S T A T E O F N E W Y O R K

1098

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. RABBITT, FINCH, WALKER -- Multi-Sponsored by -- M. of A. SAYWARD -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to determination and apportionment by the commissioner of taxation and finance

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 260 of the tax law, as amended by chapter 372 of the laws of 1930, is amended to read as follows:

S 260. Determination and apportionment by the [state tax commission] COMMISSIONER. When the real property covered by a mortgage is situated in more than one tax district, the [state tax commission] COMMISSIONER shall apportion the tax paid on such mortgage between the respective tax districts upon the basis of the relative assessments of such real property as the same appear on the last assessment-rolls, AS ADJUSTED TO REFLECT THE APPLICABLE STATE EQUALIZATION RATE ESTABLISHED PURSUANT TO THE REAL PROPERTY TAX LAW, FOR EACH SUCH RESPECTIVE TAX DISTRICT, WHICH WAS IN EFFECT AT THE TIME SUCH MORTGAGE WAS RECORDED. If, however, the whole or any part of the property covered by such a mortgage is not assessed upon the last assessment-roll or rolls of the tax district or districts in which it is situated, or is so assessed, as a part of a larger tract, that the assessed value cannot be determined, or if improvements have been made to such an extent as materially to change the value of the property so assessed, the [tax commission] COMMISSIONER may require the local assessors in the respective tax districts, or the mortgagor, or mortgagee, to furnish sworn appraisals of the property in each tax district, and upon such appraisals shall determine the apportionment. If such mortgage covers real property in two or more counties, the [tax commission] COMMISSIONER shall determine the proportion of the tax which shall be paid by the recording officer who has received

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

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the same to the recording officers of the other counties in which are situated the tax districts entitled to share therein. When any recording officer shall pay any portion of a tax to the recording officer of another county, he OR SHE shall forward with such tax a description sufficient to identify the mortgage on which the tax has been paid, and the recording officer receiving such tax shall note on the margin of the record of such mortgage the fact of such payment, attested by his OR HER signature. The [tax commission] COMMISSIONER shall make an order of determination and apportionment in respect to each such mortgage and file a certified copy thereof with the recording officer of each county in which a part of the mortgaged real property is situated.

When the real property covered by a mortgage is partly within the state and partly without the state, it shall be the duty of the [tax commission] COMMISSIONER to determine what portion of the mortgage or of advancements thereon shall be taxable under this article. Such determination shall be made in the following manner: First: Determine the respective values of the property within and without the state, and deduct therefrom the amount of any prior existing mortgage liens, excepting such liens as are to be replaced by prior advancements and the advancement under consideration. Second: Find the ratio that the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property. Third: Make the determination of the portion of the mortgage or of the advancements thereon which shall be taxable under this article by applying the ratio so found. If a mortgage covering property partly within and partly without the state is presented for record before such determination has been made, or at the time when an advance is made on a corporate trust mortgage or on a prior advance mortgage, there may be presented to the recording officer a statement in duplicate, verified by the mortgagor or an officer or duly authorized agent of the mortgagor, in which shall be specified the net value of the property within the state and the net value of the property without the state covered by such mortgage. One of such statements shall be filed by the recording officer and the other shall be forthwith transmitted by him OR HER to the [state tax commission] COMMISSIONER. The tax payable under this article before the determination by the [tax commission] COMMISSIONER shall be computed upon such portion of the principal indebtedness secured by the mortgage, or of the sum advanced thereon, as the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property as set forth in such statement. The [tax commission] COMMISSIONER shall on receipt of the statement from the recording officer and on not less than ten days' notice served personally or by mail upon the mortgagor, the mortgagee, and the state comptroller, proceed to make the required determination. In determining the separate values of the property within and without the state, the [tax commission] COMMISSIONER shall consider only the tangible property, real and personal, except that leases of real property shall be deemed tangible property. For the purpose of determining such value, the [tax commission] COMMISSIONER may require the mortgagor or mortgagee to furnish by affidavit or verified report such information or data as [it] HE OR SHE may deem necessary, and may require and take the testimony of the mortgagor, mortgagee, or any other person. A certified copy of the order of determination and apportionment shall be delivered personally or by mail to the mortgagor, the mortgagee, and the state comptroller, and any tax under such determination which has not been paid shall be paid within ten days after service of such certified copy; if, however, the tax paid at the time of filing the statement

hereinbefore specified with the recording officer is in excess of the tax determined to be payable, the certificate of determination and apportionment shall direct the recording officer to refund to the person paying such tax the amount of such excess; provided that no refund shall be made of any taxes paid pursuant to a previous determination.

The [tax commission] COMMISSIONER shall adopt rules to govern the procedure and the manner of taking evidence in all the matters provided for by this section and may require verified statements to be furnished either by boards of assessors, recording officers, or other persons having knowledge in relation to such matters. Failure on the part of any person or officer to furnish a statement or other data when required so to do pursuant to the provisions of this section shall render such person or officer liable to a penalty of one hundred dollars, to be recovered by the attorney-general in an action brought in the name of the people of the state of New York.

In making determination and apportionment under this section, the [tax commission] COMMISSIONER shall consider each advancement made upon a mortgage after July first, nineteen hundred [and] six, as a new mortgage. In all cases under this section where the provisions for distribution of the tax among tax districts are inapplicable or inadequate, the [tax commission] COMMISSIONER shall establish a basis of apportionment that will be equitable and fair.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.