# STATE OF NEW YORK

2686

2017-2018 Regular Sessions

# IN SENATE

January 17, 2017

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the general municipal law and the tax law, in relation to authorizing cities and towns to impose a tax on real estate transfers, and authorizing municipalities to create community preservation funds

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

Section 1. Paragraph g of subdivision 2 of section 49-0209 of the environmental conservation law, as added by chapter 596 of the laws of 2007, is amended to read as follows:

g. review any community preservation project plans **prepared by towns within the region** developed pursuant to section six-s of the general municipal law.

§ 2. The general municipal law is amended by adding a new section 248 to read as follows:

**§ 248. Community preservation funds. 1. As used in this section, the following words and terms shall have the following meanings:**

**(a) "Community preservation" or "preservation of community character" shall mean and include any of the purposes outlined in subdivision five of this section.**

**(b) "Board" means the advisory board required pursuant to subdivision six of this section.**

**(c) "Tax" means the real estate transfer tax payable on a real property conveyance pursuant to section fourteen hundred forty-nine-bbbbbb of the tax law, but shall have a different meaning if the context clearly indicates such as the real estate transfer tax imposed pursuant to article thirty-one of the tax law.**

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

**(e) "Municipality" means a city or town.**

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

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(f) "Municipal legislative body" means the town board of a town; or the board of aldermen, common council, council or commission of a city.

2. (a) The municipal legislative body of any municipality is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the municipality from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such municipality pursuant to section fourteen hundred forty-nine-bbbbbb of the tax law. The fund shall also be authorized to accept gifts of any such interests in land, of monies, or of negotiable instruments or shares of stock. Interest or dividends accrued by funds deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account or used for any purpose other than community preservation. Monies of a municipality's community preservation fund may be expended jointly with one or more other municipalities for the benefit of the residents of all municipalities contributing to such joint expenditure. Nothing contained in this subdivision shall be construed to prevent the financing, in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section.

(b) Nothing in this section shall be construed to supersede, affect, impair or invalidate any provision of section sixty-four-e or sixty-four-f of the town law. Nothing in section sixty-four-e or sixty-four-f of the town law shall affect or impair the authority of the towns of Brookhaven, East Hampton, Riverhead, Shelter Island, Southampton and Southold to establish by local law a community preservation fund pursuant to the provisions of this section.

3. The purposes of the fund shall be exclusively:

(a) to implement a plan for the preservation of community character in accordance with this section;

(b) to acquire interests or rights in real property for the preservation of community character within the municipality including villages therein, in accordance with such plan and in cooperation with willing sellers;

(c) to establish a bank pursuant to a transfer of development rights program consistent with the applicable provisions of section two hundred sixty-one-a of the town law and section twenty-f of the general city law; and

(d) to provide for the management and stewardship of such interests and rights consistent with subdivision eight of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for such management and stewardship program.

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

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

(a) preservation of open space;

(b) establishment of parks, nature preserves, or recreation areas;

(c) preservation of land which is predominantly viable agricultural land, as defined in subdivision seven of section three hundred one of the agriculture and markets law, or unique and irreplaceable agricultural land, as defined in subdivision six of section three hundred one of the agriculture and markets law;

(d) preservation of lands of exceptional scenic value;

(e) preservation of fresh and saltwater marshes or other wetlands;

(f) preservation of aquifer recharge areas;

(g) preservation of undeveloped beach-lands or shoreline;

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

(i) preservation of unique or threatened ecological areas;

(j) preservation of rivers, riparian lands, and rivers in a natural, free-flowing condition;

(k) preservation of forested land;

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

(m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and

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

6. The municipal legislative body of any municipality which has established a community preservation fund shall create an advisory board to review and make recommendations to the municipal legislative body on proposed acquisitions of interests in real property using monies from the fund. No member of the municipal legislative body shall serve on the advisory board. The members and the chairperson shall be appointed by the municipal legislative body. Such advisory board shall consist of five or seven residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with land conservation or historic preservation. The municipal legislative body shall make a reasonable effort to appoint at least one active farmer to the board. In any county that has a county agricultural and farmland protection board established pursuant to section three hundred two of the agriculture and markets law, the municipal legislative body shall make a reasonable effort to appoint at least one member of the county agricultural and farmland protection board to the advisory board. The terms of members of the board first appointed shall be so fixed that the term of one member shall expire at the end of the municipal official year in which such members were initially appointed. The terms of the remaining members first appointed shall be so fixed that the term shall expire at the end of each official year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the advisory board.

7. The municipal legislative body of any municipality which has established a community preservation fund shall, by local law, adopt a community preservation project plan. This plan shall list every project which the municipality plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the municipality in order to protect community character. Such plan shall provide for a detailed evaluation of all available land

use alternatives to protect community character, including but not limited to:

(a) fee simple acquisition;

(b) zoning regulations, including density reductions, cluster development, and site plan and design requirements;

(c) transfer of development rights;

(d) the purchase of development rights; and

(e) scenic and conservation easements.

Such evaluation shall be as specific as practicable as to the parcels selected for inclusion in the plan. The plan shall establish the priorities for preservation. Funds from the community preservation fund may only be expended for projects which have been included in the plan. Such plan shall be updated not less than once every five years. A copy of the plan shall be filed with the commissioners of environmental conservation, agriculture and markets, and the office of parks, recreation and historic preservation, the secretary of state, and with the clerk of the municipality and, where practical, posted on the municipality's website. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred forty-nine-bbbbbb of the tax law.

8. Any municipal legislative body which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of the town law or section twenty-f of the general city law. If at any time during the life of the community preservation fund a transfer of development rights program is established, the municipality may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the municipal legislative body, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until notice is provided and a public hearing is held as required by section two hundred forty-seven of this article; provided, however, that nothing pursuant to this section shall prevent the municipal legislative body from entering into a conditional purchase agreement before a public hearing is held. Any resolution of a municipal legislative body approving an acquisition of interests or rights in real property pursuant to this section shall find that such acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the municipality.

10. Rights or interests in real property acquired pursuant to this section shall be administered and managed in a manner which:

(a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic, and open space character of such lands or with the sustainable forestry use of such lands;

(b) preserves the native biological diversity of such lands;

(c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, board walks, hiking trails, snowshoe and cross-country ski trails, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and

(d) preserves cultural property consistent with accepted standards for historic preservation.

Notwithstanding any other provision of this subdivision, there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision eleven of section three hundred one of the agriculture and markets law. In furthering the purposes of this section, the municipality may enter into agreements with corporations organized under the not-for-profit corporation law that engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep and manage the lands consistent with this section.

11. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the state legislature, which shall provide for the substitution of other lands of equal environmental, historical, or agricultural value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the state legislature. Any conservation easements, created under title three of article forty-nine of the environmental conservation law, which are acquired with monies from such fund, may only be modified or extinguished as provided by section 49-0307 of the environmental conservation law. Nothing in this section shall preclude a municipality, by local law, from establishing additional restrictions to the alienation of rights or interests in real property acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by a municipality acquired pursuant to this section, where such sale is made by a development rights bank created by a municipality, pursuant to a transfer of development rights program established by a municipality pursuant to the applicable provisions of section two hundred sixty-one-a of the town law or section twenty-f of the general city law, provided, however:

(a) that the lands from which such development rights were acquired shall remain preserved in perpetuity by a permanent conservation 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.

§ 3. The tax law is amended by adding a new article 31-H to read as follows:

## ARTICLE 31-H
## TAX ON REAL ESTATE TRANSFERS IN CITIES AND TOWNS

Section 1449-aaaaaa. Definitions.
1449-bbbbbb. Imposition of tax.
1449-cccccc. Payment of tax.
1449-dddddd. Liability for tax.
1449-eeeeee. Exemptions.
1449-ffffff. Credit.
1449-gggggg. Cooperative housing corporation transfers.
1449-hhhhhh. Designation of agents.
1449-iiiiii. Liability of recording officer.
1449-jjjjjj. Refunds.

1449-kkkkkk. Deposit and disposition of revenue.
1449-llllll. Judicial review.
1449-mmmmmm. Apportionment.
1449-nnnnnn. Miscellaneous.
1449-oooooo. Returns to be secret.

§ 1449-aaaaaa. Definitions. When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "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 encumbrance, whether or not the underlying indebtedness is assumed or taken subject to:

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

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

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

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

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall

be the total number of shares of stock in the cooperative housing corporation.

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

4. "Tax" means the real estate transfer tax payable on a real property conveyance pursuant to section fourteen hundred forty-nine-bbbbbb of this article, but shall have a different meaning if the context clearly indicates such as the real estate transfer tax imposed pursuant to article thirty-one of this chapter.

5. "Fund" means a community preservation fund created pursuant to section two hundred forty-eight of the general municipal law.

6. "Buyer" means the person who obtains real property or interest therein as a result of a conveyance.

7. "Seller" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "seller" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

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

9. "Municipality" means a city or town.

10. "Municipal legislative body" means the town board of a town; or the board of aldermen, common council, council or commission of a city.

11. "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.

12. "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 any city or town in the state of New York. It shall not include rights to sepulture.

13. "Recording officer" means the county clerk of the county where the real property is located except in a county having a register, where it means the register of the county, or in the city of New York where it means the city register.

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

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

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

(c) the transfer report form indicates that the property is a residential condominium.

15. "Treasurer" means the treasurer of the county where the real property is located except in a city with a population of one million or more, where it means the city department of finance.

§ 1449-bbbbbb. Imposition of tax. 1. Notwithstanding any other provisions of law to the contrary, any municipality acting through its municipal legislative body is hereby authorized and empowered to adopt a local law imposing in such municipality a tax on each conveyance of real property or interest therein at a rate not to exceed a maximum of two percent of the consideration for such conveyance; any such local law shall fix the rate of such tax. Provided however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Such local law shall only be submitted for the approval of the electors at a general election. Notwithstanding the foregoing, prior to adoption of any such local law, the municipality must establish a community preservation fund pursuant to section two hundred forty-eight of the general municipal law. Revenues from such a tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such municipal legislative body, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date; provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

2. Nothing in this article shall be construed to supersede, affect, impair or invalidate any provision of article thirty-one-B or thirty-one-D of this chapter. Nothing in article thirty-one-B or thirty-one-D of this chapter shall affect or impair the authority of the towns of Brookhaven, East Hampton, Riverhead, Shelter Island, Southampton and Southold to adopt a local law imposing in such municipalities a fee on conveyances of real property as authorized by this article.

§ 1449-ccccccc. Payment of tax. 1. The tax imposed pursuant to this article shall be paid to the treasurer or the recording officer acting as the agent of the treasurer upon designation as such agent by the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of this chapter is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be filed with such treasurer or recording officer for purposes of the fee imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The treasurer shall prescribe the form of the return, the information which it shall contain, and the documentation that shall accompany the return. Such form shall be identical to the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter, except that the treasurer shall adapt the form to reflect the provisions in this article that are inconsistent, different from, or in addition to the provisions of article thirty-one of this chapter. The real estate transfer tax returns required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

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

§ 1449-dddddd. Liability for tax. 1. The tax shall be paid by the buyer. If the buyer has failed to pay the tax imposed pursuant to this article or if the buyer is exempt from such tax, the seller shall have the duty to pay the tax. Where the seller has the duty to pay the tax because the buyer has failed to pay the tax, such tax shall be the joint and several liability of the buyer and the seller.

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

§ 1449-eeeeee. Exemptions. 1. The following shall be exempt from the payment of the tax:

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

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

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

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

(b) Conveyances which are or were used to secure a debt or other obligation;

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

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

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

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

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

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

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

(j) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:

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

(2) covenants or restrictions prohibiting development where the property being conveyed has had its development rights permanently removed,

(3) a purchase of development rights agreement where the property being conveyed has had its development rights permanently removed,

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

(5) real property subject to any locally adopted land preservation agreement; provided that the municipal legislative body exempts from the tax those conveyances subject to such development restriction in the local law adopted pursuant to this article;

(k) Conveyances of real property, where the property is predominantly viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law, and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in paragraph (j) of this subdivision; provided that such development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and that said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the municipality simultaneously with the conveyance of the real property; or

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

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

§ 1449-ffffff. Credit. A buyer shall be allowed a credit against the tax due on a conveyance of real property to the extent the tax was paid by such buyer on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such buyer. Such

credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such seller on the date of the subsequent conveyance (and which such seller will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 1449-ggggggg. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaaaaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaaaaa of this article, the tax imposed pursuant to this article shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision, and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the seller and the buyer, the

number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 1449-hhhhhh. Designation of agents. The treasurer is authorized to designate the recording officer to act as his or her agent for purposes of collecting the tax authorized by this article. The treasurer shall provide for the manner in which such person may be designated as his or her agent subject to such terms and conditions as the treasurer shall prescribe. The tax shall be paid to such agent as provided in section fourteen hundred forty-nine-cccccc of this article.

§ 1449-iiiiii. Liability of recording officer. A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

§ 1449-jjjjjj. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, he or she may cause such moneys to be refunded pursuant to such requirements he or she may prescribe, provided that any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made.

§ 1449-kkkkkk. Deposit and disposition of revenue. 1. All taxes, penalties and interest imposed by the municipality under the authority of section fourteen hundred forty-nine-bbbbbb of this article, which are collected by the treasurer or his or her agents, shall be deposited in a single trust fund for the municipality and shall be kept in trust and separate and apart from all other monies in possession of the treasurer. Moneys in such fund shall be deposited and secured in the manner provided by section ten of the general municipal law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

2. The treasurer shall retain such amount as he or she may determine to be necessary for refunds with respect to the tax imposed by the municipality, under the authority of section fourteen hundred forty-nine-bbbbbb of this article, out of which the treasurer shall pay any refunds of such taxes to those subject to the taxes entitled to a refund pursuant to the provisions of this article.

3. The treasurer, after reserving such refunds, shall on or before the twelfth day of each month pay to the municipality the taxes, penalties and interest imposed by the municipality under the authority of section fourteen hundred forty-nine-bbbbbb of this article, collected by the treasurer pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the municipal legislative body by the treasurer, who shall not be held liable for any inaccuracy in such certification. Provided, however, any such certification may be based on such information as may be available to the treasurer at the time such certification must be made under this section. Where the amount so paid over to the municipality in any such distribution is more or less than the amount due to the municipality, the amount of the overpayment or underpayment shall be certified to the municipal legislative body by the treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the overpayment or underpayment shall be so certified to the municipal legislative body as soon after the discovery of the overpayment or underpayment as reasonably possible

and subsequent payments and distributions by the treasurer to such municipality shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the treasurer and the municipal legislative body shall consider reasonable in view of the overpayment or underpayment and all other facts and circumstances.

4. All monies received from the treasurer shall be deposited in the fund of the municipality, pursuant to section two hundred forty-eight of the general municipal law.

§ 1449-llllll. Judicial review. 1. Any final determination of the amount of any tax payable under section fourteen hundred forty-nine-cccccc of this article shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

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

§ 1449-mmmmmm. Apportionment. A local law adopted by any municipality pursuant to this article shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the municipality.

§ 1449-nnnnnn. Miscellaneous. A local law adopted by any municipality pursuant to this article may contain such other provisions as the municipality deems necessary for the proper administration of the tax imposed pursuant to this article, including provisions concerning the determination of tax, the imposition of interest on underpayments and overpayments and the imposition of civil penalties. Such provisions

shall be identical to the corresponding provisions of the real estate transfer tax imposed by article thirty-one of this chapter, so far as such provisions can be made applicable to the fee imposed pursuant to this article.

§ 1449-oooooo. Returns to be secret. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the municipality, including any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article; provided, however, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

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

3. Nothing in this section shall be construed to prohibit the delivery to a seller or buyer of an instrument effecting a conveyance or the duly authorized representative of a seller or buyer of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such municipality of the return of anyone subject to the tax who shall bring action to set aside or review the tax based thereon.

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

§ 5. This act shall take effect immediately.