STATE OF NEW YORK

7231

IN SENATE

January 13, 2020

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to requiring the recording of mezzanine debt; and amend the tax law, in relation to including mezzanine debt in the mortgage recording tax

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

Section 1. The real property law is amended by adding a new section 291-k to read as follows:

§ 291-k. Recording of mezzanine debt. Whenever a mortgage instrument is recorded in the office of the recording officer of any county, any mezzanine debt related to the real property upon which the mortgage instrument is filed shall also be recorded with such mortgage instrument. For the purposes of this section, "mezzanine debt" shall mean debt carried by a borrower that may be subordinate to the primary lien and/or common shares and reported as assets for the purposes of financing such primary lien.

§ 2. Section 250 of the tax law is amended by adding a new subdivision 4 to read as follows:

4. The term "mezzanine debt" shall have the same meaning as provided in section two hundred ninety-one-k of the real property law.

§ 3. Section 253 of the tax law, as amended by chapter 350 of the laws of 1969, subdivision 1-a as added by chapter 788 of the laws of 1978, paragraph (a) of subdivision 1-a as amended by chapter 522 of the laws of 2008, subdivision 2 as amended by chapter 151 of the laws of 1971, paragraph (a) of subdivision 2 as amended by chapter 394 of the laws of 2016 and subdivision 3 as amended by chapter 527 of the laws of 2007, is amended to read as follows:

§ 253. Recording tax. 1. A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of **the total sum of: (a) the** principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of July, nineteen hundred and six, **and (b) any**

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

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mezzanine debt related to such real property recorded pursuant to section two hundred ninety-one-k of the real property law, is hereby imposed on [~~each~~] such [~~mortgage~~] **total amount**, and shall be collected and paid as provided in this article. If the principal debt or obligation which is or by any contingency may be secured by such mortgage recorded on or after the first day of July, nineteen hundred and seven, **and any mezzanine debt** is less than one hundred dollars, a tax of fifty cents is hereby imposed on such mortgage **and mezzanine debt**, and shall be collected and paid as provided in this article.

1-a. (a) In addition to the tax imposed by subdivision one of this section, there shall be imposed on **the total sum of (i)** each mortgage of real property situated within the state **and (ii) any mezzanine debt related to such property recorded pursuant to section two hundred ninety-one-k of the real property law**, except mortgages wherein the mortgagee is a natural person or persons, or is a credit union as defined in section two of the banking law, and in either case the mortgaged premises consist of real property improved by a structure containing six residential dwelling units or less, each with separate cooking facilities, a special additional tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at anytime thereafter by such mortgage **and any mezzanine debt**. The tax, if any, imposed by this subdivision shall in cases of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, be paid by the mortgagee, and such tax shall not be paid or payable, directly or indirectly, by the mortgagor except as otherwise provided in sections two hundred fifty-eight and two hundred fifty-nine of this article and except such tax shall be paid in such cases by the mortgagor where the mortgagee is an exempt organization described in paragraph (b) of this subdivision. In all other cases, such tax shall be paid by the mortgagor except that the tax shall be paid by the mortgagee where the mortgagor is an exempt organization described in paragraph (b) of this subdivision. All of the provisions of this article shall apply with respect to the special additional tax imposed by this subdivision to the same extent as if it were imposed by said subdivision one of this section, except as otherwise expressly provided in this article.

(b) An organization organized other than for profit which is operated on a nonprofit basis no part of the net earnings of which inures to the benefit of any officer, director or member and which is exempt from federal income taxation pursuant to subsection (a) of section five hundred one of the internal revenue code shall be exempt from the special additional tax imposed by this subdivision.

2. (a) In addition to the taxes imposed by subdivisions one and one-a of this section, there shall be imposed on **the total sum of (i)** each mortgage of real property situated within the state recorded on or after the first day of July, nineteen hundred sixty-nine, **and (ii) any mezzanine debt related to such property recorded pursuant to section two hundred ninety-one-k of the real property law,** an additional tax of twenty-five cents for counties outside of the metropolitan commuter transportation district, as defined pursuant to section twelve hundred sixty-two of the public authorities law, and thirty cents for counties within such metropolitan commuter transportation district for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at

the date of execution thereof or at any time thereafter by such mortgage, **and any mezzanine debt,** saving and excepting the first ten thousand dollars of such principal debt or obligation in any case in which the related mortgage is of real property principally improved or to be improved by a one or two family residence or dwelling. All the provisions of this article shall apply with respect to the additional tax imposed by this subdivision to the same extent as if it were imposed by the said subdivision one of this section, except as otherwise expressly provided in this article. Notwithstanding article eighteen-A of the general municipal law and titles eleven and fifteen of article eight of the public authorities law, no mortgage of real property situated within the state in counties located within the metropolitan commuter transportation district, the Niagara Frontier transportation district, the Rochester-Genesee transportation district, the capital district transportation district, and the central New York regional transportation district executed, given, made, or transferred or assigned by or to an agency created under article eighteen-A of the general municipal law, an authority created under title eleven or fifteen of article eight of the public authorities law, an agent or agent of such agent of such agency or authority, a project operator receiving financial assistance from such agency or authority, a project occupant of such agency or authority, or an owner of a project receiving financial assistance from such agency or authority shall be exempt from the additional tax imposed by this subdivision. For the purposes of this subdivision the term "financial assistance" shall have the same meaning as defined in section eight hundred fifty-four of the general municipal law. The imposition of this additional tax on mortgages **and mezzanine debt** recorded in a county outside the city of New York, other than one of the counties from time to time comprising the metropolitan commuter transportation district, the Niagara Frontier transportation district, the Rochester-Genesee transportation district, the capital district transportation district or the central New York regional transportation district may be suspended for a specified period of time or without limitation as to time by a local law, ordinance or resolution duly adopted by the local legislative body of such county.

(b) Any local law, ordinance or resolution suspending the imposition of this additional tax as provided in paragraph (a) of this subdivision, or amending or repealing such local law, ordinance or resolution, shall take effect only on the first day of the third month succeeding the month in which such local law, ordinance or resolution is duly adopted. Such a local law, ordinance or resolution shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the state tax commission at its office in Albany at least sixty days prior to the date the local law, ordinance or resolution shall take effect. However, the tax commission may waive and reduce such sixty-day notice requirement to a requirement that such certified copy be mailed by registered or certified mail within a period of not less than thirty days prior to such effective date if it deems such action to be consistent with its duties under this article. A certified copy of any local law, ordinance or resolution adopted pursuant to this subdivision shall also be filed with the state comptroller within five days after the date it is duly adopted.

3. Notwithstanding any other provision of law to the contrary, the mortgage recording tax shall not be imposed upon any mortgage executed by a voluntary nonprofit hospital corporation, fire company or voluntary ambulance service as defined in section one hundred of the general

municipal law, or upon any mortgage executed by or granted to the dormitory authority.

§ 4. Section 257 of the tax law is amended to read as follows:

§ 257. Payment of taxes. The taxes imposed by this article shall be payable on the recording of each mortgage of real property**, including any mezzanine debt,** subject to taxes thereunder. Such taxes shall be paid to the recording officer of any county in which the real property or any part thereof is situated. It shall be the duty of such recording officer to indorse upon each mortgage **and any mezzanine debt included with such mortgage** a receipt for the amount of the tax so paid. Any mortgage so indorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax indorsed upon each mortgage shall be recorded therewith. The record of such receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage**, including any mezzanine debt**.

§ 5. Subdivision 3 of section 261 of the tax law, as amended by chapter 443 of the laws of 2017, is amended to read as follows:

3. On or before the tenth day of each month the recording officer of each county shall pay over to the county treasurer of said county, and in the counties of New York, Kings, Queens, Richmond and Bronx to the commissioner of finance of the city of New York for credit to the general fund of such city, the balance of the moneys received during the preceding month upon account of taxes paid to him or her as herein prescribed, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of section two hundred sixty of this article are first to be apportioned by the commissioner, which taxes and money shall be paid over by the commissioner of finance of the city of New York as provided by the determination of the commissioner **and except taxes paid upon any mortgage with related recorded mezzanine debt, which taxes and money shall be paid over to the county treasurer or to the commissioner of finance of the city of New York for the development, maintenance, or management of public housing and/or affordable housing in such officer's county or the city of New York**. In each county not within the city of New York, the whole of the net amount of such balance, after the deduction by the county treasurer of the necessary expenses of his or her office provided in section two hundred sixty-two of this article, shall be held by him or her and shall be allocated to the tax districts of the county according to the location of the real property covered by the respective mortgages upon which the tax was collected. The recording officer and county treasurer shall prepare a joint semi-annual report on or before May fifteenth and on or before November fifteenth in each year showing the amounts to be credited to each tax district of the county of the moneys collected under this article during the preceding periods of six months each which ended respectively on March thirty-first and September thirtieth. Such report shall be made in duplicate in accordance with the rules and regulations of the commissioner and filed with the clerk of the board of supervisors and the commissioner. The board of supervisors, on or before the fifteenth day of June and on or before the fifteenth day of December in each year, shall issue its warrant for the payment to the respective tax districts of the amounts so credited, provided, however, that in a county in which a town contains within its limits an incorporated village, or portion thereof, the board of supervisors shall apportion to such village so much of the share credited to the town as the assessed value of said village or portion thereof bears to twice the total

assessed valuation of the town, and provided, further, that, at the option of the governing board of the county, the county may instead prepare and file such a joint report and make such payments on a monthly or quarterly basis. Where the county elects to make monthly payments, the recording officer and county treasurer shall prepare a joint report on or before the fifteenth day of each month showing the amounts to be credited to each tax district of the county and the moneys collected under this article for the month preceding the most recently concluded month, and the board of supervisors shall issue its warrant for payment on or before the fifteenth day of the following month. Where the county elects to make quarterly payments, the recording officer and county treasurer shall prepare such a joint report on or before the fifteenth day of May, August, November, and February, showing the amounts to be credited to each tax district of the county of moneys collected under this article for the preceding three-month period ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first, respectively and the board of supervisors shall issue its warrant for payment on or before the fifteenth day of June, September, December, and March, respectively. The warrant shall direct payment to the city treasurer of the amount due the city, to the town supervisor of the amount due the town, and to the village treasurer of the amount to which the village shall be entitled. Mortgage tax moneys allotted to cities, towns and villages shall be applied to the payment of the general expenses thereof. The commissioner shall prescribe the method of adjustment and correction of errors heretofore or hereafter made in the distribution of moneys collected under this article. Provided, however that in the town of Ossining, county of Westchester, monies due to the unincorporated portion of the town shall be placed in the unincorporated town fund instead of into the general fund of such town.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law.