

STATE OF NEW YORK

7868

2019-2020 Regular Sessions

IN ASSEMBLY

May 24, 2019

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

AN ACT to amend the tax law, in relation to authorizing the county of Onondaga to impose a tax on real estate transfers; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. The tax law is amended by adding a new article 31-H to read
2 as follows:

ARTICLE 31-H

TAX ON REAL ESTATE TRANSFERS

IN THE COUNTY OF ONONDAGA

Section 1449-aaaaaa. Definitions.

1449-bbbbbbb. 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-pppppp. Foreclosure.

§ 1449-aaaaaa. Definitions. When used in this article, unless otherwise expressly stated:

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

LBD11277-07-9

1 1. "Person" means an individual, partnership, society, association,
2 joint stock company, corporation, estate, receiver, trustee, assignee,
3 referee or any other person acting in a fiduciary or representative
4 capacity, whether appointed by a court or otherwise, any combination of
5 individuals, and any other form of unincorporated enterprise owned or
6 conducted by two or more persons.

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

14 3. "Real property" means every estate or right, legal or equitable,
15 present or future, vested or contingent, in lands, tenements or heredi-
16 taments, including buildings, structures and other improvements thereon,
17 which are located in whole or in part within the county of Onondaga. It
18 shall not include rights to sepulture.

19 4. "Consideration" means the price actually paid or required to be
20 paid for the real property or interest therein, including payment for an
21 option or contract to purchase real property, whether or not expressed
22 in the deed and whether paid or required to be paid by money, property,
23 or any other thing of value. It shall include the cancellation or
24 discharge of an indebtedness or obligation. It shall also include the
25 amount of any mortgage, purchase money mortgage, lien or other encum-
26 brance, whether or not the underlying indebtedness is assumed or taken
27 subject to.

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

35 (b) In the case of a creation of a subleasehold interest, consider-
36 ation shall include, but not be limited to, the value of the sublease
37 rental payments attributable to the use and occupancy of the real prop-
38 erty, the value of any amount paid for an option to renew and the value
39 of rental or other payments attributable to the exercise of any option
40 to renew less the value of the remaining prime lease rental payments
41 required to be made.

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

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

52 (e) In the case of (1) the original conveyance of shares of stock in a
53 cooperative housing corporation in connection with the grant or transfer
54 of a proprietary leasehold by the cooperative corporation or cooperative
55 plan sponsor and (2) the subsequent conveyance by the owner thereof of
56 such stock in a cooperative housing corporation in connection with the

1 grant or transfer of a proprietary leasehold for a cooperative unit
2 other than an individual residential unit, consideration shall include a
3 proportionate share of the unpaid principal of any mortgage on the real
4 property of the cooperative housing corporation comprising the cooper-
5 ative dwelling or dwellings. Such share shall be determined by multiply-
6 ing the total unpaid principal of the mortgage by a fraction, the numer-
7 ator of which shall be the number of shares of stock being conveyed in
8 the cooperative housing corporation in connection with the grant or
9 transfer of a proprietary leasehold and the denominator of which shall
10 be the total number of shares of stock in the cooperative housing corpo-
11 ration.

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

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

38 7. "Grantor" means the person making the conveyance of real property
39 or 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, "grantor" means the entity with an interest in real prop-
42 erty or a shareholder or partner transferring stock or partnership
43 interest.

44 8. "Grantee" means the person who obtains real property or interest
45 therein as a result of a conveyance.

46 9. "Recording officer" means the county clerk of the county of Ononda-
47 ga.

48 10. "Treasurer" means the chief fiscal officer of the county of Onon-
49 daga.

50 § 1449-bbbbb. Imposition of tax. Notwithstanding any other provisions
51 of law to the contrary, the county of Onondaga, acting through its local
52 legislative body, is hereby authorized and empowered to adopt and amend
53 local laws imposing in such county a tax on each conveyance of real
54 property or interest therein when the consideration exceeds one thousand
55 dollars, at the rate of three dollars for each one thousand dollars or
56 fractional part thereof. Such local law may apply to any conveyance

1 occurring on or after the date designated by such legislative body, but
2 shall not apply to conveyances made on or after such date pursuant to
3 binding written contracts entered into prior to such date, provided that
4 the date of execution of such contract is confirmed by independent
5 evidence such as the recording of the contract, payment of a deposit or
6 other facts and circumstances as determined by the treasurer.

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

14 2. A return shall be required to be filed with such treasurer or
15 recording officer for purposes of the real estate transfer tax imposed
16 pursuant to this article at the same time as a return is required to be
17 filed for purposes of the real estate transfer tax imposed by article
18 thirty-one of this chapter. The return, for purposes of the real estate
19 transfer tax imposed pursuant to this article, shall be a photocopy or
20 carbon copy of the real estate transfer tax return required to be filed
21 pursuant to section fourteen hundred nine of this chapter. However,
22 when an apportionment is required to be made pursuant to section four-
23 teen hundred forty-nine-mmmmm of this article, a supplemental form
24 shall also be required to be filed. The real estate transfer tax returns
25 and supplemental forms required to be filed pursuant to this section
26 shall be preserved for three years and thereafter until such treasurer
27 or recording officer orders them to be destroyed.

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

32 § 1449-ddddddd. Liability for tax. 1. The real estate transfer tax
33 shall be paid by the grantor. If the grantor has failed to pay the tax
34 imposed pursuant to this article or if the grantor is exempt from such
35 tax, the grantee shall have the duty to pay the tax. Where the grantee
36 has the duty to pay the tax because the grantor has failed to pay, such
37 tax shall be the joint and several liability of the grantor and the
38 grantee.

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

47 § 1449-eeeeeee. Exemptions. 1. The following shall be exempt from
48 payment of the real estate transfer tax:

49 (a) The state of New York, or any of its agencies, instrumentalities,
50 political subdivisions, or public corporations (including a public
51 corporation created pursuant to agreement or compact with another state
52 or the Dominion of Canada).

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

55 The exemption of such governmental bodies or persons shall not, howev-
56 er, relieve a grantee from them of liability for the tax.

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 prior conveyance;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances 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; and

(j) Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

§ 1449-fffff. Credit. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor 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 grantor. 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 grantor on the date of the subsequent conveyance (and which such grantor 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-ggggg. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaaaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaaaa 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

1 is an individual residential unit, the consideration for the interest
2 conveyed shall exclude the value of any liens on certificates of stock
3 or other evidences of an ownership interest in and a proprietary lease
4 from a corporation or partnership formed for the purpose of cooperative
5 ownership of residential interest in real estate remaining thereon at
6 the time of conveyance. In determining the tax on a conveyance described
7 in paragraph (a) of this subdivision, a credit shall be allowed for a
8 proportionate part of the amount of any tax paid upon the conveyance to
9 the cooperative housing corporation of the real property comprising the
10 cooperative dwelling or dwellings to the extent that such conveyance
11 effectuated a mere change of identity or form of ownership of such prop-
12 erty and not a change in the beneficial ownership of such property. The
13 amount of the credit shall be determined by multiplying the amount of
14 tax paid upon the conveyance to the cooperative housing corporation by a
15 percentage representing the extent to which such conveyance effectuated
16 a mere change of identity or form of ownership and not a change in the
17 beneficial ownership of such property, and then multiplying the result-
18 ing product by a fraction, the numerator of which shall be the number of
19 shares of stock conveyed in a transaction described in paragraph (a) of
20 this subdivision and the denominator of which shall be the total number
21 of shares of stock of the cooperative housing corporation (including any
22 stock held by the corporation). In no event, however, shall such credit
23 reduce the tax, on a conveyance described in paragraph (a) of this
24 subdivision, below zero, nor shall any such credit be allowed for a tax
25 paid more than twenty-four months prior to the date on which occurs the
26 first in a series of conveyances of shares of stock in an offering of
27 cooperative housing corporation shares described in paragraph (a) of
28 this subdivision.

29 2. Every cooperative housing corporation shall be required to file an
30 information return with the treasurer by July fifteenth of each year
31 covering the preceding period of January first through June thirty-first
32 and by January fifteenth of each year covering the preceding period of
33 July first through December thirty-first. The return shall contain such
34 information regarding the conveyance of shares of stock in the cooper-
35 ative housing corporation as the treasurer may deem necessary, includ-
36 ing, but not limited to, the names, addresses and employee identifica-
37 tion numbers or social security numbers of the grantor and the grantee,
38 the number of shares conveyed, the date of the conveyance and the
39 consideration paid for such conveyance.

40 § 1449-hhhhhh. Designation of agents. The treasurer is authorized to
41 designate the recording officer to act as its agent for purposes of
42 collecting the tax authorized by this article. The treasurer shall
43 provide for the manner in which such person may be designated as its
44 agent subject to such terms and conditions as it shall prescribe. The
45 real estate transfer tax shall be paid to such agent as provided in
46 section fourteen hundred forty-nine-cccccc of this article.

47 § 1449-iiiii. Liability of recording officer. A recording officer
48 shall not be liable for any inaccuracy in the amount of tax imposed
49 pursuant to this article that he shall collect so long as he shall
50 compute and collect such tax on the amount of consideration or the value
51 of the interest conveyed as such amounts are provided to him or her by
52 the person paying the tax.

53 § 1449-jjjjj. Refunds. Whenever the treasurer shall determine that
54 any moneys received under the provisions of the local law enacted pursu-
55 ant to this article were paid in error, it may cause such moneys to be
56 refunded pursuant to such rules and regulations it may prescribe,

1 provided any application for such refund is filed with the treasurer
2 within two years from the date the erroneous payment was made. When
3 making any findings or determinations the treasurer may rely upon any
4 findings or determinations of the commissioner and any rules and regu-
5 lations promulgated pursuant to article thirty-one of this chapter.

6 § 1449-kkkkkk. Deposit and disposition of revenue. All taxes collected
7 or received by the treasurer or his duly authorized agent under the
8 provisions of the local law enacted pursuant to this article shall be
9 deposited in accordance with provisions of a local law adopted by the
10 legislative body of the county of Onondaga which local law shall desig-
11 nate proper officers to be responsible for deposit of revenue collected
12 or received under this article. Such local law shall also provide that
13 any officer designated to collect, receive, or deposit such revenue
14 shall maintain a system of accounts showing the revenue collected or
15 received from the tax imposed pursuant to this article. Such local law
16 shall also provide that all revenue derived from the imposition of such
17 tax shall be deposited into a separate account maintained by the county
18 of Onondaga and shall be distributed as follows: one-third of net
19 collections to the Greater Syracuse Property Development Corporation;
20 one-third of net collections to fund arts and cultural institutions in
21 Onondaga county; and one-third of net collections to road and sewer
22 infrastructure repairs and improvements within Onondaga county and its
23 sewer districts in Onondaga county.

24 § 1449-llllll. Judicial review. 1. Any final determination of the
25 amount of any tax payable under section fourteen hundred forty-nine-
26 cccccc of this article shall be reviewable for error, illegality or
27 unconstitutionality or any other reason whatsoever by a proceeding under
28 article seventy-eight of the civil practice law and rules if application
29 therefor is made to the supreme court within four months after the
30 giving of the notice of such final determination, provided, however,
31 that any such proceeding under article seventy-eight of the civil prac-
32 tice law and rules shall not be instituted unless (a) the amount of any
33 tax sought to be reviewed, with such interest and penalties thereon as
34 may be provided for by local law shall be first deposited and there is
35 filed an undertaking, issued by a surety company authorized to transact
36 business in this state and approved by the superintendent of financial
37 services of this state as to solvency and responsibility, in such amount
38 as a justice of the supreme court shall approve to the effect that if
39 such proceeding be dismissed or the tax confirmed the petitioner will
40 pay all costs and charges which may accrue in the prosecution of such
41 proceeding or (b) at the option of the petitioner, such undertaking may
42 be in a sum sufficient to cover the taxes, interest and penalties stated
43 in such determination, plus the costs and charges which may accrue
44 against it in the prosecution of the proceeding, in which event the
45 petitioner shall not be required to pay such taxes, interest or penal-
46 ties as a condition precedent to the application.

47 2. Where any tax imposed hereunder shall have been erroneously, ille-
48 gally or unconstitutionally assessed or collected and application for
49 the refund or revision thereof duly made to the proper fiscal officer or
50 officers, and such officer or officers shall have made a determination
51 denying such refund or revision, such determination shall be reviewable
52 by a proceeding under article seventy-eight of the civil practice law
53 and rules; provided, however, that (a) such proceeding is instituted
54 within four months after the giving of the notice of such denial, (b) a
55 final determination of tax due was not previously made, and (c) an
56 undertaking is filed with the proper fiscal officer or officers in such

1 amount and with such sureties as a justice of the supreme court shall
2 approve to the effect that if such proceeding be dismissed or the tax
3 confirmed, the petitioner will pay all costs and charges which may
4 accrue in the prosecution of such proceeding.

5 3. In any proceedings instituted pursuant to this article the rules
6 and regulations of the commissioner shall be applied where applicable.

7 § 1449-mmmmmm. Apportionment. The local law adopted by the legislative
8 body of the county of Onondaga shall provide for a method of apportion-
9 ment for determining the amount of tax due whenever the real property or
10 interest therein is situated within and without the county of Onondaga.

11 § 1449-nnnnnn. Miscellaneous. The local law adopted by the legislative
12 body of the county of Onondaga may contain such other provisions as such
13 legislative body deems necessary for the proper administration of the
14 tax imposed pursuant to this article, including provisions concerning
15 the determination of tax, the imposition of interest on underpayments
16 and overpayments and the imposition of civil penalties. Such provisions
17 shall be identical to the corresponding provisions of the real estate
18 transfer tax imposed by article thirty-one of this chapter, so far as
19 such provisions can be made applicable to the tax imposed pursuant to
20 this article.

21 § 1449-oooooo. Returns to be secret. 1. Except in accordance with
22 proper judicial order or as otherwise provided by law, it shall be
23 unlawful for the treasurer or any officer or employee of the county of
24 Onondaga or any person engaged or retained by such county on an inde-
25 pendent contract basis to divulge or make known in any manner the
26 particulars set forth or disclosed in any return required under a local
27 law enacted pursuant to this article. However, that nothing in this
28 section shall prohibit the recording officer from making a notation on
29 an instrument effecting a conveyance indicating the amount of tax paid.
30 No recorded instrument effecting a conveyance shall be considered a
31 return for purposes of this section.

32 2. The officers charged with the custody of such returns shall not be
33 required to produce any of them or evidence of anything contained in
34 them in any action or proceeding in any court, except on behalf of the
35 county in any action or proceeding involving the collection of a tax due
36 under a local law enacted pursuant to this article to which such county
37 or an officer or employee of such county is a party or a claimant, or on
38 behalf of any party to any action or proceeding under the provisions of
39 a local law enacted pursuant to this article when the returns or facts
40 shown thereby are directly involved in such action or proceeding, in any
41 of which events the court may require the production of, and may admit
42 in evidence, so much of said returns or of the facts shown thereby, as
43 are pertinent to the action or proceeding and no more.

44 3. Nothing herein shall be construed to prohibit the delivery to a
45 grantor or grantee of an instrument effecting a conveyance or the duly
46 authorized representative of a grantor or grantee of a certified copy of
47 any return filed in connection with such instrument or to prohibit the
48 publication of statistics so classified as to prevent the identification
49 of particular returns and the items thereof, or the inspection by the
50 legal representatives of such county of the return of any taxpayer who
51 shall bring action to set aside or review the tax based thereon.

52 4. Any officer or employee of such county who willfully violates the
53 provisions of this section shall be dismissed from office and be incapa-
54 ble of holding any public office in this state for a period of five
55 years thereafter.

1 § 1449-pppppp. Foreclosure. Where the conveyance consists of a trans-
2 fer of property made as a result of an order of the court in a foreclo-
3 sure proceeding ordering the sale of such property, the referee or sher-
4 iff effectuating such transfer shall not be liable for any interest or
5 penalties that are authorized pursuant to this article or article thir-
6 ty-seven of this chapter.

7 § 2. This act shall take effect immediately and shall expire and be
8 deemed repealed seven years after such date.