

# STATE OF NEW YORK

10750

## IN ASSEMBLY

May 16, 2018

Introduced by M. of A. B. MILLER -- read once and referred to the  
Committee on Ways and Means

AN ACT to amend the tax law, in relation to apportionment of mortgage  
taxes for property situated in more than one tax district

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

1 Section 1. Section 260 of the tax law, as amended by chapter 372 of  
2 the laws of 1930, is amended to read as follows:  
3 § 260. Determination and apportionment by the state tax commission.  
4 When the real property covered by a mortgage is situated in more than  
5 one tax district, the state tax commission shall apportion the tax paid  
6 on such mortgage between the respective tax districts upon the basis of  
7 the [~~relative assessments~~] full market value of such real property as  
8 the same appear on the last assessment-rolls. If, however, the whole or  
9 any part of the property covered by such a mortgage is not assessed upon  
10 the last assessment-roll or rolls of the tax district or districts in  
11 which it is situated, or is so assessed, as a part of a larger tract,  
12 that the assessed value cannot be determined, or if improvements have  
13 been made to such an extent as materially to change the value of the  
14 property so assessed, the tax commission may require the local assessors  
15 in the respective tax districts, or the mortgagor, or mortgagee, to  
16 furnish sworn appraisals of the property in each tax district, and upon  
17 such appraisals shall determine the apportionment. If such mortgage  
18 covers real property in two or more counties, the tax commission shall  
19 determine the proportion of the tax which shall be paid by the recording  
20 officer who has received the same to the recording officers of the other  
21 counties in which are situated the tax districts entitled to share ther-  
22 ein. When any recording officer shall pay any portion of a tax to the  
23 recording officer of another county, he shall forward with such tax a  
24 description sufficient to identify the mortgage on which the tax has  
25 been paid, and the recording officer receiving such tax shall note on  
26 the margin of the record of such mortgage the fact of such payment,  
27 attested by his signature. The tax commission shall make an order of  
28 determination and apportionment in respect to each such mortgage and

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

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1 file a certified copy thereof with the recording officer of each county  
2 in which a part of the mortgaged real property is situated.

3 When the real property covered by a mortgage is partly within the  
4 state and partly without the state it shall be the duty of the tax  
5 commission to determine what portion of the mortgage or of advancements  
6 thereon shall be taxable under this article. Such determination shall  
7 be made in the following manner: First: Determine the respective  
8 values of the property within and without the state, and deduct there-  
9 from the amount of any prior existing mortgage liens, excepting such  
10 liens as are to be replaced by prior advancements and the advancement  
11 under consideration. Second: Find the ratio that the net value of the  
12 mortgaged property within the state bears to the net value of the entire  
13 mortgaged property. Third: Make the determination of the portion of  
14 the mortgage or of the advancements thereon which shall be taxable under  
15 this article by applying the ratio so found. If a mortgage covering  
16 property partly within and partly without the state is presented for  
17 record before such determination has been made, or at the time when an  
18 advance is made on a corporate trust mortgage or on a prior advance  
19 mortgage, there may be presented to the recording officer a statement in  
20 duplicate verified by the mortgagor or an officer or duly authorized  
21 agent of the mortgagor, in which shall be specified the net value of the  
22 property within the state and the net value of the property without the  
23 state covered by such mortgage. One of such statements shall be filed  
24 by the recording officer and the other shall be forthwith transmitted by  
25 him to the state tax commission. The tax payable under this article  
26 before the determination by the tax commission shall be computed upon  
27 such portion of the principal indebtedness secured by the mortgage, or  
28 of the sum advanced thereon, as the net value of the mortgaged property  
29 within the state bears to the net value of the entire mortgaged property  
30 as set forth in such statement. The tax commission shall on receipt of  
31 the statement from the recording officer and on not less than ten days'  
32 notice served personally or by mail upon the mortgagor, the mortgagee  
33 and the state comptroller, proceed to make the required determination.  
34 In determining the separate values of the property within and without  
35 the state the tax commission shall consider only the tangible property,  
36 real and personal, except that leases of real property shall be deemed  
37 tangible property. For the purpose of determining such value the tax  
38 commission may require the mortgagor or mortgagee to furnish by affida-  
39 vit or verified report such information or data as it may deem neces-  
40 sary, and may require and take the testimony of the mortgagor, mortgagee  
41 or any other person. A certified copy of the order of determination and  
42 apportionment shall be delivered personally or by mail to the mortgagor,  
43 the mortgagee and the state comptroller, and any tax under such determi-  
44 nation which has not been paid shall be paid within ten days after  
45 service of such certified copy; if, however, the tax paid at the time of  
46 filing the statement hereinbefore specified with the recording officer  
47 is in excess of the tax determined to be payable, the certificate of  
48 determination and apportionment shall direct the recording officer to  
49 refund to the person paying such tax the amount of such excess; provided  
50 that no refund shall be made of any taxes paid pursuant to a previous  
51 determination.

52 The tax commission shall adopt rules to govern the procedure and the  
53 manner of taking evidence in all the matters provided for by this  
54 section and may require verified statements to be furnished either by  
55 boards of assessors, recording officers or other persons having know-  
56 ledge in relation to such matters. Failure on the part of any person or

1 officer to furnish a statement or other data when required so to do  
2 pursuant to the provisions of this section shall render such person or  
3 officer liable to a penalty of one hundred dollars, to be recovered by  
4 the attorney-general in an action brought in the name of the people of  
5 the state of New York.

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

13 § 2. This act shall take effect immediately.