
- 35 (c) preservation of lands of exceptional scenic value;
- 36 (d) preservation of freshwater marshes or other wetlands;
- 37 (e) preservation of aquifer recharge areas;
- 38 (f) preservation of undeveloped beach-lands or shoreline;
- 39 (g) establishment of wildlife refuges for the purpose of maintaining
40 native animal species diversity, including the protection of habitat
41 essential to the recovery of rare, threatened or endangered species;
- 42 (h) preservation of unique or threatened ecological areas;
- 43 (i) preservation of rivers and river areas in a natural, free-flowing
44 condition;
- 45 (j) preservation of forested land;
- 46 (k) preservation of public access to lands for public use including
47 stream rights and waterways;
- 48 (l) preservation of historic places and properties listed on the New
49 York state register of historic places and/or protected under a munici-
50 pal historic preservation ordinance or law; and
- 51 (m) undertaking any of the purposes of this subdivision in furtherance
52 of the establishment of a greenbelt.

53 6. The town board which has established a community preservation fund
54 shall create an advisory board to review and make recommendations on
55 proposed acquisitions of interests in real property using monies from
56 the fund. Such board shall consist of five or seven legal residents of

1 the municipality who shall serve without compensation. No member of the
2 local legislative body shall serve on the board. A majority of the
3 members of the board shall have demonstrated experience with conserva-
4 tion or land preservation activities. The board shall act in an advisory
5 capacity to the town board. Board members' terms shall be staggered.

6 7. The town board which has established a community preservation fund
7 shall, by local law, adopt a community preservation project plan. Such
8 plan shall list every project which the town plans to undertake pursuant
9 to the community preservation fund. Such plan shall provide for a
10 detailed evaluation of all available land use alternatives to protect
11 community character, including but not limited to: (a) fee simple acqui-
12 sition, (b) zoning regulations, including density reductions, cluster
13 development, and site plan and design requirements, (c) transfer of
14 development rights, (d) the purchase of development rights, and (e)
15 scenic and conservation easements. Said evaluation shall be as specific
16 as practicable as to each parcel selected for inclusion in such plan.
17 Such plan shall establish the priorities for preservation. Funds from
18 the community preservation fund may only be expended for projects which
19 have been included in such plan. Such plan shall be updated not less
20 than once every five years, but in no event until at least three years
21 after the adoption of the original plan. A copy of such plan shall be
22 filed with the town clerk, the commissioner of environmental conserva-
23 tion, and the commissioner of the office of parks, recreation and
24 historic preservation. Such plan shall be completed at least sixty days
25 before the submission of the mandatory referendum required by section
26 fourteen hundred thirty-nine-bbb of the tax law. If at the time of
27 referendum, the town shall have in place an adopted open space plan,
28 such plan shall be deemed sufficient to waive the preservation plan
29 requirements of this subdivision. Any monies expended from the community
30 preservation plan shall, however be consistent with the purposes
31 outlined in subdivisions three and five of this section and with the
32 open space plan for a period not to exceed twelve months.

33 8. The town board which has established a community preservation fund
34 pursuant to this section may study and consider establishing a transfer
35 of development rights program to protect community character as provided
36 for by section two hundred sixty-one-a of this chapter. All provisions
37 of such section two hundred sixty-one-a shall be complied with. If at
38 any time during the life of the community preservation fund a transfer
39 of development rights program is established, the town may utilize
40 monies from the community preservation fund in order to create and fund
41 a central bank of the transfer of development rights program. If at any
42 time during the life of the community preservation fund, a transfer of
43 development rights program is repealed by the town, all monies from the
44 central bank shall be returned to the community preservation fund.

45 9. No interests or rights in real property shall be acquired pursuant
46 to this section until a public hearing is held as required by section
47 two hundred forty-seven of the general municipal law; provided, however,
48 that nothing herein shall prevent the town board from entering into a
49 conditional purchase agreement before a public hearing is held. Any
50 resolution of the town board approving an acquisition of rights or
51 interest in real property pursuant to this section, shall find that
52 acquisition was the best alternative for the protection of community
53 character of all the reasonable alternatives available to the town.

54 10. Rights or interest in real property acquired pursuant to this
55 section shall be administered and managed in a manner which (a) allows
56 public use and enjoyment in a manner compatible with the natural,

1 scenic, historic and open space character of such lands; (b) preserves
 2 the native biological diversity of such lands; (c) with regard to open
 3 spaces, limits improvements to enhancing access for passive use of such
 4 lands such as nature trails, boardwalks, bicycle paths, and peripheral
 5 parking areas provided that such improvements do not degrade the ecolog-
 6 ical value of the land or threaten essential wildlife habitat; and (d)
 7 preserves cultural property consistent with accepted standards for
 8 historic preservation. In furthering the purposes of this section, the
 9 town may enter into agreements with corporations organized under the
 10 not-for-profit corporation law and engage in land trust activities to
 11 manage lands including less than fee interests acquired pursuant to the
 12 provisions of this section, provided that any such agreement shall
 13 contain a provision that such corporation shall keep the lands accessi-
 14 ble to the public unless such corporation shall demonstrate to the
 15 satisfaction of the town that public accessibility would be detrimental
 16 to the lands or any natural resources associated therewith.

17 11. Rights or interests in real property acquired with monies from
 18 such fund shall not be sold, leased, exchanged, donated, or otherwise
 19 disposed of or used for other than the purposes permitted by this
 20 section without the express authority of an act of the state legisla-
 21 ture, which shall provide for the substitution of other lands of equal
 22 environmental value and fair market value and reasonably equivalent
 23 usefulness and location to those to be discontinued, sold or disposed
 24 of, and such other requirements as shall be approved by the state legis-
 25 lature. Any conservation easements, created under title three of article
 26 forty-nine of the environmental conservation law, which are acquired
 27 with monies from such fund may only be modified or extinguished as
 28 provided in section 49-0307 of such law. Nothing in this section shall
 29 preclude the town, by local law, from establishing additional
 30 restrictions to the alienation of lands acquired pursuant to this
 31 section. This subdivision shall not apply to the sale of development
 32 rights by the town acquired pursuant to this section, where said sale is
 33 made by a central bank created by the town, pursuant to a transfer of
 34 development rights program established by the town pursuant to section
 35 two hundred sixty-one-a of this chapter, provided, however that (a) the
 36 lands from which said development rights were acquired shall remain
 37 preserved in perpetuity by a permanent conservation easement or other
 38 instrument that similarly preserves the community character referenced
 39 in subdivision five of this section, and (b) the proceeds from such sale
 40 shall be deposited in the community preservation fund.

41 § 2. The tax law is amended by adding a new article 31-A-4 to read as
 42 follows:

43 ARTICLE 31-A-4

44 TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF ORANGETOWN

45 Section 1439-aaa. Definitions.

46 1439-bbb. Imposition of tax.

47 1439-ccc. Payment of tax.

48 1439-ddd. Liability for tax.

49 1439-eee. Exemptions.

50 1439-fff. Credit.

51 1439-ggg. Cooperative housing corporation transfers.

52 1439-hhh. Designation of agents.

53 1439-iii. Liability of recording officer.

54 1439-jjj. Refunds.

55 1439-kkk. Deposit and disposition of revenue.

56 1439-lll. Judicial review.

- 1 1439-mmm. Apportionment.
- 2 1439-nnn. Miscellaneous.
- 3 1439-ooo. Returns to be secret.
- 4 1439-ppp. Foreclosure proceedings.

5 § 1439-aaa. Definitions. When used in this article, unless otherwise
6 expressly stated, the following words and terms shall have the following
7 meanings:

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

14 2. "Controlling interest" means (a) in the case of a corporation,
15 either fifty percent or more of the total combined voting power of all
16 classes of stock of such corporation, or fifty percent or more of the
17 capital, profits or beneficial interest in such voting stock of such
18 corporation, and (b) in the case of a partnership, association, trust or
19 other entity, fifty percent or more of the capital, profits or benefi-
20 cial interest in such partnership, association, trust or other entity.

21 3. "Real property" means every estate or right, legal or equitable,
22 present or future, vested or contingent, in lands, tenements or heredi-
23 taments, including buildings, structures and other improvements thereon,
24 which are located in whole or in part within the town of Orangetown. It
25 shall not include rights to sepulture.

26 4. "Consideration" means the price actually paid or required to be
27 paid for the real property or interest therein, including payment for an
28 option or contract to purchase real property, whether or not expressed
29 in the deed and whether paid or required to be paid by money, property,
30 or any other thing of value. It shall include the cancellation or
31 discharge of an indebtedness or obligation. It shall also include the
32 amount of any mortgage, purchase money mortgage, lien or other encum-
33 brance, whether or not the underlying indebtedness is assumed or taken
34 subject to.

35 (a) In the case of a creation of a leasehold interest or the granting
36 of an option with use and occupancy of real property, consideration
37 shall include, but not be limited to, the value of the rental and other
38 payments attributable to the use and occupancy of the real property or
39 interest therein, the value of any amount paid for an option to purchase
40 or renew and the value of rental or other payments attributable to the
41 exercise of any option to renew.

42 (b) In the case of a creation of a subleasehold interest, consider-
43 ation shall include, but not be limited to, the value of the sublease
44 rental payments attributable to the use and occupancy of the real prop-
45 erty, the value of any amount paid for an option to renew and the value
46 of rental or other payments attributable to the exercise of any option
47 to renew less the value of the remaining prime lease rental payments
48 required to be made.

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

53 (d) In the case of an assignment or surrender of a leasehold interest
54 or the assignment or surrender of an option or contract to purchase real
55 property, consideration shall not include the value of the remaining
56 rental payments required to be made pursuant to the terms of such lease

1 or the amount to be paid for the real property pursuant to the terms of
2 the option or contract being assigned or surrendered.

3 (e) In the case of (1) the original conveyance of shares of stock in a
4 cooperative housing corporation in connection with the grant or transfer
5 of a proprietary leasehold by the cooperative corporation or cooperative
6 plan sponsor, and (2) the subsequent conveyance by the owner thereof of
7 such stock in a cooperative housing corporation in connection with the
8 grant or transfer of a proprietary leasehold for a cooperative unit
9 other than an individual residential unit, consideration shall include a
10 proportionate share of the unpaid principal of any mortgage on the real
11 property of the cooperative housing corporation comprising the cooper-
12 ative dwelling or dwellings. Such share shall be determined by multi-
13 plying the total unpaid principal of the mortgage by a fraction, the
14 numerator of which shall be the number of shares of stock being conveyed
15 in the cooperative housing corporation in connection with the grant or
16 transfer of a proprietary leasehold and the denominator of which shall
17 be the total number of shares of stock in the cooperative housing corpo-
18 ration.

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

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

45 7. "Grantor" means the person making the conveyance of real property
46 or interest therein. Where the conveyance consists of a transfer or an
47 acquisition of a controlling interest in an entity with an interest in
48 real property, "grantor" means the entity with an interest in real prop-
49 erty or a shareholder or partner transferring stock or partnership
50 interest, respectively.

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

53 9. "Fund" means a community preservation fund created pursuant to
54 section sixty-four-1 of the town law.

55 10. "Recording officer" means the county clerk of the county of Rock-
56 land.

1 11. "Town" means the town of Orangetown, county of Rockland.

2 12. "Treasurer" means the treasurer of the county of Rockland.

3 13. "Town supervisor" means the town supervisor of the town of Orange-
4 town.

5 14. "Tax" shall mean the real estate transfer tax imposed pursuant to
6 section fourteen hundred thirty-nine-bbb of this article or, if the
7 context clearly indicates, shall mean the real estate transfer tax
8 imposed pursuant to article thirty-one of this chapter.

9 15. "Residential real property" means property which satisfies at
10 least one of the following conditions:

11 (a) the property classification code assigned to the property on the
12 latest final assessment roll, as reported on the transfer report form,
13 indicates that the property is a one, two or three family home or a
14 rural residence; or

15 (b) the transfer report indicates that the property is a one, two or
16 three family residential property that has been newly constructed on
17 vacant land; or

18 (c) the transfer report form indicates that the property is a residen-
19 tial condominium.

20 § 1439-bbb. Imposition of tax. Notwithstanding any other provisions of
21 law to the contrary, the town of Orangetown, acting through its town
22 board, is hereby authorized and empowered to adopt a local law imposing
23 in such town a tax on each conveyance of real property or interest ther-
24 ein not to exceed a maximum of three-quarters of one percent of the
25 consideration for such conveyance, subject to the exemptions set forth
26 in section fourteen hundred thirty-nine-eee of this article; any such
27 local law shall fix the rate of such tax. Provided, however, any such
28 local law imposing, repealing or reimposing such tax shall be subject to
29 a mandatory referendum pursuant to section twenty-three of the municipal
30 home rule law. Notwithstanding the foregoing, prior to adoption of such
31 local law, the town must establish a community preservation fund pursu-
32 ant to section sixty-four-1 of the town law. Revenues from such tax
33 shall be deposited in such fund and may be used solely for the purposes
34 of such fund. Such local law shall apply to any conveyance occurring on
35 or after the first day of a month to be designated by such town board,
36 which is not less than sixty days after the enactment of such local law,
37 but shall not apply to conveyances made on or after such date pursuant
38 to binding written contracts entered into prior to such date, provided
39 that the date of execution of such contract is confirmed by independent
40 evidence such as the recording of the contract, payment of a deposit or
41 other facts and circumstances as determined by the treasurer.

42 § 1439-ccc. Payment of tax. 1. The real estate transfer tax imposed
43 pursuant to this article shall be paid to the treasurer or the recording
44 officer acting as the agent of the treasurer upon designation as such
45 agent by the treasurer. Such tax shall be paid at the same time as the
46 real estate transfer tax imposed by article thirty-one of this chapter
47 is required to be paid. Such treasurer or recording officer shall
48 endorse upon each deed or instrument effecting a conveyance a receipt
49 for the amount of the tax so paid.

50 2. A return shall be required to be filed with such treasurer or
51 recording officer for purposes of the real estate transfer tax imposed
52 pursuant to this article at the same time as a return is required to be
53 filed for purposes of the real estate transfer tax imposed by article
54 thirty-one of this chapter. The treasurer shall prescribe the form of
55 return, the information which it shall contain, and the documentation
56 that shall accompany the return. Said form shall be identical to the

1 real estate transfer tax return required to be filed pursuant to section
2 fourteen hundred nine of this chapter, except that the treasurer shall
3 adapt said form to reflect the provisions in this chapter that are
4 inconsistent, different, or in addition to the provisions of article
5 thirty-one of this chapter. The real estate transfer tax returns
6 required to be filed pursuant to this section shall be preserved for
7 three years and thereafter until such treasurer or recording officer
8 orders them to be destroyed.

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

13 § 1439-ddd. Liability for tax. 1. The real estate transfer tax shall
14 be paid by the grantee. If the grantee has failed to pay the tax imposed
15 pursuant to this article or if the grantee is exempt from such tax, the
16 grantor shall have the duty to pay the tax. Where the grantor has the
17 duty to pay the tax because the grantee has failed to pay the tax, such
18 tax shall be the joint and several liability of the grantee and the
19 grantor.

20 2. For the purpose of the proper administration of this article and to
21 prevent evasion of the tax hereby imposed, it shall be presumed that all
22 conveyances are subject to the tax. Where the consideration includes
23 property other than money, it shall be presumed that the consideration
24 is the fair market value of the real property or interest therein. These
25 presumptions shall prevail until the contrary is proven, and the burden
26 of proving the contrary shall be on the person liable for payment of the
27 tax.

28 § 1439-eee. Exemptions. 1. The following shall be exempt from the
29 payment of the real estate transfer tax imposed by this article:

30 (a) The state of New York, or any of its agencies, instrumentalities,
31 political subdivisions, or public corporations (including a public
32 corporation created pursuant to an agreement or compact with another
33 state or the Dominion of Canada); and

34 (b) The United Nations, the United States of America or any of its
35 agencies or instrumentalities.

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

37 (a) Conveyances to the United Nations, the United States of America,
38 the state of New York, or any of their instrumentalities, agencies or
39 political subdivisions (or any public corporation, including a public
40 corporation created pursuant to agreement or compact with another state
41 or the Dominion of Canada);

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

44 (c) Conveyances which, without additional consideration, confirm,
45 correct, modify or supplement a deed previously recorded;

46 (d) Conveyances of real property without consideration and otherwise
47 than in connection with a sale, including deeds conveying realty as bona
48 fide gifts;

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

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

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

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

1 (i) Conveyances of real property which consist of the execution of a
2 contract to sell real property without the use or occupancy of such
3 property or the granting of an option to purchase real property without
4 the use or occupancy of such property;

5 (j) Conveyances of real property or a portion or portions of real
6 property that are the subject of one or more of the following develop-
7 ment restrictions:

8 (1) conservation, scenic, or an open space easement,

9 (2) covenants or restrictions prohibiting development where the prop-
10 erty or portion of property being conveyed has had its development
11 rights permanently removed,

12 (3) a purchase of development rights agreement where the property or
13 portion of property being conveyed has had its development rights perma-
14 nently removed,

15 (4) a transfer of development rights agreement, where the property
16 being conveyed has had its development rights removed,

17 (5) real property subject to any locally adopted land preservation
18 agreement, provided said exemption is included in the local law imposing
19 the tax authorized by this article; or

20 (k) Conveyances of real property for open space, parks, or historic
21 preservation purposes to any not-for-profit tax exempt corporation oper-
22 ated for conservation, environmental, or historic preservation purposes.

23 3. An exemption of four hundred thousand dollars shall be allowed on
24 the consideration of the conveyance of improved real property or an
25 interest therein, and an exemption of one hundred thousand dollars shall
26 be allowed on the consideration of the conveyance of unimproved real
27 property.

28 § 1439-fff. Credit. A grantee shall be allowed a credit against the
29 tax due on a conveyance of real property to the extent tax was paid by
30 such grantee on a prior creation of a leasehold of all or a portion of
31 the same real property or on the granting of an option or contract to
32 purchase all or a portion of the same real property by such grantee.
33 Such credit shall be computed by multiplying the tax paid on the
34 creation of the leasehold or on the granting of the option or contract
35 by a fraction, the numerator of which is the value of the consideration
36 used to compute such tax paid which is not yet due to such grantor on
37 the date of the subsequent conveyance (and which such grantor will not
38 be entitled to receive after such date), and the denominator of which is
39 the total value of the consideration used to compute such tax paid.

40 § 1439-ggg. Cooperative housing corporation transfers. 1. Notwith-
41 standing the definition of "controlling interest" contained in subdivi-
42 sion two of section fourteen hundred thirty-nine-aaa of this article or
43 anything to the contrary contained in subdivision five of section four-
44 teen hundred thirty-nine-aaa of this article, the tax imposed pursuant
45 to this article shall apply to (a) the original conveyance of shares of
46 stock in a cooperative housing corporation in connection with the grant
47 or transfer of a proprietary leasehold by the cooperative corporation or
48 cooperative plan sponsor, and (b) the subsequent conveyance of such
49 stock in a cooperative housing corporation in connection with the grant
50 or transfer of a proprietary leasehold by the owner thereof. With
51 respect to any such subsequent conveyance where the property is an indi-
52 vidual residential unit, the consideration for the interest conveyed
53 shall exclude the value of any liens on certificates of stock or other
54 evidences of an ownership interest in and a proprietary lease from a
55 corporation or partnership formed for the purpose of cooperative owner-
56 ship of residential interest in real estate remaining thereon at the

1 time of conveyance. In determining the tax on a conveyance described in
2 paragraph (a) of this subdivision, a credit shall be allowed for a
3 proportionate part of the amount of any tax paid upon the conveyance to
4 the cooperative housing corporation of the real property comprising the
5 cooperative dwelling or dwellings to the extent that such conveyance
6 effectuated a mere change of identity or form of ownership of such prop-
7 erty and not a change in the beneficial ownership of such property. The
8 amount of the credit shall be determined by multiplying the amount of
9 tax paid upon the conveyance to the cooperative housing corporation by a
10 percentage representing the extent to which such conveyance effectuated
11 a mere change of identity or form of ownership and not a change in the
12 beneficial ownership of such property, and then multiplying the result-
13 ing product by a fraction, the numerator of which shall be the number of
14 shares of stock conveyed in a transaction described in paragraph (a) of
15 this subdivision, and the denominator of which shall be the total number
16 of shares of stock of the cooperative housing corporation (including any
17 stock held by the corporation). In no event, however, shall such credit
18 reduce the tax, on a conveyance described in paragraph (a) of this
19 subdivision, below zero, nor shall any such credit be allowed for a tax
20 paid more than twenty-four months prior to the date on which occurs the
21 first in a series of conveyances of shares of stock in an offering of
22 cooperative housing corporation shares described in paragraph (a) of
23 this subdivision.

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

35 § 1439-hhh. Designation of agents. The treasurer is authorized to
36 designate the recording officer to act as his or her agent for purposes
37 of collecting the tax authorized by this article. The treasurer shall
38 provide for the manner in which such person may be designated as his or
39 her agent subject to such terms and conditions as the treasurer shall
40 prescribe. The real estate transfer tax shall be paid to such agent as
41 provided in section fourteen hundred thirty-nine-ccc of this article.

42 § 1439-iii. Liability of recording officer. A recording officer shall
43 not be liable for any inaccuracy in the amount of tax imposed pursuant
44 to this article that he or she shall collect so long as he or she shall
45 compute and collect such tax on the amount of consideration or the value
46 of the interest conveyed as such amounts are provided to him or her by
47 the person paying the tax.

48 § 1439-jjj. Refunds. Whenever the treasurer shall determine that any
49 moneys received under the provisions of the local law enacted pursuant
50 to this article were paid in error, he or she may cause such moneys to
51 be refunded pursuant to such requirements as he or she may prescribe,
52 provided that any application for such refund is filed with the treasur-
53 er within two years from the date the erroneous payment was made.

54 § 1439-kkk. Deposit and disposition of revenue. 1. All taxes, penal-
55 ties and interest imposed by the town under the authority of section
56 fourteen hundred thirty-nine-bbb of this article, which are collected by

1 the treasurer or his or her agents, shall be deposited in a single trust
2 fund for the town and shall be kept in trust and separate and apart from
3 all other monies in possession of the treasurer. Moneys in such fund
4 shall be deposited and secured in the manner provided by section ten of
5 the general municipal law. Pending expenditure from such fund, moneys
6 therein may be invested in the manner provided in section eleven of the
7 general municipal law. Any interest earned or capital gain realized on
8 the moneys so deposited or invested shall accrue to and become part of
9 such fund.

10 2. The treasurer shall retain such amount as he or she may determine
11 to be necessary for refunds with respect to the tax imposed by the town,
12 under the authority of section fourteen hundred thirty-nine-bbb of this
13 article, out of which the treasurer shall pay any refunds of such taxes
14 to those taxpayers entitled to a refund pursuant to the provisions of
15 this article.

16 3. The treasurer, after reserving such refunds, shall on or before the
17 twelfth day of each month pay to the town supervisor the taxes, penal-
18 ties and interest imposed by the town under the authority of section
19 fourteen hundred thirty-nine-bbb of this article, collected by the trea-
20 surer, pursuant to this article during the next preceding calendar
21 month. The amount so payable shall be certified to the town supervisor
22 by the treasurer, who shall not be held liable for any inaccuracy in
23 such certification. Provided, however, any such certification may be
24 based on such information as may be available to the treasurer at the
25 time such certification must be made under this section. Where the
26 amount so paid over to the town in any such distribution is more or less
27 than the amount due to the town, the amount of the overpayment or under-
28 payment shall be certified to the town supervisor by the treasurer, who
29 shall not be held liable for any inaccuracy in such certification. The
30 amount of the overpayment or underpayment shall be so certified to the
31 town supervisor as soon after the discovery of the overpayment or under-
32 payment as reasonably possible and subsequent payments and distributions
33 by the treasurer to the town shall be adjusted by subtracting the amount
34 of any such overpayment from or by adding the amount of any such under-
35 payment to such number of subsequent payments and distributions as the
36 treasurer and town supervisor shall consider reasonable in view of the
37 overpayment or underpayment and all other facts and circumstances.

38 4. All monies received from the treasurer shall be deposited in the
39 fund of the town, pursuant to section sixty-four-1 of the town law.

40 § 1439-111. Judicial review. 1. Any final determination of the amount
41 of any tax payable under section fourteen hundred thirty-nine-ccc of
42 this article shall be reviewable for error, illegality or unconstitu-
43 tionality or any other reason whatsoever by a proceeding under article
44 seventy-eight of the civil practice law and rules if application there-
45 for is made to the supreme court within four months after the giving of
46 the notice of such final determination, provided, however, that any such
47 proceeding under article seventy-eight of the civil practice law and
48 rules shall not be instituted unless (a) the amount of any tax sought to
49 be reviewed, with such interest and penalties thereon as may be provided
50 for by local law shall be first deposited and there is filed an under-
51 taking, issued by a surety company authorized to transact business in
52 this state and approved by the state superintendent of financial
53 services as to solvency and responsibility, in such amount as a justice
54 of the supreme court shall approve to the effect that if such proceeding
55 be dismissed or the tax confirmed the petitioner will pay all costs and
56 charges which may accrue in the prosecution of such proceeding or (b) at

1 the option of the petitioner, such undertaking may be in a sum suffi-
2 cient to cover the taxes, interest and penalties stated in such determi-
3 nation, plus the costs and charges which may accrue against it in the
4 prosecution of the proceeding, in which event the petitioner shall not
5 be required to pay such taxes, interest or penalties as a condition
6 precedent to the application.

7 2. Where any tax imposed hereunder shall have been erroneously, ille-
8 gally or unconstitutionally assessed or collected and application for
9 the refund or revision thereof duly made to the proper fiscal officer or
10 officers, and such officer or officers shall have made a determination
11 denying such refund or revision, such determination shall be reviewable
12 by a proceeding under article seventy-eight of the civil practice law
13 and rules; provided, however, that (a) such proceeding is instituted
14 within four months after the giving of the notice of such denial, (b) a
15 final determination of tax due was not previously made, and (c) an
16 undertaking is filed with the proper fiscal officer or officers in such
17 amount and with such sureties as a justice of the supreme court shall
18 approve to the effect that if such proceeding be dismissed or the tax
19 confirmed, the petitioner will pay all costs and charges which may
20 accrue in the prosecution of such proceeding.

21 § 1439-mmm. Apportionment. A local law adopted by the town of Orange-
22 town, pursuant to this article, shall provide for a method of apportion-
23 ment for determining the amount of tax due whenever the real property or
24 interest therein is situated within and without the town.

25 § 1439-nnn. Miscellaneous. A local law adopted by the town of Orange-
26 town, pursuant to this article, may contain such other provisions as the
27 town deems necessary for the proper administration of the tax imposed
28 pursuant to this article, including provisions concerning the determi-
29 nation of tax, the imposition of interest on underpayments and overpay-
30 ments and the imposition of civil penalties. Such provisions shall be
31 identical to the corresponding provisions of the real estate transfer
32 tax imposed by article thirty-one of this chapter, so far as such
33 provisions can be made applicable to the tax imposed pursuant to this
34 article.

35 § 1439-ooo. Returns to be secret. 1. Except in accordance with proper
36 judicial order or as otherwise provided by law, it shall be unlawful for
37 the treasurer or any officer or employee of the county or town, includ-
38 ing any person engaged or retained on an independent contract basis, to
39 divulge or make known in any manner the particulars set forth or
40 disclosed in any return required under a local law enacted pursuant to
41 this article. However, that nothing in this section shall prohibit the
42 recording officer from making a notation on an instrument effecting a
43 conveyance indicating the amount of tax paid. No recorded instrument
44 effecting a conveyance shall be considered a return for purposes of this
45 section.

46 2. The officers charged with the custody of such returns shall not be
47 required to produce any of them or evidence of anything contained in
48 them in any action or proceeding in any court, except on behalf of the
49 county or town in any action or proceeding involving the collection of a
50 tax due under a local law enacted pursuant to this article to which such
51 county or town is a party, or a claimant, or on behalf of any party to
52 any action or proceeding under the provisions of a local law enacted
53 pursuant to this article when the returns or facts shown thereby are
54 directly involved in such action or proceeding, in any of which events
55 the court may require the production of, and may admit in evidence, so

1 much of said returns or of the facts shown thereby, as are pertinent to
2 the action or proceeding and no more.

3 3. Nothing herein shall be construed to prohibit the delivery to a
4 grantor or grantee of an instrument effecting a conveyance or the duly
5 authorized representative of a grantor or grantee of a certified copy of
6 any return filed in connection with such instrument or to prohibit the
7 publication of statistics so classified as to prevent the identification
8 of particular returns and the items thereof, or the inspection by the
9 legal representatives of such county or town of the return of any
10 taxpayer who shall bring action to set aside or review the tax based
11 thereon.

12 4. Any officer or employee of such county or town who willfully
13 violates the provisions of this section shall be dismissed from office
14 and be incapable of holding any public office in this state for a period
15 of five years thereafter.

16 § 1439-ppp. Foreclosure proceedings. Where the conveyance consists of
17 a transfer of property made as a result of an order of the court in a
18 foreclosure proceeding ordering the sale of such property, the referee
19 or sheriff effectuating such transfer shall not be liable for any inter-
20 est or penalties that are authorized pursuant to this article or article
21 thirty-seven of this chapter.

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

28 § 4. This act shall take effect immediately; provided, however, that
29 section two of this act shall take effect on the ninetieth day after it
30 shall have become a law and shall expire December 31, 2043 when upon
31 such date the provisions of such section shall be deemed repealed.