

STATE OF NEW YORK

980

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sens. BRESLIN, KRUEGER -- 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 municipi-
pal law and the tax law, in relation to authorizing cities and towns
to impose a tax on real estate transfers, and authorizing municipi-
palities to create community preservation funds

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

1 Section 1. Paragraph g of subdivision 2 of section 49-0209 of the
2 environmental conservation law, as added by chapter 596 of the laws of
3 2007, is amended to read as follows:

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

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

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

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

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

16 (c) "Tax" means the real estate transfer tax payable on a real proper-
17 ty conveyance pursuant to section fourteen hundred forty-nine-bbbbbbb of
18 the tax law, but shall have a different meaning if the context clearly
19 indicates such as the real estate transfer tax imposed pursuant to arti-
20 cle thirty-one of the tax law.

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

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

LBD05927-01-9

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

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

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

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

32 3. The purposes of the fund shall be exclusively:

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

35 (b) to acquire interests or rights in real property for the preserva-
36 tion of community character within the municipality including villages
37 therein, in accordance with such plan and in cooperation with willing
38 sellers;

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

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

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

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

56 (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

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

- 3 (a) fee simple acquisition;
- 4 (b) zoning regulations, including density reductions, cluster develop-
- 5 ment, and site plan and design requirements;
- 6 (c) transfer of development rights;
- 7 (d) the purchase of development rights; and
- 8 (e) scenic and conservation easements.

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

21 8. Any municipal legislative body which has established a community
22 preservation fund pursuant to this section may study and consider estab-
23 lishing a transfer of development rights program to protect community
24 character as provided for by section two hundred sixty-one-a of the town
25 law or section twenty-f of the general city law. If at any time during
26 the life of the community preservation fund a transfer of development
27 rights program is established, the municipality may utilize monies from
28 the community preservation fund in order to create and fund a central
29 bank of the transfer of development rights program. If at any time
30 during the life of the community preservation fund, a transfer of devel-
31 opment rights program is repealed by the municipal legislative body, all
32 monies from the central bank shall be returned to the community preser-
33 vation fund.

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

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

- 46 (a) allows public use and enjoyment in a manner compatible with the
- 47 natural, scenic, historic, and open space character of such lands or
- 48 with the sustainable forestry use of such lands;
- 49 (b) preserves the native biological diversity of such lands;
- 50 (c) with regard to open spaces, limits improvements to enhancing
- 51 access for passive use of such lands such as nature trails, board walks,
- 52 hiking trails, snowshoe and cross-country ski trails, bicycle paths, and
- 53 peripheral parking areas provided that such improvements do not degrade
- 54 the ecological value of the land or threaten essential wildlife habitat;
- 55 and

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

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

14 11. Rights or interests in real property acquired with monies from
15 such fund shall not be sold, leased, exchanged, donated, or otherwise
16 disposed of or used for other than the purposes permitted by this
17 section without the express authority of an act of the state legisla-
18 ture, which shall provide for the substitution of other lands of equal
19 environmental, historical, or agricultural value and fair market value
20 and reasonably equivalent usefulness and location to those to be discon-
21 tinued, sold or disposed of, and such other requirements as shall be
22 approved by the state legislature. Any conservation easements, created
23 under title three of article forty-nine of the environmental conserva-
24 tion law, which are acquired with monies from such fund, may only be
25 modified or extinguished as provided by section 49-0307 of the environ-
26 mental conservation law. Nothing in this section shall preclude a muni-
27 cipality, by local law, from establishing additional restrictions to the
28 alienation of rights or interests in real property acquired pursuant to
29 this section. This subdivision shall not apply to the sale of develop-
30 ment rights by a municipality acquired pursuant to this section, where
31 such sale is made by a development rights bank created by a munici-
32 pality, pursuant to a transfer of development rights program established
33 by a municipality pursuant to the applicable provisions of section two
34 hundred sixty-one-a of the town law or section twenty-f of the general
35 city law, provided, however:

36 (a) that the lands from which such development rights were acquired
37 shall remain preserved in perpetuity by a permanent conservation or
38 other instrument that similarly preserves the community character refer-
39 enced in subdivision five of this section; and

40 (b) the proceeds from such sale shall be deposited in the community
41 preservation fund.

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

44 ARTICLE 31-H

45 TAX ON REAL ESTATE TRANSFERS

46 IN CITIES AND TOWNS

47 Section 1449-aaaaaa. Definitions.

48 1449-bbbbbb. Imposition of tax.

49 1449-cccccc. Payment of tax.

50 1449-dddddd. Liability for tax.

51 1449-eeeeee. Exemptions.

52 1449-ffffff. Credit.

53 1449-gggggg. Cooperative housing corporation transfers.

54 1449-hhhhhh. Designation of agents.

55 1449-iiiiii. Liability of recording officer.

56 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

1 be the total number of shares of stock in the cooperative housing corpo-
2 ration.

3 2. "Controlling interest" means (a) in the case of a corporation,
4 either fifty percent or more of the total combined voting power of all
5 classes of stock of such corporation, or fifty percent or more of the
6 capital, profits or beneficial interest in such voting stock of such
7 corporation, and (b) in the case of a partnership, association, trust or
8 other entity, fifty percent or more of the capital, profits or benefi-
9 cial interest in such partnership, association, trust or other entity.

10 3. "Conveyance" means the transfer of any interest in real property by
11 any method, including but not limited to, sale, exchange, assignment,
12 surrender, mortgage foreclosure, transfer in lieu of foreclosure,
13 option, trust indenture, taking by eminent domain, conveyance upon
14 liquidation or by a receiver, or transfer or acquisition of a control-
15 ling interest in any entity with an interest in real property. Transfer
16 of an interest in real property shall include the creation of a lease-
17 hold or sublease only where (a) the sum of the term of the lease or
18 sublease and any options for renewal exceeds forty-nine years, (b)
19 substantial capital improvements are or may be made by or for the bene-
20 fit of the lessee or sublessee, and (c) the lease or sublease is for
21 substantially all of the premises constituting the real property.
22 Notwithstanding the foregoing, conveyance of real property shall not
23 include a conveyance made pursuant to devise, bequest or inheritance;
24 the creation, modification, extension, spreading, severance, consol-
25 idation, assignment, transfer, release or satisfaction of a mortgage; a
26 mortgage subordination agreement, a mortgage severance agreement, an
27 instrument given to perfect or correct a recorded mortgage; or a release
28 of lien of tax pursuant to this chapter or the internal revenue code.

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

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

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

38 7. "Seller" means the person making the conveyance of real property or
39 interest therein. Where the conveyance consists of a transfer or an
40 acquisition of a controlling interest in an entity with an interest in
41 real property, "seller" means the entity with an interest in real prop-
42 erty or a shareholder or partner transferring stock or partnership
43 interest, respectively.

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

51 9. "Municipality" means a city or town.

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

54 11. "Person" means an individual, partnership, limited liability
55 company, society, association, joint stock company, corporation, estate,
56 receiver, trustee, assignee, referee or any other person acting in a

1 fiduciary or representative capacity, whether appointed by a court or
2 otherwise, any combination of individuals, and any other form of unin-
3 corporated enterprise owned or conducted by two or more persons.

4 12. "Real property" means every estate or right, legal or equitable,
5 present or future, vested or contingent, in lands, tenements or heredi-
6 taments, including buildings, structures and other improvements thereon,
7 which are located in whole or in part within any city or town in the
8 state of New York. It shall not include rights to sepulture.

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

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

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

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

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

24 15. "Treasurer" means the treasurer of the county where the real prop-
25 erty is located except in a city with a population of one million or
26 more, where it means the city department of finance.

27 § 1449-bbbbbb. Imposition of tax. 1. Notwithstanding any other
28 provisions of law to the contrary, any municipality acting through its
29 municipal legislative body is hereby authorized and empowered to adopt a
30 local law imposing in such municipality a tax on each conveyance of real
31 property or interest therein at a rate not to exceed a maximum of two
32 percent of the consideration for such conveyance; any such local law
33 shall fix the rate of such tax. Provided however, any such local law
34 imposing, repealing or reimposing such tax shall be subject to a manda-
35 tory referendum pursuant to section twenty-three of the municipal home
36 rule law. Such local law shall only be submitted for the approval of the
37 electors at a general election. Notwithstanding the foregoing, prior to
38 adoption of any such local law, the municipality must establish a commu-
39 nity preservation fund pursuant to section two hundred forty-eight of
40 the general municipal law. Revenues from such a tax shall be deposited
41 in such fund and may be used solely for the purposes of such fund. Such
42 local law shall apply to any conveyance occurring on or after the first
43 day of a month to be designated by such municipal legislative body,
44 which is not less than sixty days after the enactment of such local law,
45 but shall not apply to conveyances made on or after such date pursuant
46 to binding written contracts entered into prior to such date; provided
47 that the date of execution of such contract is confirmed by independent
48 evidence such as the recording of the contract, payment of a deposit or
49 other facts and circumstances as determined by the treasurer.

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

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

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

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

27 § 1449-ddddddd. Liability for tax. 1. The tax shall be paid by the
28 buyer. If the buyer has failed to pay the tax imposed pursuant to this
29 article or if the buyer is exempt from such tax, the seller shall have
30 the duty to pay the tax. Where the seller has the duty to pay the tax
31 because the buyer has failed to pay the tax, such tax shall be the joint
32 and several liability of the buyer and the seller.

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

41 § 1449-eeeeeee. Exemptions. 1. The following shall be exempt from the
42 payment of the tax:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (2) covenants or restrictions prohibiting development where the prop-
22 erty being conveyed has had its development rights permanently removed,

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

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

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

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

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

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

52 § 1449-ffffff. Credit. A buyer shall be allowed a credit against the
53 tax due on a conveyance of real property to the extent the tax was paid
54 by such buyer on a prior creation of a leasehold of all or a portion of
55 the same real property or on the granting of an option or contract to
56 purchase all or a portion of the same real property by such buyer. Such

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

8 § 1449-gggggg. Cooperative housing corporation transfers. 1. Notwith-
9 standing the definition of "controlling interest" contained in subdivi-
10 sion two of section fourteen hundred forty-nine-aaaaaa of this article
11 or anything to the contrary contained in subdivision five of section
12 fourteen hundred forty-nine-aaaaaa of this article, the tax imposed
13 pursuant to this article shall apply to (a) the original conveyance of
14 shares of stock in a cooperative housing corporation in connection with
15 the grant or transfer of a proprietary leasehold by the cooperative
16 corporation or cooperative plan sponsor, and (b) the subsequent convey-
17 ance of such stock in a cooperative housing corporation in connection
18 with the grant or transfer of a proprietary leasehold by the owner ther-
19 eof. With respect to any such subsequent conveyance where the property
20 is an individual residential unit, the consideration for the interest
21 conveyed shall exclude the value of any liens on certificates of stock
22 or other evidences of an ownership interest in and a proprietary lease
23 from a corporation or partnership formed for the purpose of cooperative
24 ownership of residential interest in real estate remaining thereon at
25 the time of conveyance. In determining the tax on a conveyance described
26 in paragraph (a) of this subdivision, a credit shall be allowed for a
27 proportionate part of the amount of any tax paid upon the conveyance to
28 the cooperative housing corporation of the real property comprising the
29 cooperative dwelling or dwellings to the extent that such conveyance
30 effectuated a mere change of identity or form of ownership of such prop-
31 erty and not a change in the beneficial ownership of such property. The
32 amount of the credit shall be determined by multiplying the amount of
33 tax paid upon the conveyance to the cooperative housing corporation by a
34 percentage representing the extent to which such conveyance effectuated
35 a mere change of identity or form of ownership and not a change in the
36 beneficial ownership of such property, and then multiplying the result-
37 ing product by a fraction, the numerator of which shall be the number of
38 shares of stock conveyed in a transaction described in paragraph (a) of
39 this subdivision, and the denominator of which shall be the total number
40 of shares of stock of the cooperative housing corporation (including any
41 stock held by the corporation). In no event, however, shall such credit
42 reduce the tax, on a conveyance described in paragraph (a) of this
43 subdivision, below zero, nor shall any such credit be allowed for a tax
44 paid more than twenty-four months prior to the date on which occurs the
45 first in a series of conveyances of shares of stock in an offering of
46 cooperative housing corporation shares described in paragraph (a) of
47 this subdivision.

48 2. Every cooperative housing corporation shall be required to file an
49 information return with the treasurer by July fifteenth of each year
50 covering the preceding period of January first through June thirtieth
51 and by January fifteenth of each year covering the preceding period of
52 July first through December thirty-first. The return shall contain such
53 information regarding the conveyance of shares of stock in the cooper-
54 ative housing corporation as the treasurer may deem necessary, includ-
55 ing, but not limited to, the names, addresses and employee identifica-
56 tion numbers or social security numbers of the seller and the buyer, the

1 number of shares conveyed, the date of the conveyance and the consider-
2 ation paid for such conveyance.

3 § 1449-hhhhhh. Designation of agents. The treasurer is authorized to
4 designate the recording officer to act as his or her agent for purposes
5 of collecting the tax authorized by this article. The treasurer shall
6 provide for the manner in which such person may be designated as his or
7 her agent subject to such terms and conditions as the treasurer shall
8 prescribe. The tax shall be paid to such agent as provided in section
9 fourteen hundred forty-nine-cccccc of this article.

10 § 1449-iiiii. Liability of recording officer. A recording officer
11 shall not be liable for any inaccuracy in the amount of tax imposed
12 pursuant to this article that he or she shall collect so long as he or
13 she shall compute and collect such tax on the amount of consideration or
14 the value of the interest conveyed as such amounts are provided to him
15 or her by the person paying the tax.

16 § 1449-jjjjjj. Refunds. Whenever the treasurer shall determine that
17 any moneys received under the provisions of the local law enacted pursu-
18 ant to this article were paid in error, he or she may cause such moneys
19 to be refunded pursuant to such requirements he or she may prescribe,
20 provided that any application for such refund is filed with the treasur-
21 er within two years from the date the erroneous payment was made.

22 § 1449-kkkkkk. Deposit and disposition of revenue. 1. All taxes,
23 penalties and interest imposed by the municipality under the authority
24 of section fourteen hundred forty-nine-bbbbbbb of this article, which are
25 collected by the treasurer or his or her agents, shall be deposited in a
26 single trust fund for the municipality and shall be kept in trust and
27 separate and apart from all other monies in possession of the treasurer.
28 Moneys in such fund shall be deposited and secured in the manner
29 provided by section ten of the general municipal law. Pending expendi-
30 ture from such fund, moneys therein may be invested in the manner
31 provided in section eleven of the general municipal law. Any interest
32 earned or capital gain realized on the moneys so deposited or invested
33 shall accrue to and become part of such fund.

34 2. The treasurer shall retain such amount as he or she may determine
35 to be necessary for refunds with respect to the tax imposed by the muni-
36 cipality, under the authority of section fourteen hundred forty-nine-
37 bbbbbbb of this article, out of which the treasurer shall pay any refunds
38 of such taxes to those subject to the taxes entitled to a refund pursu-
39 ant to the provisions of this article.

40 3. The treasurer, after reserving such refunds, shall on or before the
41 twelfth day of each month pay to the municipality the taxes, penalties
42 and interest imposed by the municipality under the authority of section
43 fourteen hundred forty-nine-bbbbbbb of this article, collected by the
44 treasurer pursuant to this article during the next preceding calendar
45 month. The amount so payable shall be certified to the municipal legis-
46 lative body by the treasurer, who shall not be held liable for any inac-
47 curacy in such certification. Provided, however, any such certification
48 may be based on such information as may be available to the treasurer at
49 the time such certification must be made under this section. Where the
50 amount so paid over to the municipality in any such distribution is more
51 or less than the amount due to the municipality, the amount of the over-
52 payment or underpayment shall be certified to the municipal legislative
53 body by the treasurer, who shall not be held liable for any inaccuracy
54 in such certification. The amount of the overpayment or underpayment
55 shall be so certified to the municipal legislative body as soon after
56 the discovery of the overpayment or underpayment as reasonably possible

1 and subsequent payments and distributions by the treasurer to such muni-
2 cipality shall be adjusted by subtracting the amount of any such over-
3 payment from or by adding the amount of any such underpayment to such
4 number of subsequent payments and distributions as the treasurer and the
5 municipal legislative body shall consider reasonable in view of the
6 overpayment or underpayment and all other facts and circumstances.

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

10 § 1449-llllll. Judicial review. 1. Any final determination of the
11 amount of any tax payable under section fourteen hundred forty-nine-
12 cccccc of this article shall be reviewable for error, illegality or
13 unconstitutionality or any other reason whatsoever by a proceeding under
14 article seventy-eight of the civil practice law and rules if application
15 therefor is made to the supreme court within four months after the
16 giving of the notice of such final determination, provided, however,
17 that any such proceeding under article seventy-eight of the civil prac-
18 tice law and rules shall not be instituted unless (a) the amount of any
19 tax sought to be reviewed, with such interest and penalties thereon as
20 may be provided for by local law shall be first deposited and there is
21 filed an undertaking, issued by a surety company authorized to transact
22 business in this state and approved by the superintendent of financial
23 services as to solvency and responsibility, in such amount as a justice
24 of the supreme court shall approve to the effect that if such proceeding
25 be dismissed or the tax confirmed the petitioner will pay all costs and
26 charges which may accrue in the prosecution of such proceeding or (b) at
27 the option of the petitioner, such undertaking may be in a sum suffi-
28 cient to cover the taxes, interest and penalties stated in such determi-
29 nation, plus the costs and charges which may accrue against it in the
30 prosecution of the proceeding, in which event the petitioner shall not
31 be required to pay such taxes, interest or penalties as a condition
32 precedent to the application.

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

47 § 1449-mmmmmmm. Apportionment. A local law adopted by any municipality
48 pursuant to this article shall provide for a method of apportionment for
49 determining the amount of tax due whenever the real property or interest
50 therein is situated within and without the municipality.

51 § 1449-nnnnnnn. Miscellaneous. A local law adopted by any municipality
52 pursuant to this article may contain such other provisions as the muni-
53 cipality deems necessary for the proper administration of the tax
54 imposed pursuant to this article, including provisions concerning the
55 determination of tax, the imposition of interest on underpayments and
56 overpayments and the imposition of civil penalties. Such provisions

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

5 § 1449-oooooo. Returns to be secret. 1. Except in accordance with
6 proper judicial order or as otherwise provided by law, it shall be
7 unlawful for the treasurer or any officer or employee of the munici-
8 pality, including any person engaged or retained on an independent
9 contract basis, to divulge or make known in any manner the particulars
10 set forth or disclosed in any return required under a local law enacted
11 pursuant to this article; provided, however, that nothing in this
12 section shall prohibit the recording officer from making a notation on
13 an instrument effecting a conveyance indicating the amount of tax paid.
14 No recorded instrument effecting a conveyance shall be considered a
15 return for purposes of this section.

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

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

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

43 § 5. This act shall take effect immediately.