

STATE OF NEW YORK

S. 3526--B

A. 3028--B
Cal. No. 241

2017-2018 Regular Sessions

SENATE - ASSEMBLY

January 24, 2017

IN SENATE -- Introduced by Sens. BRESLIN, AVELLA, HOYLMAN -- 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 -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. FAHY, SEPULVEDA, QUART, CARROLL, L. ROSENTHAL, THIELE, HARRIS, MOSLEY, ORTIZ -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the town law, in relation to authorizing the town of Bethlehem to establish community preservation funds; to amend the tax law, in relation to authorizing the town of Bethlehem 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-k to
2 read as follows:

3 § 64-k. Town of Bethlehem 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 Bethlehem.

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

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

LBD06787-03-8

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

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

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

9 2. The town board of the town of Bethlehem is authorized to establish
10 by local law a community preservation fund pursuant to the provisions of
11 this section. Deposits into the fund may include revenues of the local
12 government from whatever source and shall include, at a minimum, all
13 revenues from a tax imposed upon the transfer of real property interests
14 in such town pursuant to article thirty-one-A-four of the tax law. The
15 fund shall also be authorized to accept gifts of any such interests in
16 land or of funds. Interest accrued by monies deposited into the fund
17 shall be credited to the fund. In no event shall monies deposited in the
18 fund be transferred to any other account. Nothing contained in this
19 section shall be construed to prevent the financing in whole or in part,
20 pursuant to the local finance law, of any acquisition authorized pursu-
21 ant to this section. Monies from the fund may be utilized to repay any
22 indebtedness or obligations incurred pursuant to the local finance law
23 consistent with effectuating the purposes of this section.

24 3. The purposes of the fund shall be exclusively: (a) to implement a
25 plan for the preservation of community character as required by this
26 section, (b) to acquire interests or rights in real property for the
27 preservation of community character within the town including villages
28 therein in accordance with such plan and in cooperation with willing
29 sellers, (c) to establish a bank pursuant to a transfer of development
30 rights program consistent with section two hundred sixty-one-a of this
31 chapter, and (d) to provide a management and stewardship program for
32 such interests and rights consistent with subdivision ten of this
33 section and in accordance with such plan designed to preserve community
34 character. Not more than ten percent of the fund shall be utilized for
35 the management and stewardship program.

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

42 5. Preservation of community character shall involve one or more of
43 the following:

44 (a) preservation of open space;
45 (b) establishment of parks, nature preserves, or recreation areas;
46 (c) preservation of land which is predominantly viable agricultural
47 land, as defined in subdivision seven of section three hundred one of
48 the agriculture and markets law, or unique and irreplaceable agricul-
49 tural land, as defined in subdivision six of section three hundred one
50 of the agriculture and markets law;

51 (d) preservation of lands of exceptional scenic value;
52 (e) preservation of freshwater marshes or other wetlands;
53 (f) preservation of aquifer recharge areas;
54 (g) preservation of undeveloped beach-lands or shoreline;

1 (h) establishment of wildlife refuges for the purpose of maintaining
2 native animal species diversity, including the protection of habitat
3 essential to the recovery of rare, threatened or endangered species;

4 (i) preservation of unique or threatened ecological areas;

5 (j) preservation of rivers and river areas in a natural, free-flowing
6 condition;

7 (k) preservation of forested land;

8 (l) preservation of public access to lands for public use including
9 stream rights and waterways;

10 (m) preservation of historic places and properties listed on the New
11 York state register of historic places and/or protected under a munici-
12 pal historic preservation ordinance or law; and

13 (n) undertaking any of the purposes of this subdivision in furtherance
14 of the establishment of a greenbelt.

15 6. The town board which has established a community preservation fund
16 shall create an advisory board to review and make recommendations on
17 proposed acquisitions of interests in real property using monies from
18 the fund. Such board shall consist of five or seven legal residents of
19 the municipality who shall serve without compensation. No member of the
20 local legislative body shall serve on the board. A majority of the
21 members of the board shall have demonstrated experience with conserva-
22 tion or land preservation activities. The board shall act in an advisory
23 capacity to the town board. At least one member of the board shall be an
24 active farmer. Board members' terms shall be staggered.

25 7. The town board which has established a community preservation fund
26 shall, by local law, adopt a community preservation project plan. Such
27 plan shall list every project which the town plans to undertake pursuant
28 to the community preservation fund. Such plan shall provide for a
29 detailed evaluation of all available land use alternatives to protect
30 community character, including but not limited to: (a) fee simple acqui-
31 sition, (b) zoning regulations, including density reductions, cluster
32 development, and site plan and design requirements, (c) transfer of
33 development rights, (d) the purchase of development rights, and (e)
34 scenic and conservation easements. Said evaluation shall be as specific
35 as practicable as to each parcel selected for inclusion in such plan.
36 Such plan shall establish the priorities for preservation, and shall
37 include the preservation of farmland as its highest priority. Funds from
38 the community preservation fund may only be expended for projects which
39 have been included in such plan. Such plan shall be updated not less
40 than once every five years, but in no event until at least three years
41 after the adoption of the original plan. A copy of such plan shall be
42 filed with the town clerk, the commissioner of environmental conserva-
43 tion, the commissioner of agriculture and markets and the commissioner
44 of the office of parks, recreation and historic preservation. Such plan
45 shall be completed at least sixty days before the submission of the
46 mandatory referendum required by section fourteen hundred thirty-nine-bb
47 of the tax law. If at the time of referendum, the town shall have in
48 place an adopted open space plan, such plan shall be deemed sufficient
49 to waive the preservation plan requirements of this subdivision. Any
50 monies expended from the community preservation plan shall, however be
51 consistent with the purposes outlined in subdivisions three and five of
52 this section and with the open space plan for a period not to exceed
53 twelve months.

54 8. The town board which has established a community preservation fund
55 pursuant to this section may study and consider establishing a transfer
56 of development rights program to protect community character as provided

1 for by section two hundred sixty-one-a of this chapter. All provisions
2 of such section two hundred sixty-one-a shall be complied with. If at
3 any time during the life of the community preservation fund a transfer
4 of development rights program is established, the town may utilize
5 monies from the community preservation fund in order to create and fund
6 a central bank of the transfer of development rights program. If at any
7 time during the life of the community preservation fund, a transfer of
8 development rights program is repealed by the town, all monies from the
9 central bank shall be returned to the community preservation fund.

10 9. No interests or rights in real property shall be acquired pursuant
11 to this section until a public hearing is held as required by section
12 two hundred forty-seven of the general municipal law; provided, however,
13 that nothing herein shall prevent the town board from entering into a
14 conditional purchase agreement before a public hearing is held. Any
15 resolution of the town board approving an acquisition of rights or
16 interest in real property pursuant to this section, shall find that
17 acquisition was the best alternative for the protection of community
18 character of all the reasonable alternatives available to the town.

19 10. Rights or interest in real property acquired pursuant to this
20 section shall be administered and managed in a manner which (a) allows
21 public use and enjoyment in a manner compatible with the natural,
22 scenic, historic and open space character of such lands; (b) preserves
23 the native biological diversity of such lands; (c) with regard to open
24 spaces, limits improvements to enhancing access for passive use of such
25 lands such as nature trails, boardwalks, bicycle paths, and peripheral
26 parking areas provided that such improvements do not degrade the ecolog-
27 ical value of the land or threaten essential wildlife habitat; and (d)
28 preserves cultural property consistent with accepted standards for
29 historic preservation. Notwithstanding any other provision of this
30 subdivision there shall be no right to public use and enjoyment of land
31 used in conjunction with a farm operation as defined by subdivision
32 eleven of section three hundred one of the agriculture and markets law.
33 In furthering the purposes of this section, the town may enter into
34 agreements with corporations organized under the not-for-profit corpo-
35 ration law and engage in land trust activities to manage lands including
36 less than fee interests acquired pursuant to the provisions of this
37 section, provided that any such agreement shall contain a provision that
38 such corporation shall keep the lands accessible to the public unless
39 such corporation shall demonstrate to the satisfaction of the town that
40 public accessibility would be detrimental to the lands or any natural
41 resources associated therewith.

42 11. Rights or interests in real property acquired with monies from
43 such fund shall not be sold, leased, exchanged, donated, or otherwise
44 disposed of or used for other than the purposes permitted by this
45 section without the express authority of an act of the state legisla-
46 ture, which shall provide for the substitution of other lands of equal
47 environmental value and fair market value and reasonably equivalent
48 usefulness and location to those to be discontinued, sold or disposed
49 of, and such other requirements as shall be approved by the state legis-
50 lature. Any conservation easements, created under title three of article
51 forty-nine of the environmental conservation law, which are acquired
52 with monies from such fund may only be modified or extinguished as
53 provided in section 49-0307 of such law. Nothing in this section shall
54 preclude the town, by local law, from establishing additional
55 restrictions to the alienation of lands acquired pursuant to this
56 section. This subdivision shall not apply to the sale of development

rights by the town acquired pursuant to this section, where said sale is made by a central bank created by the town, pursuant to a transfer of development rights program established by the town pursuant to section two hundred sixty-one-a of this chapter, provided, however that (a) the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision five of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

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

ARTICLE 31-A-4

TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF BETHLEHEM

Section 1439-aaa. Definitions.

1439-bbb. Imposition of tax.

1439-ccc. Payment of tax.

1439-ddd. Liability for tax.

1439-eee. Exemptions.

1439-fff. Credit.

1439-ggg. Cooperative housing corporation transfers.

1439-hhh. Designation of agents.

1439-iii. Liability of recording officer.

1439-jjj. Refunds.

1439-kkk. Deposit and disposition of revenue.

1439-lll. Judicial review.

1439-mmm. Apportionment.

1439-nnn. Miscellaneous.

1439-ooo. Returns to be secret.

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

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

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town of Bethlehem. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encum-

1 brance, whether or not the underlying indebtedness is assumed or taken
2 subject to.

3 (a) In the case of a creation of a leasehold interest or the granting
4 of an option with use and occupancy of real property, consideration
5 shall include, but not be limited to, the value of the rental and other
6 payments attributable to the use and occupancy of the real property or
7 interest therein, the value of any amount paid for an option to purchase
8 or renew and the value of rental or other payments attributable to the
9 exercise of any option to renew.

10 (b) In the case of a creation of a subleasehold interest, consider-
11 ation shall include, but not be limited to, the value of the sublease
12 rental payments attributable to the use and occupancy of the real prop-
13 erty, the value of any amount paid for an option to renew and the value
14 of rental or other payments attributable to the exercise of any option
15 to renew less the value of the remaining prime lease rental payments
16 required to be made.

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

21 (d) In the case of an assignment or surrender of a leasehold interest
22 or the assignment or surrender of an option or contract to purchase real
23 property, consideration shall not include the value of the remaining
24 rental payments required to be made pursuant to the terms of such lease
25 or the amount to be paid for the real property pursuant to the terms of
26 the option or contract being assigned or surrendered.

27 (e) In the case of (1) the original conveyance of shares of stock in a
28 cooperative housing corporation in connection with the grant or transfer
29 of a proprietary leasehold by the cooperative corporation or cooperative
30 plan sponsor, and (2) the subsequent conveyance by the owner thereof of
31 such stock in a cooperative housing corporation in connection with the
32 grant or transfer of a proprietary leasehold for a cooperative unit
33 other than an individual residential unit, consideration shall include a
34 proportionate share of the unpaid principal of any mortgage on the real
35 property of the cooperative housing corporation comprising the cooper-
36 ative dwelling or dwellings. Such share shall be determined by multi-
37 plying the total unpaid principal of the mortgage by a fraction, the
38 numerator of which shall be the number of shares of stock being conveyed
39 in the cooperative housing corporation in connection with the grant or
40 transfer of a proprietary leasehold and the denominator of which shall
41 be the total number of shares of stock in the cooperative housing corpo-
42 ration.

43 5. "Conveyance" means the transfer or transfers of any interest in
44 real property by any method, including but not limited to, sale,
45 exchange, assignment, surrender, mortgage foreclosure, transfer in lieu
46 of foreclosure, option, trust indenture, taking by eminent domain,
47 conveyance upon liquidation or by a receiver, or transfer or acquisition
48 of a controlling interest in any entity with an interest in real proper-
49 ty. Transfer of an interest in real property shall include the creation
50 of a leasehold or sublease only where (a) the sum of the term of the
51 lease or sublease and any options for renewal exceeds forty-nine years,
52 (b) substantial capital improvements are or may be made by or for the
53 benefit of the lessee or sublessee, and (c) the lease or sublease is for
54 substantially all of the premises constituting the real property.
55 Notwithstanding the foregoing, conveyance of real property shall not
56 include a conveyance made pursuant to devise, bequest or inheritance;

1 the creation, modification, extension, spreading, severance, consol-
2 idation, assignment, transfer, release or satisfaction of a mortgage; a
3 mortgage subordination agreement, a mortgage severance agreement, an
4 instrument given to perfect or correct a recorded mortgage; or a release
5 of lien of tax pursuant to this chapter or the internal revenue code.

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

13 7. "Grantor" means the person making the conveyance of real property
14 or interest therein. Where the conveyance consists of a transfer or an
15 acquisition of a controlling interest in an entity with an interest in
16 real property, "grantor" means the entity with an interest in real prop-
17 erty or a shareholder or partner transferring stock or partnership
18 interest, respectively.

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

21 9. "Fund" means a community preservation fund created pursuant to
22 section sixty-four-k of the town law.

23 10. "Recording officer" means the county clerk of the county of Alba-
24 ny.

25 11. "Town" means the town of Bethlehem, county of Albany.

26 12. "Treasurer" means the treasurer of the county of Albany.

27 13. "Town supervisor" means the town supervisor of the town of Bethle-
28 hem.

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

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

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

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

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

44 § 1439-bbb. Imposition of tax. Notwithstanding any other provisions of
45 law to the contrary, the town of Bethlehem, acting through its town
46 board, is hereby authorized and empowered to adopt a local law imposing
47 in such town a tax on each conveyance of real property or interest ther-
48 ein not to exceed a maximum of two percent of the consideration for such
49 conveyance, subject to the exemptions set forth in section fourteen
50 hundred thirty-nine-eee of this article; any such local law shall fix
51 the rate of such tax. Provided, however, any such local law imposing,
52 repealing or reimposing such tax shall be subject to a mandatory refer-
53 endum pursuant to section twenty-three of the municipal home rule law.
54 Notwithstanding the foregoing, prior to adoption of such local law, the
55 town must establish a community preservation fund pursuant to section
56 sixty-four-k of the town law. Revenues from such tax shall be deposited

1 in such fund and may be used solely for the purposes of such fund. Such
2 local law shall apply to any conveyance occurring on or after the first
3 day of a month to be designated by such town board, which is not less
4 than sixty days after the enactment of such local law, but shall not
5 apply to conveyances made on or after such date pursuant to binding
6 written contracts entered into prior to such date, provided that the
7 date of execution of such contract is confirmed by independent evidence
8 such as the recording of the contract, payment of a deposit or other
9 facts and circumstances as determined by the treasurer.

10 § 1439-ccc. Payment of tax. 1. The real estate transfer tax imposed
11 pursuant to this article shall be paid to the treasurer or the recording
12 officer acting as the agent of the treasurer upon designation as such
13 agent by the treasurer. Such tax shall be paid at the same time as the
14 real estate transfer tax imposed by article thirty-one of this chapter
15 is required to be paid. Such treasurer or recording officer shall
16 endorse upon each deed or instrument effecting a conveyance a receipt
17 for the amount of the tax so paid.

18 2. A return shall be required to be filed with such treasurer or
19 recording officer for purposes of the real estate transfer tax imposed
20 pursuant to this article at the same time as a return is required to be
21 filed for purposes of the real estate transfer tax imposed by article
22 thirty-one of this chapter. The treasurer shall prescribe the form of
23 return, the information which it shall contain, and the documentation
24 that shall accompany the return. Said form shall be identical to the
25 real estate transfer tax return required to be filed pursuant to section
26 fourteen hundred nine of this chapter, except that the treasurer shall
27 adapt said form to reflect the provisions in this chapter that are
28 inconsistent, different, or in addition to the provisions of article
29 thirty-one of this chapter. The real estate transfer tax returns
30 required to be filed pursuant to this section shall be preserved for
31 three years and thereafter until such treasurer or recording officer
32 orders them to be destroyed.

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

37 § 1439-ddd. Liability for tax. 1. The real estate transfer tax shall
38 be paid by the grantee. If the grantee has failed to pay the tax imposed
39 pursuant to this article or if the grantee is exempt from such tax, the
40 grantor shall have the duty to pay the tax. Where the grantor has the
41 duty to pay the tax because the grantee has failed to pay the tax, such
42 tax shall be the joint and several liability of the grantee and the
43 grantor.

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

52 § 1439-eee. Exemptions. 1. The following shall be exempt from the
53 payment of the real estate transfer tax imposed by this article:

54 (a) The state of New York, or any of its agencies, instrumentalities,
55 political subdivisions, or public corporations (including a public

1 corporation created pursuant to an agreement or compact with another
2 state or the Dominion of Canada); and

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

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

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

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

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

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

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

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

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

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

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

29 (j) Conveyances of real property or a portion or portions of real
30 property that are the subject of one or more of the following develop-
31 ment restrictions:

32 (1) agricultural, conservation, scenic, or an open space easement,

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

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

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

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

44 (k) Conveyances of real property, where the property is viable agri-
45 cultural land as defined in subdivision seven of section three hundred
46 one of the agriculture and markets law and the entire property to be
47 conveyed is to be made subject to one of the development restrictions
48 provided for in subparagraph two of paragraph (j) of this subdivision
49 provided that said development restriction precludes the conversion of
50 the property to a non-agricultural use for at least eight years from the
51 date of transfer, and said development restriction is evidenced by an
52 easement, agreement, or other suitable instrument which is to be
53 conveyed to the town simultaneously with the conveyance of the real
54 property; or

1 (l) Conveyances of real property for open space, parks, or historic
2 preservation purposes to any not-for-profit tax exempt corporation oper-
3 ated for conservation, environmental, or historic preservation purposes.

4 3. An exemption from the tax which is equal to the median sales price
5 of residential real property within the applicable county, as determined
6 by the office of real property services pursuant to section four hundred
7 twenty-five of the real property tax law, shall be allowed on the
8 consideration of the conveyance of improved or unimproved real property
9 or an interest therein.

10 § 1439-fff. Credit. A grantee shall be allowed a credit against the
11 tax due on a conveyance of real property to the extent tax was paid by
12 such grantee on a prior creation of a leasehold of all or a portion of
13 the same real property or on the granting of an option or contract to
14 purchase all or a portion of the same real property by such grantee.
15 Such credit shall be computed by multiplying the tax paid on the
16 creation of the leasehold or on the granting of the option or contract
17 by a fraction, the numerator of which is the value of the consideration
18 used to compute such tax paid which is not yet due to such grantor on
19 the date of the subsequent conveyance (and which such grantor will not
20 be entitled to receive after such date), and the denominator of which is
21 the total value of the consideration used to compute such tax paid.

22 § 1439-ggg. Cooperative housing corporation transfers. 1. Notwith-
23 standing the definition of "controlling interest" contained in subdivi-
24 sion two of section fourteen hundred thirty-nine-aaa of this article or
25 anything to the contrary contained in subdivision five of section four-
26 teen hundred thirty-nine-aaa of this article, the tax imposed pursuant
27 to this article shall apply to (a) the original conveyance of shares of
28 stock in a cooperative housing corporation in connection with the grant
29 or transfer of a proprietary leasehold by the cooperative corporation or
30 cooperative plan sponsor, and (b) the subsequent conveyance of such
31 stock in a cooperative housing corporation in connection with the grant
32 or transfer of a proprietary leasehold by the owner thereof. With
33 respect to any such subsequent conveyance where the property is an indi-
34 vidual residential unit, the consideration for the interest conveyed
35 shall exclude the value of any liens on certificates of stock or other
36 evidences of an ownership interest in and a proprietary lease from a
37 corporation or partnership formed for the purpose of cooperative owner-
38 ship of residential interest in real estate remaining thereon at the
39 time of conveyance. In determining the tax on a conveyance described in
40 paragraph (a) of this subdivision, a credit shall be allowed for a
41 proportionate part of the amount of any tax paid upon the conveyance to
42 the cooperative housing corporation of the real property comprising the
43 cooperative dwelling or dwellings to the extent that such conveyance
44 effectuated a mere change of identity or form of ownership of such prop-
45 erty and not a change in the beneficial ownership of such property. The
46 amount of the credit shall be determined by multiplying the amount of
47 tax paid upon the conveyance to the cooperative housing corporation by a
48 percentage representing the extent to which such conveyance effectuated
49 a mere change of identity or form of ownership and not a change in the
50 beneficial ownership of such property, and then multiplying the result-
51 ing product by a fraction, the numerator of which shall be the number of
52 shares of stock conveyed in a transaction described in paragraph (a) of
53 this subdivision, and the denominator of which shall be the total number
54 of shares of stock of the cooperative housing corporation (including any
55 stock held by the corporation). In no event, however, shall such credit
56 reduce the tax, on a conveyance described in paragraph (a) of this

1 subdivision, below zero, nor shall any such credit be allowed for a tax
2 paid more than twenty-four months prior to the date on which occurs the
3 first in a series of conveyances of shares of stock in an offering of
4 cooperative housing corporation shares described in paragraph (a) of
5 this subdivision.

6 2. Every cooperative housing corporation shall be required to file an
7 information return with the treasurer by July fifteenth of each year
8 covering the preceding period of January first through June thirtieth
9 and by January fifteenth of each year covering the preceding period of
10 July first through December thirty-first. The return shall contain such
11 information regarding the conveyance of shares of stock in the cooper-
12 ative housing corporation as the treasurer may deem necessary, includ-
13 ing, but not limited to, the names, addresses and employee identifica-
14 tion numbers or social security numbers of the grantor and the grantee,
15 the number of shares conveyed, the date of the conveyance and the
16 consideration paid for such conveyance.

17 § 1439-hhh. Designation of agents. The treasurer is authorized to
18 designate the recording officer to act as his or her agent for purposes
19 of collecting the tax authorized by this article. The treasurer shall
20 provide for the manner in which such person may be designated as his or
21 her agent subject to such terms and conditions as the treasurer shall
22 prescribe. The real estate transfer tax shall be paid to such agent as
23 provided in section fourteen hundred thirty-nine-ccc of this article.

24 § 1439-iii. Liability of recording officer. A recording officer shall
25 not be liable for any inaccuracy in the amount of tax imposed pursuant
26 to this article that he or she shall collect so long as he or she shall
27 compute and collect such tax on the amount of consideration or the value
28 of the interest conveyed as such amounts are provided to him or her by
29 the person paying the tax.

30 § 1439-jjj. Refunds. Whenever the treasurer shall determine that any
31 moneys received under the provisions of the local law enacted pursuant
32 to this article were paid in error, he or she may cause such moneys to
33 be refunded pursuant to such requirements as he or she may prescribe,
34 provided that any application for such refund is filed with the treasurer
35 within two years from the date the erroneous payment was made.

36 § 1439-kkk. Deposit and disposition of revenue. 1. All taxes, penal-
37 ties and interest imposed by the town under the authority of section
38 fourteen hundred thirty-nine-bbb of this article, which are collected by
39 the treasurer or his or her agents, shall be deposited in a single trust
40 fund for the town and shall be kept in trust and separate and apart from
41 all other monies in possession of the treasurer. Moneys in such fund
42 shall be deposited and secured in the manner provided by section ten of
43 the general municipal law. Pending expenditure from such fund, moneys
44 therein may be invested in the manner provided in section eleven of the
45 general municipal law. Any interest earned or capital gain realized on
46 the moneys so deposited or invested shall accrue to and become part of
47 such fund.

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

54 3. The treasurer, after reserving such refunds, shall on or before the
55 twelfth day of each month pay to the town supervisor the taxes, penal-
56 ties and interest imposed by the town under the authority of section

1 fourteen hundred thirty-nine-bbb of this article, collected by the trea-
2 surer, pursuant to this article during the next preceding calendar
3 month. The amount so payable shall be certified to the town supervisor
4 by the treasurer, who shall not be held liable for any inaccuracy in
5 such certification. Provided, however, any such certification may be
6 based on such information as may be available to the treasurer at the
7 time such certification must be made under this section. Where the
8 amount so paid over to the town in any such distribution is more or less
9 than the amount due to the town, the amount of the overpayment or under-
10 payment shall be certified to the town supervisor by the treasurer, who
11 shall not be held liable for any inaccuracy in such certification. The
12 amount of the overpayment or underpayment shall be so certified to the
13 town supervisor as soon after the discovery of the overpayment or under-
14 payment as reasonably possible and subsequent payments and distributions
15 by the treasurer to the town shall be adjusted by subtracting the amount
16 of any such overpayment from or by adding the amount of any such under-
17 payment to such number of subsequent payments and distributions as the
18 treasurer and town supervisor shall consider reasonable in view of the
19 overpayment or underpayment and all other facts and circumstances.

20 4. All monies received from the treasurer shall be deposited in the
21 fund of the town, pursuant to section sixty-four-k of the town law.

22 § 1439-lll. Judicial review. 1. Any final determination of the amount
23 of any tax payable under section fourteen hundred thirty-nine-ccc of
24 this article shall be reviewable for error, illegality or unconstitu-
25 tionality or any other reason whatsoever by a proceeding under article
26 seventy-eight of the civil practice law and rules if application there-
27 for is made to the supreme court within four months after the giving of
28 the notice of such final determination, provided, however, that any such
29 proceeding under article seventy-eight of the civil practice law and
30 rules shall not be instituted unless (a) the amount of any tax sought to
31 be reviewed, with such interest and penalties thereon as may be provided
32 for by local law shall be first deposited and there is filed an under-
33 taking, issued by a surety company authorized to transact business in
34 this state and approved by the state superintendent of insurance as to
35 solvency and responsibility, in such amount as a justice of the supreme
36 court shall approve to the effect that if such proceeding be dismissed
37 or the tax confirmed the petitioner will pay all costs and charges which
38 may accrue in the prosecution of such proceeding or (b) at the option of
39 the petitioner, such undertaking may be in a sum sufficient to cover the
40 taxes, interest and penalties stated in such determination, plus the
41 costs and charges which may accrue against it in the prosecution of the
42 proceeding, in which event the petitioner shall not be required to pay
43 such taxes, interest or penalties as a condition precedent to the appli-
44 cation.

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

1 confirmed, the petitioner will pay all costs and charges which may
2 accrue in the prosecution of such proceeding.

3 § 1439-mmm. Apportionment. A local law adopted by the town of Bethle-
4 hem, pursuant to this article, shall provide for a method of apportion-
5 ment for determining the amount of tax due whenever the real property or
6 interest therein is situated within and without the town.

7 § 1439-nnn. Miscellaneous. A local law adopted by the town of Bethle-
8 hem, pursuant to this article, may contain such other provisions as the
9 town deems necessary for the proper administration of the tax imposed
10 pursuant to this article, including provisions concerning the determi-
11 nation of tax, the imposition of interest on underpayments and overpay-
12 ments and the imposition of civil penalties. Such provisions shall be
13 identical to the corresponding provisions of the real estate transfer
14 tax imposed by article thirty-one of this chapter, so far as such
15 provisions can be made applicable to the tax imposed pursuant to this
16 article.

17 § 1439-ooo. Returns to be secret. 1. Except in accordance with proper
18 judicial order or as otherwise provided by law, it shall be unlawful for
19 the treasurer or any officer or employee of the county or town, includ-
20 ing any person engaged or retained on an independent contract basis, to
21 divulge or make known in any manner the particulars set forth or
22 disclosed in any return required under a local law enacted pursuant to
23 this article. However, that nothing in this section shall prohibit the
24 recording officer from making a notation on an instrument effecting a
25 conveyance indicating the amount of tax paid. No recorded instrument
26 effecting a conveyance shall be considered a return for purposes of this
27 section.

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

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

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

53 § 3. Severability. If any provision of this act or the application
54 thereof shall for any reason be adjudged by any court of competent
55 jurisdiction to be invalid, such judgment shall not affect, impair, or
56 invalidate the remainder of this act, but shall be confined in its oper-

1 ation to the provision thereof directly involved in the controversy in
2 which such judgment shall have been rendered.

3 § 4. This act shall take effect immediately; provided, however, that
4 section two of this act shall take effect on the ninetieth day after it
5 shall have become a law and shall expire December 31, 2038 when upon
6 such date the provisions of such section shall be deemed repealed.