STATE OF NEW YORK

S. 6041 A. 7704

2017-2018 Regular Sessions

SENATE - ASSEMBLY

May 10, 2017

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law in relation to taxable conveyances under the real estate transfer tax in the Peconic Bay Region; and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 4 of section 1449-aa of the tax law is amended by adding a new paragraph (f) to read as follows:

(f) In the case of a transfer of an interest in a partnership, limited liability corporation, S corporation or non-publicly traded C corporation with one hundred or fewer shareholders that owns real property that is located in a town and has a fair market value that equals or exceeds fifty percent of all the assets of the entity on the date of the transfer of an interest in the entity, the consideration for the conveyance shall be calculated by multiplying (1) the fair market value of the real property that is located in a town that is owned by the entity and (2) the percentage of the entity that is transferred.

§ 2. Subdivision 5 of section 1449-aa of the tax law is REPEALED and a new subdivision 5 is added to read as follows:

5. "Conveyance" means the transfer or transfers 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. Conveyance also includes the transfer of an interest in a partner-

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

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ship, limited liability corporation, S corporation or non-publicly traded C corporation with fewer than one hundred shareholders that owns an interest in real property that is located in New York and has a fair market value that equals or exceeds fifty percent of all the assets of the entity on the date of the transfer of an interest in the entity. Only those assets that the entity owned for at least two years before the date of the transfer of the taxpayer's interest in the entity shall be used in determining the fair market value of all the assets of the entity on the date of the transfer. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (i) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (ii) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii) 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 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 a lien of tax pursuant to this chapter or the internal revenue code.

§ 3. Section 1449-nn of the tax law is amended by adding a new subdivision 5 to read as follows:

5. The town is authorized to treat as subject to tax under this article any conveyance of an interest in real property made pursuant to an agreement, understanding or arrangement that results in the avoidance or evasion of the tax imposed by this section.

§ 4. This act shall take effect immediately; provided, however, that the amendments to paragraph (f) of subdivision 4 of section 1449-aa of the tax law made by section one of this act shall not affect the repeal of such subdivision and shall be deemed to repeal therewith; provided, further, that the amendments to subdivision 5 of section 1449-aa of the tax law made by section two of this act shall not affect the repeal of such section and shall be deemed to repeal therewith; provided, further that the amendments to subdivision 5 of section 1449-nn of the tax law made by section three of this act shall not affect the repeal of such section and shall be deemed to repeal therewith.