

STATE OF NEW YORK

9041

IN ASSEMBLY

January 10, 2020

Introduced by M. of A. EPSTEIN -- read once and referred 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:

1 Section 1. The real property law is amended by adding a new section
2 291-k to read as follows:

3 § 291-k. Recording of mezzanine debt. Whenever a mortgage instrument
4 is recorded in the office of the recording officer of any county, any
5 mezzanine debt related to the real property upon which the mortgage
6 instrument is filed shall also be recorded with such mortgage instru-
7 ment. For the purposes of this section, "mezzanine debt" shall mean debt
8 carried by a borrower that may be subordinate to the primary lien and/or
9 common shares and reported as assets for the purposes of financing such
10 primary lien.

11 § 2. Section 250 of the tax law is amended by adding a new subdivision
12 4 to read as follows:

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

15 § 3. Section 253 of the tax law, as amended by chapter 350 of the laws
16 of 1969, subdivision 1-a as added by chapter 788 of the laws of 1978,
17 paragraph (a) of subdivision 1-a as amended by chapter 522 of the laws
18 of 2008, subdivision 2 as amended by chapter 151 of the laws of 1971,
19 paragraph (a) of subdivision 2 as amended by chapter 394 of the laws of
20 2016 and subdivision 3 as amended by chapter 527 of the laws of 2007, is
21 amended to read as follows:

22 § 253. Recording tax. 1. A tax of fifty cents for each one hundred
23 dollars and each remaining major fraction thereof of the total sum of:
24 (a) the principal debt or obligation which is, or under any contingency
25 may be secured at the date of the execution thereof or at any time there-
26 after by a mortgage on real property situated within the state recorded
27 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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1 mezzanine debt related to such real property recorded pursuant to
2 section two hundred ninety-one-k of the real property law, is hereby
3 imposed on [~~each~~] such [~~mortgage~~] total amount, and shall be collected
4 and paid as provided in this article. If the principal debt or obli-
5 gation which is or by any contingency may be secured by such mortgage
6 recorded on or after the first day of July, nineteen hundred and seven,
7 and any mezzanine debt is less than one hundred dollars, a tax of fifty
8 cents is hereby imposed on such mortgage and mezzanine debt, and shall
9 be collected and paid as provided in this article.

10 1-a. (a) In addition to the tax imposed by subdivision one of this
11 section, there shall be imposed on the total sum of (i) each mortgage of
12 real property situated within the state and (ii) any mezzanine debt
13 related to such property recorded pursuant to section two hundred nine-
14 ty-one-k of the real property law, except mortgages wherein the mortga-
15 gee is a natural person or persons, or is a credit union as defined in
16 section two of the banking law, and in either case the mortgaged prem-
17 ises consist of real property improved by a structure containing six
18 residential dwelling units or less, each with separate cooking facili-
19 ties, a special additional tax of twenty-five cents for each one hundred
20 dollars and each remaining major fraction thereof of principal debt or
21 obligation which is, or under any contingency may be secured at the date
22 of execution thereof or at anytime thereafter by such mortgage and any
23 mezzanine debt. The tax, if any, imposed by this subdivision shall in
24 cases of real property principally improved or to be improved by one or
25 more structures containing in the aggregate not more than six residen-
26 tial dwelling units, each dwelling unit having its own separate cooking
27 facilities, be paid by the mortgagee, and such tax shall not be paid or
28 payable, directly or indirectly, by the mortgagor except as otherwise
29 provided in sections two hundred fifty-eight and two hundred fifty-nine
30 of this article and except such tax shall be paid in such cases by the
31 mortgagor where the mortgagee is an exempt organization described in
32 paragraph (b) of this subdivision. In all other cases, such tax shall be
33 paid by the mortgagor except that the tax shall be paid by the mortgagee
34 where the mortgagor is an exempt organization described in paragraph (b)
35 of this subdivision. All of the provisions of this article shall apply
36 with respect to the special additional tax imposed by this subdivision
37 to the same extent as if it were imposed by said subdivision one of this
38 section, except as otherwise expressly provided in this article.

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

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

1 the date of execution thereof or at any time thereafter by such mort-
2 gage, and any mezzanine debt, saving and excepting the first ten thou-
3 sand dollars of such principal debt or obligation in any case in which
4 the related mortgage is of real property principally improved or to be
5 improved by a one or two family residence or dwelling. All the
6 provisions of this article shall apply with respect to the additional
7 tax imposed by this subdivision to the same extent as if it were imposed
8 by the said subdivision one of this section, except as otherwise
9 expressly provided in this article. Notwithstanding article eighteen-A
10 of the general municipal law and titles eleven and fifteen of article
11 eight of the public authorities law, no mortgage of real property situ-
12 ated within the state in counties located within the metropolitan commu-
13 ter transportation district, the Niagara Frontier transportation
14 district, the Rochester-Genesee transportation district, the capital
15 district transportation district, and the central New York regional
16 transportation district executed, given, made, or transferred or
17 assigned by or to an agency created under article eighteen-A of the
18 general municipal law, an authority created under title eleven or
19 fifteen of article eight of the public authorities law, an agent or
20 agent of such agent of such agency or authority, a project operator
21 receiving financial assistance from such agency or authority, a project
22 occupant of such agency or authority, or an owner of a project receiving
23 financial assistance from such agency or authority shall be exempt from
24 the additional tax imposed by this subdivision. For the purposes of this
25 subdivision the term "financial assistance" shall have the same meaning
26 as defined in section eight hundred fifty-four of the general municipal
27 law. The imposition of this additional tax on mortgages and mezzanine
28 debt recorded in a county outside the city of New York, other than one
29 of the counties from time to time comprising the metropolitan commuter
30 transportation district, the Niagara Frontier transportation district,
31 the Rochester-Genesee transportation district, the capital district
32 transportation district or the central New York regional transportation
33 district may be suspended for a specified period of time or without
34 limitation as to time by a local law, ordinance or resolution duly
35 adopted by the local legislative body of such county.

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

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

1 municipal law, or upon any mortgage executed by or granted to the dormi-
2 tory authority.

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

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

16 § 5. Subdivision 3 of section 261 of the tax law, as amended by chap-
17 ter 443 of the laws of 2017, is amended to read as follows:

18 3. On or before the tenth day of each month the recording officer of
19 each county shall pay over to the county treasurer of said county, and
20 in the counties of New York, Kings, Queens, Richmond and Bronx to the
21 commissioner of finance of the city of New York for credit to the gener-
22 al fund of such city, the balance of the moneys received during the
23 preceding month upon account of taxes paid to him or her as herein
24 prescribed, after deducting the necessary expenses of his or her office
25 as provided in section two hundred sixty-two of this article, except
26 taxes paid upon mortgages which under the provisions of section two
27 hundred sixty of this article are first to be apportioned by the commis-
28 sioner, which taxes and money shall be paid over by the commissioner of
29 finance of the city of New York as provided by the determination of the
30 commissioner and except taxes paid upon any mortgage with related
31 recorded mezzanine debt, which taxes and money shall be paid over to the
32 county treasurer or to the commissioner of finance of the city of New
33 York for the development, maintenance, or management of public housing
34 and/or affordable housing in such officer's county or the city of New
35 York. In each county not within the city of New York, the whole of the
36 net amount of such balance, after the deduction by the county treasurer
37 of the necessary expenses of his or her office provided in section two
38 hundred sixty-two of this article, shall be held by him or her and shall
39 be allocated to the tax districts of the county according to the
40 location of the real property covered by the respective mortgages upon
41 which the tax was collected. The recording officer and county treasurer
42 shall prepare a joint semi-annual report on or before May fifteenth and
43 on or before November fifteenth in each year showing the amounts to be
44 credited to each tax district of the county of the moneys collected
45 under this article during the preceding periods of six months each which
46 ended respectively on March thirty-first and September thirtieth. Such
47 report shall be made in duplicate in accordance with the rules and regu-
48 lations of the commissioner and filed with the clerk of the board of
49 supervisors and the commissioner. The board of supervisors, on or before
50 the fifteenth day of June and on or before the fifteenth day of December
51 in each year, shall issue its warrant for the payment to the respective
52 tax districts of the amounts so credited, provided, however, that in a
53 county in which a town contains within its limits an incorporated
54 village, or portion thereof, the board of supervisors shall apportion to
55 such village so much of the share credited to the town as the assessed
56 value of said village or portion thereof bears to twice the total

1 assessed valuation of the town, and provided, further, that, at the
2 option of the governing board of the county, the county may instead
3 prepare and file such a joint report and make such payments on a monthly
4 or quarterly basis. Where the county elects to make monthly payments,
5 the recording officer and county treasurer shall prepare a joint report
6 on or before the fifteenth day of each month showing the amounts to be
7 credited to each tax district of the county and the moneys collected
8 under this article for the month preceding the most recently concluded
9 month, and the board of supervisors shall issue its warrant for payment
10 on or before the fifteenth day of the following month. Where the county
11 elects to make quarterly payments, the recording officer and county
12 treasurer shall prepare such a joint report on or before the fifteenth
13 day of May, August, November, and February, showing the amounts to be
14 credited to each tax district of the county of moneys collected under
15 this article for the preceding three-month period ending March thirty-
16 first, June thirtieth, September thirtieth, and December thirty-first,
17 respectively and the board of supervisors shall issue its warrant for
18 payment on or before the fifteenth day of June, September, December, and
19 March, respectively. The warrant shall direct payment to the city treas-
20 urer of the amount due the city, to the town supervisor of the amount
21 due the town, and to the village treasurer of the amount to which the
22 village shall be entitled. Mortgage tax moneys allotted to cities, towns
23 and villages shall be applied to the payment of the general expenses
24 thereof. The commissioner shall prescribe the method of adjustment and
25 correction of errors heretofore or hereafter made in the distribution of
26 moneys collected under this article. Provided, however that in the town
27 of Ossining, county of Westchester, monies due to the unincorporated
28 portion of the town shall be placed in the unincorporated town fund
29 instead of into the general fund of such town.

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