

# STATE OF NEW YORK

7041

2021-2022 Regular Sessions

## IN SENATE

May 25, 2021

Introduced by Sen. RYAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to authorizing cities and towns, except a city with a population of one million or more, to establish community preservation funds and community housing funds; and to amend the tax law, in relation to authorizing cities and towns, except a city with a population of one million or more, to impose a real estate transfer tax with revenues therefrom to be deposited in such funds

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

1 Section 1. The general municipal law is amended by adding a new  
2 section 6-w to read as follows:

3 § 6-w. Community preservation funds. 1. As used in this section, the  
4 following words and terms shall have the following meanings:

5 (a) "Community preservation" shall mean and include any of the  
6 purposes outlined in subdivision four of this section.

7 (b) "Board" means the advisory board required pursuant to subdivision  
8 five of this section.

9 (c) "City or town" means a city, except a city with a population of  
10 one million or more, or a town.

11 (d) "Governing body" means a city council or town board.

12 (e) "Fund" means the community preservation fund created pursuant to  
13 subdivision two of this section.

14 (f) "Water quality improvement project" means: (1) any project eligi-  
15 ble for state funding under the clean water infrastructure fund of two  
16 thousand seventeen, pursuant to part T of chapter fifty-seven of the  
17 laws of two thousand seventeen or (2) any project eligible for state  
18 funding as a safe drinking water project or clean water project pursuant  
19 to title two or title three of article fifty-six of the environmental  
20 conservation law.

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

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1 2. The governing body of any city or town is authorized to establish  
2 by local law a community preservation fund pursuant to the provisions of  
3 this section. Deposits into the fund may include revenues of the local  
4 government from whatever source and shall include, at a minimum, all  
5 revenues from a tax imposed upon the transfer of real property interests  
6 in such city or town pursuant to subdivision one of section one thousand  
7 five hundred seventy-six of the tax law. The fund shall also be author-  
8 ized to accept gifts of any such interests in land or of funds. Interest  
9 accrued by monies deposited into the fund shall be credited to the fund.  
10 In no event shall monies deposited in the fund be transferred to any  
11 other account. Nothing contained in this section shall be construed to  
12 prevent the financing in whole or in part, pursuant to the local finance  
13 law, of any acquisition authorized pursuant to this section. Monies from  
14 the fund may be utilized to repay any indebtedness or obligations  
15 incurred pursuant to the local finance law consistent with effectuating  
16 the purposes of this section.

17 3. The purposes of the fund shall be exclusively, (a) to implement a  
18 plan for the preservation of community character as required by this  
19 section, (b) to acquire interests or rights in real property for the  
20 preservation of community character within the designated city or town  
21 including villages therein in accordance with such plan and in cooper-  
22 ation with willing sellers, (c) to establish a bank pursuant to a trans-  
23 fer of development rights program as permitted by law, (d) to provide a  
24 management and stewardship program for such interests and rights  
25 consistent with subdivision nine of this section and in accordance with  
26 such plan designed to preserve community character; provided that not  
27 more than ten (10) percent of the fund shall be utilized for the manage-  
28 ment and stewardship program, and (e) to implement water quality  
29 improvement projects in accordance with a plan to preserve community  
30 character. If the implementation of the community preservation project  
31 plan, adopted by a governing body, as provided in subdivision six of  
32 this section, has been completed, and funds are no longer needed for the  
33 purposes outlined in this subdivision, then any remaining monies in the  
34 fund shall be applied to reduce any bonded indebtedness or obligations  
35 incurred to effectuate the purposes of this section. Preliminary and  
36 incidental costs in connection with the acquisition of interests or  
37 rights in real property, pursuant to this subdivision, shall be deemed  
38 part of the cost of the acquisition for which they were incurred. Such  
39 expenditures may include any administrative or other expenditures  
40 directly arising therefrom. No expenditure shall be charged to the fund,  
41 unless authorized by law. A full accounting of such costs for each  
42 acquisition of land shall be provided by the governing body.

43 4. Preservation of community character shall involve one or more of  
44 the following: (a) establishment of parks, nature preserves, or recre-  
45 ation areas; (b) preservation of open space, including agricultural  
46 lands provided, however, that farm buildings and structures used for the  
47 marketing of farm products produced on such agricultural lands shall be  
48 permitted; (c) preservation of lands of exceptional scenic value; (d)  
49 preservation of fresh and saltwater marshes or other wetlands; (e) pres-  
50 ervation of aquifer recharge areas; (f) preservation of undeveloped  
51 beach lands or shoreline including those at significant risk of coastal  
52 flooding due to projected sea level rise and future storms; (g) estab-  
53 lishment of wildlife refuges for the purpose of maintaining native  
54 animal species diversity, including the protection of habitat essential  
55 to the recovery of rare, threatened or endangered species; (h) preserva-  
56 tion of pine barrens consisting of such biota as pitch pine, and scrub

1 oak; (i) preservation of unique or threatened ecological areas; (j)  
2 preservation of rivers and river areas in a natural, free-flowing condi-  
3 tion; (k) preservation of forested land; (l) preservation of public  
4 access to lands for public use including stream rights and waterways;  
5 (m) preservation of historic places and properties listed on the New  
6 York state register of historic places and/or protected under a munici-  
7 pal historic preservation ordinance or law; (n) preservation of lands  
8 necessary to protect fisheries and water dependent uses essential to  
9 maintain and enhance maritime heritage; and (o) undertaking any of the  
10 aforementioned in furtherance of the establishment of a greenbelt.  
11 Preservation of community character shall also include the protection  
12 and improvement of the quality of all water resources.

13 5. The governing body of any city or town which has established a  
14 community preservation fund shall create an advisory board to review and  
15 make recommendations on proposed acquisitions of interests in real prop-  
16 erty or water quality improvement projects using monies from the fund.  
17 Such board shall consist of five or seven legal residents of the munici-  
18 pality who shall serve without compensation. No member of the local  
19 legislative body shall serve on the board. A majority of the members of  
20 the board shall have demonstrated experience with conservation and land  
21 preservation activities or water quality improvement activities. The  
22 board shall act in an advisory capacity to the governing body.

23 6. The governing body of any city or town which has established a  
24 community preservation fund shall, by local law, adopt a community pres-  
25 ervation project plan. This plan shall list every project which the city  
26 or town plans to undertake pursuant to the community preservation fund.  
27 It shall include every parcel which is necessary to be acquired in the  
28 city or town in order to protect community character. Such plan shall  
29 provide for a detailed evaluation of all available land use alternatives  
30 to protect community character, including but not limited to: (a) fee  
31 simple acquisition, (b) zoning regulations, including density  
32 reductions, cluster development, and site plan and design requirements,  
33 (c) transfer of development rights, (d) the purchase of development  
34 rights, and (e) scenic and conservation easements. Said evaluation shall  
35 be as specific as practicable as to each parcel selected for inclusion  
36 in the plan. The plan shall establish the priorities for preservation.  
37 Said plan shall also list every water quality improvement project which  
38 the city or town plans to undertake pursuant to the community preserva-  
39 tion fund and shall state how such project would improve existing water  
40 quality. Projects which have as their purpose the accommodation of new  
41 growth as opposed to the remediation of water quality shall not qualify  
42 for funding under this section. Funds from the community preservation  
43 fund may only be expended for projects which have been included in said  
44 plan. The plan shall be updated not less than once every five years and  
45 shall be completed at least sixty (60) days before the submission of the  
46 mandatory referendum required by section fifteen hundred seventy-six of  
47 the tax law. As part of, or in addition, to said community preservation  
48 fund project plan, each governing body may also adopt a management and  
49 stewardship plan for interests or rights in real property acquired  
50 pursuant to this section. No monies from the fund shall be expended for  
51 management and stewardship, except as approved in said plan. Said plan  
52 may provide management and stewardship projects for up to a three year  
53 period and shall provide a description and estimated cost for each  
54 project. Said plan shall be approved and adopted by local law and may be  
55 updated from time to time at the discretion of the local governing body.

1 Only management and stewardship projects permitted pursuant to subdivi-  
2 sion nine of this section shall be eligible to be included in the plan.

3 7. The governing body of any city or town which has established a  
4 community preservation fund pursuant to this section shall consider  
5 establishing a transfer of development rights program to protect commu-  
6 nity character consistent with state law. If at any time during the life  
7 of the community preservation fund a transfer of development rights  
8 program is established, the city or town may utilize monies from the  
9 community preservation fund in order to create and fund a central bank  
10 of the transfer of development rights program. If at any time during the  
11 life of the community preservation fund, a transfer of development  
12 rights program is repealed by the city or town, all monies from the  
13 central bank shall be returned to the community preservation fund.

14 8. No interests or rights in real property shall be acquired pursuant  
15 to this section until a public hearing is held as required by section  
16 two hundred forty-seven of this chapter; provided, however, that nothing  
17 in this section shall prevent the governing body from entering into a  
18 conditional purchase agreement before a public hearing is held. Any  
19 resolution of a governing body approving an acquisition of land pursuant  
20 to this section, shall find that acquisition was the best alternative  
21 for the protection of community character of all the reasonable alterna-  
22 tives available to the city or town.

23 9. Lands acquired pursuant to this section shall be administered and  
24 managed in a manner which (a) allows public use and enjoyment in a  
25 manner compatible with the natural, scenic, historic and open space  
26 character of such lands; (b) preserves the native biological diversity  
27 of such lands; (c) with regard to open spaces, limits improvements to  
28 enhancing access for passive use of such lands such as nature trails,  
29 boardwalks, bicycle paths, and peripheral parking areas provided that  
30 such improvements do not degrade the ecological value of the land or  
31 threaten essential wildlife habitat; and (d) preserves cultural property  
32 consistent with accepted standards for historic preservation. In  
33 furthering the purposes of this section, the city or town may enter into  
34 agreements with conservation organizations formed under the not-for-pro-  
35 fit corporation law and engaged in land trust activities to manage  
36 lands, including less than fee interests acquired pursuant to the  
37 provisions of this section, provided that any such agreement shall  
38 contain a provision that such corporation shall keep the lands accessi-  
39 ble to the public unless the governing body finds that public accessi-  
40 bility would be detrimental to the lands or any natural resources asso-  
41 ciated therewith. Except for interests or rights in real property  
42 acquired for historic preservation purposes, management and stewardship  
43 projects shall be only expended for (1) projects which promote the  
44 protection or enhancement of the natural, scenic, and open space charac-  
45 ter for which the interests or rights in real property were acquired, or  
46 (2) accessory uses related to the purpose for which the interests or  
47 rights in real property were acquired consistent with this subdivision,  
48 or (3) restoration of acquired real property to its natural state  
49 including the demolition of existing buildings and structures. In the  
50 case of interests or rights in real property acquired for historic pres-  
51 ervation purposes, funds may be expended only for the restoration and  
52 rehabilitation of buildings and structures consistent with accepted  
53 state and federal standards for historic preservation. Expenses related  
54 to the customary operation and maintenance of acquired interests or  
55 rights in real property shall not be permitted from the fund. Any

1 expenditure from the fund for a purpose other than that permitted, here-  
2 in, shall be deemed to be prohibited.

3 10. Rights or interests in real property acquired with monies from  
4 such fund shall not be sold, leased, exchanged, donated, or otherwise  
5 disposed of or used for other than the purposes permitted by this  
6 section without the express authority of an act of the legislature,  
7 which shall provide for the substitution of other lands of equal envi-  
8 ronmental value and fair market value and reasonably equivalent useful-  
9 ness and location to those to be discontinued, sold or disposed of, and  
10 such other requirements as shall be approved by the legislature. Nothing  
11 in this section shall preclude a city or town, by local law, from estab-  
12 lishing additional restrictions to the alienation of lands acquired  
13 pursuant to this section. This subdivision shall not apply to the sale  
14 of development rights by a city or town acquired pursuant to this  
15 section, where said sale is made by a central bank created by a city or  
16 town, pursuant to a transfer of development rights program established  
17 by a city or town, provided, however (a) that the lands from which said  
18 development rights were acquired shall remain preserved in perpetuity by  
19 a permanent conservation easement or other instrument that similarly  
20 preserves the community character referenced in subdivision four of this  
21 section, and (b) the proceeds from such sale shall be deposited in the  
22 community preservation fund.

23 11. Notwithstanding any provision of law to the contrary, cities or  
24 towns may enter into inter-municipal agreements pursuant to article  
25 five-G of this chapter for the following purposes: (a) to jointly  
26 acquire interests or rights in real property, consistent with the  
27 purposes of this section, where the acquisition of such interests or  
28 rights promotes a regional public benefit for two or more cities or  
29 towns pursuant to a regional plan, (b) to establish an office or depart-  
30 ment to render legal opinions and interpretations to facilitate the  
31 efficient and consistent administration of each fund created under this  
32 section, (c) to provide for an independent financial audit of each  
33 city's or town's fund, and (d) to hire employees necessary to implement  
34 the provisions of this section.

35 12. Each city or town which has established a community preservation  
36 fund shall annually commission an independent audit of the fund. The  
37 audit shall be conducted by an independent certified public accountant  
38 or an independent public accountant. Said audit shall be performed by a  
39 certified public accountant or an independent public accountant other  
40 than the one that performs the general audit of each city's or town's  
41 finances. Such audit shall be an examination of the fund and shall  
42 determine whether the fund has been administered consistent with the  
43 provisions of this section and all other applicable provisions of state  
44 law. Said audit shall be initiated within sixty days of the close of the  
45 fiscal year of each city or town and shall be completed within one  
46 hundred twenty days of the close of the fiscal year. A copy of the audit  
47 shall be submitted annually to the state comptroller and the city or  
48 town clerk. A copy of the audit shall be made available to the public  
49 within thirty days of its completion. A notice of the completion of the  
50 audit shall be published in the official newspaper of the city or town  
51 and posted on the official sign board of the city or town within ten  
52 days of its filing with the town clerk. Said audit and notice shall  
53 also be posted on the internet site for the city or town. The cost of  
54 the audit may be a charge to the fund.

55 13. The cost of employees and independent contractors to implement the  
56 provisions of this section may only be paid for by the fund where the

1 duties and responsibilities of said employees and independent contrac-  
2 tors are directly dedicated to implementing the provisions of this  
3 section. Where such employees and independent contractors are not exclu-  
4 sively dedicated to implementing the provisions of this section, no more  
5 than the cost of the actual time expended directly dedicated to imple-  
6 menting the provisions of this section may be charged. Such costs shall  
7 be expressly identified in the city or town budget and any plan adopted  
8 pursuant to this section before funds for such costs may be expended. In  
9 addition, such costs must be documented by a time accounting system,  
10 subject to audit. Costs relating to the activities of elected officials  
11 implementing the purposes of this section may not be a charge to the  
12 fund.

13 § 2. The general municipal law is amended by adding a new section 6-x  
14 to read as follows:

15 § 6-x. Community housing fund. 1. Definitions. As used in this  
16 section, the following words and terms shall have the following mean-  
17 ings:

18 (a) "City or town" means a city, except a city with a population of  
19 one million or more, or a town.

20 (b) "Community housing" means a primary residential property for an  
21 eligible individual. The governing body shall establish, by local law,  
22 purchase price limit for community housing, provided that limit shall  
23 not exceed one hundred fifty percent of the purchase price limits estab-  
24 lished by the state of New York mortgage agency low interest rate loan  
25 program in non-target categories for the county in effect on the  
26 contract date for the sale of such property. Community housing shall  
27 include apartments that are accessory to a legally established residen-  
28 tial or commercial use.

29 (c) "Board" means the advisory board created pursuant to subdivision  
30 six of this section.

31 (d) "Fund" means the community housing fund authorized pursuant to  
32 subdivision two of this section.

33 (e) "First-time homebuyer" means an eligible individual who has not  
34 owned a primary residential property and is not married to a person who  
35 has owned a residential property during the three-year period prior to  
36 his or her purchase of the primary residential property, and who does  
37 not own a vacation or investment home.

38 (f) "Primary residential property" means any one or two family house,  
39 townhouse, or condominium, including accessory apartments.

40 (g) "Eligible individual" shall be defined by the governing body, by  
41 local law, provided that the definition of household income in such  
42 local law shall not exceed one hundred percent of the income limits as  
43 established by the state of New York mortgage agency low interest rate  
44 loan program in non-target categories for the county in effect on the  
45 contract date for the sale of such property.

46 (h) "Governing body" means a city council or town board.

47 2. Fund authorized. Cities and towns are authorized to establish, by  
48 local law, a community housing fund, pursuant to the provisions of this  
49 section. Deposits into the fund may include revenues of the local  
50 government from whatever source, including but not limited to: (a) all  
51 revenues from the supplemental real estate transfer tax authorized by  
52 subdivision two of section one thousand five hundred seventy-six of the  
53 tax law; (b) all proceeds from any indebtedness or obligations issued  
54 pursuant to the local finance law for community housing opportunity  
55 purposes as authorized in subdivision three of this section; (c) general  
56 fund balances or surpluses; (d) any proceeds received by the local

1 government from the sale or rental of community housing produced from  
2 revenues of the fund; (e) the repayment of any loans issued from  
3 proceeds of the fund; (f) any gifts of interests in land or funds; and  
4 (g) any state or federal grants received by the city or town for provid-  
5 ing affordable homes.

6 3. Purposes of the fund. The proceeds of the fund established pursuant  
7 to subdivision two of this section shall be utilized for the following  
8 purposes:

9 (a) the provision of financial assistance to first-time homebuyers who  
10 are residents of the city or town for the purchase of a first home. Such  
11 financial assistance may be in the form of a grant or a loan and such  
12 program shall meet the following criteria:

13 (1) A city or town may provide financial assistance for the purchase  
14 of a first home to a first-time homebuyer who is a resident of the city  
15 or town or who is employed in the city or town. A resident of the city  
16 or town shall include a person who is currently a resident of the town  
17 or a non-resident who has been a resident within the past five years.

18 (2) Such financial assistance shall not exceed fifty percent of the  
19 purchase price of the home.

20 (3) If such financial assistance is in the form of a loan, such loan  
21 shall be repayable to the city or town pursuant to the terms agreed to  
22 between the recipient and the city or town, provided that any loan shall  
23 be fully repaid by the recipient upon the resale of the home.

24 (4) For the purposes of calculating city or town real property tax  
25 liability for such property, only, the dollar amount of any financial  
26 assistance for the purchase of a first home made by the city or town  
27 pursuant to this section shall be subtracted from the full equalized  
28 assessed value of such property.

29 (5) All revenues received by the city or town from the repayment of a  
30 loan shall be deposited in the fund.

31 (6) A city or town may provide financial assistance for community  
32 housing in conjunction with a public/private partnership for employer  
33 assisted housing.

34 (b) the actual production of community housing for sale to eligible  
35 individuals by the city or town;

36 (c) the actual production of community housing for sale to eligible  
37 individuals in conjunction with a public/private partnership, where the  
38 private partner agrees to comply with the profit guidelines of the New  
39 York state affordable housing corporation and the provisions of this  
40 section;

41 (d) the actual production and maintenance of community housing,  
42 including accessory apartments for rental to eligible individuals either  
43 by the city or town or its housing authority; or in conjunction with a  
44 public/private partnership, where the private partner agrees to comply  
45 with the profit guidelines of the New York state affordable housing  
46 corporation and the provisions of this section;

47 (e) the rehabilitation of existing buildings and structures in the  
48 city or town for the purpose of conversion to community housing for sale  
49 or rental to eligible individuals;

50 (f) the acquisition of interests in real property in existing housing  
51 stock, which will result in the production of community housing for sale  
52 or rental to eligible individuals; and

53 (g) the provision of housing counseling services by not-for-profit  
54 corporations who are authorized by the United States department of hous-  
55 ing and urban development to provide such services.

1 4. Fund management. Interest accrued by monies deposited into the fund  
2 shall be credited to the fund. In no event shall monies deposited into  
3 the fund be transferred to any other account. Nothing contained in this  
4 section shall be construed to prevent the financing in whole or in part,  
5 pursuant to the local finance law, of any purpose authorized pursuant to  
6 this section. Monies from the fund may be utilized to repay indebtedness  
7 or obligations incurred pursuant to the local finance law consistent  
8 with effectuating the purposes of this section.

9 5. Eligible expenses. For the purposes of this section, eligible  
10 expenses relating to the production of community housing and the reha-  
11 ilitation of existing buildings and structures under the fund shall  
12 include but not be limited to land acquisition, planning, engineering,  
13 construction costs, and other hard and soft costs directly related to  
14 the construction, rehabilitation, purchase or rental of housing pursuant  
15 to this section. All revenues received by the city or town from the sale  
16 or rental of community housing, or the repayment of loans shall be  
17 deposited in the fund.

18 6. Advisory board established. The governing body of any city or town  
19 which has established a community housing fund pursuant to this section  
20 shall create an advisory board to review and make recommendations  
21 regarding the town's community housing plan required by subdivision  
22 seven of this section. Such board shall consist of not less than seven  
23 nor more than fifteen legal residents of the municipality who shall  
24 serve without compensation. No member of the local legislative body  
25 shall serve on the board. The board shall include a representative of:  
26 (a) the construction industry; (b) the real estate industry; (c) the  
27 banking industry; and three representatives of local housing advocacy or  
28 human services organizations. Where a village or villages, located with-  
29 in a town, elect to participate in the fund, as provided in subdivision  
30 eight of this section, the board shall include at least one resident of  
31 a participating village or villages. Where an Indian nation is located  
32 within the boundaries of a city or town, the board shall include at  
33 least one member from such nation. The board shall act in an advisory  
34 capacity to the governing body.

35 7. Adoption of housing plan. (a) Before a city or town may expend any  
36 funds pursuant to this section, the governing body shall first adopt a  
37 housing plan which establishes an implementation plan for the provision  
38 of community housing opportunities by the fund. Said plan shall be  
39 adopted by local law. Such plan shall adhere to the following princi-  
40 ples:

41 (1) Public investment. To account for and minimize social, economic,  
42 and environmental costs of new development, including infrastructure  
43 costs such as transportation, sewers, and wastewater treatment, water,  
44 schools, recreation, and loss of open space and agricultural land;

45 (2) Development. To encourage development in areas where transporta-  
46 tion, water, and sewage infrastructure are available or practical;

47 (3) Conservation. To protect, preserve, and enhance the state's  
48 resources, including agricultural land, forests, surface waters, ground-  
49 water, recreation and open space, scenic areas, and significant historic  
50 and archeological sites;

51 (4) Coordination. To promote coordination of state and local govern-  
52 ment decisions and cooperation among communities to work toward the most  
53 efficient, planned and cost-effective delivery of government services  
54 by, among other means, facilitating cooperative agreements among adja-  
55 cent communities, and to coordinate planning to ensure compatibility of  
56 one's community development with development of neighboring communities;



1 (5) Community design. To strengthen communities through development  
2 and redevelopment strategies that include integration of all income and  
3 age groups, mixed land uses, and compact development, traditional neigh-  
4 borhood development, planned unit development, open space districts,  
5 downtown revitalization, brownfield redevelopment, enhanced beauty in  
6 public spaces, and diverse and community housing in close proximity to  
7 places of employment, recreation, and commercial development;

8 (6) Transportation. To provide transportation choices, including  
9 increasing public transit and alternative modes of transportation, in  
10 order to reduce automobile dependency, traffic congestion, and automo-  
11 bile pollution;

12 (7) Consistency. To ensure predictability in building and land use  
13 codes; and

14 (8) Community collaboration. To provide for and encourage local  
15 governments to develop, through a collaborative community-based effort,  
16 plans that include long term land use and permit predictability and  
17 coordination, efficient decision making and planning implementation.

18 (b) Such plan may include the establishment of a map or maps that  
19 delineate the housing implementation recommendations proposed by the  
20 town.

21 (c) Such plan shall be updated at least once every five years.

22 (d) The housing plan shall be an element of the city or town compre-  
23 hensive plan.

24 (e) Such plan shall ensure that all community housing, created pursu-  
25 ant to this section, remains affordable. Subsequent purchasers of such  
26 community housing, at the time of purchase, shall be eligible individ-  
27 uals as defined herein.

28 (f) Such plan shall provide for the equitable distribution of communi-  
29 ty housing opportunities among all the communities of the town. The plan  
30 shall ensure that no community has an undue concentration of community  
31 housing opportunities that would substantially alter the character of  
32 the community. In determining equitable distribution of community hous-  
33 ing opportunities, existing community housing opportunities in a commu-  
34 nity shall be considered.

35 8. Village participation. (a) The participation of any village, where  
36 there is a town community housing fund, in the production of community  
37 housing authorized by this section, shall be at the option of the  
38 village. In order to participate, a village shall pass a resolution  
39 opting into the program and shall submit said resolution to the town  
40 board.

41 (b) Where a village opts to participate pursuant to this subdivision,  
42 an intergovernmental agreement shall be executed pursuant to article  
43 five-G of the general municipal law or other applicable legal authority,  
44 in order to establish the rights and responsibilities of each government  
45 regarding community housing opportunities.

46 (c) Regardless of whether a village participates in the program  
47 authorized by this section, properties in the village shall be subject  
48 to the supplemental real estate transfer tax authorized by section four-  
49 teen hundred forty-nine-bb of the tax law.

50 § 3. The tax law is amended by adding a new article 33-C to read as  
51 follows:

52 ARTICLE 33-C

53 TAX ON REAL ESTATE TRANSFERS IN CITIES OR TOWNS

54 Section 1575. Definitions.

55 1576. Imposition of tax.

56 1577. Payment of tax.

1 1578. Liability for tax.

2 1579. Exemptions.

3 1580. Credit.

4 1581. Cooperative housing corporation transfers.

5 1582. Designation of agents.

6 1583. Liability of recording officer.

7 1584. Deposit and disposition of revenue.

8 1585. Judicial review.

9 1586. Apportionment.

10 1587. Miscellaneous.

11 1588. Returns to be secret.

12 § 1575. Definitions. When used in this article, unless otherwise  
13 expressly stated, the following words and terms shall have the following  
14 meanings:

15 1. "Person" means an individual, partnership, limited liability compa-  
16 ny, society, association, joint stock company, corporation, estate,  
17 receiver, trustee, assignee, referee or any other person acting in a  
18 fiduciary or representative capacity, whether appointed by a court or  
19 otherwise, any combination of individuals, and any other form of unin-  
20 corporated enterprise owned or conducted by two or more persons.

21 2. "Controlling interest" means (a) in the case of a corporation,  
22 either fifty percent or more of the total combined voting power of all  
23 classes of stock of such corporation, or fifty percent or more of the  
24 capital, profits or beneficial interest in such voting stock of such  
25 corporation, and (b) in the case of a partnership, association, trust or  
26 other entity, fifty percent or more of the capital, profits or benefi-  
27 cial interest in such partnership, association, trust or other entity.

28 3. "Real property" means every estate or right, legal or equitable,  
29 present or future, vested or contingent, in lands, tenements or heredi-  
30 taments, including buildings, structures and other improvements thereon,  
31 which are located in whole or in part within any city or town. It shall  
32 not include rights to sepulture.

33 4. "Consideration" means the price actually paid or required to be  
34 paid for the real property or interest therein, including payment for an  
35 option or contract to purchase real property, whether or not expressed  
36 in the deed and whether paid or required to be paid by money, property,  
37 or any other thing of value. It shall include the cancellation or  
38 discharge of an indebtedness or obligation. It shall also include the  
39 amount of any mortgage, purchase money mortgage, lien or other encum-  
40 brance, whether or not the underlying indebtedness is assumed or taken  
41 subject to.

42 (a) In the case of a creation of a leasehold interest or the granting  
43 of an option with use and occupancy of real property, consideration  
44 shall include, but not be limited to, the value of the rental and other  
45 payments attributable to the use and occupancy of the real property or  
46 interest therein, the value of any amount paid for an option to purchase  
47 or renew and the value of rental or other payments attributable to the  
48 exercise of any option to renew.

49 (b) In the case of a creation of a subleasehold interest, consider-  
50 ation shall include, but not be limited to, the value of the sublease  
51 rental payments attributable to the use and occupancy of the real prop-  
52 erty, the value of any amount paid for an option to renew and the value  
53 of rental or other payments attributable to the exercise of any option  
54 to renew less the value of the remaining prime lease rental payments  
55 required to be made.

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

5 (d) In the case of an assignment or surrender of a leasehold interest  
6 or the assignment or surrender of an option or contract to purchase real  
7 property, consideration shall not include the value of the remaining  
8 rental payments required to be made pursuant to the terms of such lease  
9 or the amount to be paid for the real property pursuant to the terms of  
10 the option or contract being assigned or surrendered.

11 (e) In the case of (1) the original conveyance of shares of stock in a  
12 cooperative housing corporation in connection with the grant or transfer  
13 of a proprietary leasehold by the cooperative corporation or cooperative  
14 plan sponsor, and (2) the subsequent conveyance by the owner thereof of  
15 such stock in a cooperative housing corporation in connection with the  
16 grant or transfer of a proprietary leasehold for a cooperative unit  
17 other than an individual residential unit, consideration shall include a  
18 proportionate share of the unpaid principal of any mortgage on the real  
19 property of the cooperative housing corporation comprising the cooper-  
20 ative dwelling or dwellings. Such share shall be determined by multiply-  
21 ing the total unpaid principal of the mortgage by a fraction, the numer-  
22 ator of which shall be the number of shares of stock being conveyed in  
23 the cooperative housing corporation in connection with the grant or  
24 transfer of a proprietary leasehold and the denominator of which shall  
25 be the total number of shares of stock in the cooperative housing corpo-  
26 ration.

27 5. "Conveyance" means the transfer or transfers of any interest in  
28 real property by any method, including but not limited to, sale,  
29 exchange, assignment, surrender, mortgage foreclosure, transfer in lieu  
30 of foreclosure, option, trust indenture, taking by eminent domain,  
31 conveyance upon liquidation or by a receiver, or transfer or acquisition  
32 of a controlling interest in any entity with an interest in real proper-  
33 ty. Transfer of an interest in real property shall include the creation  
34 of a leasehold or sublease only where (a) the sum of the term of the  
35 lease or sublease and any options for renewal exceeds forty-nine years,  
36 (b) substantial capital improvements are or may be made by or for the  
37 benefit of the lessee or sublessee, and (c) the lease or sublease is for  
38 substantially all of the premises constituting the real property.  
39 Notwithstanding the foregoing, conveyance of real property shall not  
40 include a conveyance made pursuant to devise, bequest or inheritance;  
41 the creation, modification, extension, spreading, severance, consol-  
42 idation, assignment, transfer, release or satisfaction of a mortgage; a  
43 mortgage subordination agreement, a mortgage severance agreement, an  
44 instrument given to perfect or correct a recorded mortgage; or a release  
45 of lien of tax pursuant to this chapter or the internal revenue code.

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

53 7. "Grantor" means the person making the conveyance of real property  
54 or interest therein. Where the conveyance consists of a transfer or an  
55 acquisition of a controlling interest in an entity with an interest in  
56 real property, "grantor" means the entity with an interest in real prop-

1 erty or a shareholder or partner transferring stock or partnership  
2 interest, respectively.

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

5 9. "Fund" means a community preservation fund created pursuant to  
6 section six-w of the general municipal law.

7 10. "Community housing fund" means a community fund created pursuant  
8 to section six-x of the general municipal law.

9 11. "Recording officer" means the county clerk.

10 12. "City or town" means a city or town, except a city of one million  
11 or more.

12 13. "Treasurer" means the county treasurer.

13 § 1576. Imposition of tax. 1. Notwithstanding any other provisions of  
14 law to the contrary, any city or town, acting through its local govern-  
15 ing body, is hereby authorized and empowered to adopt a local law impos-  
16 ing in such city or town a tax on each conveyance of real property or  
17 interest therein where the consideration exceeds five hundred dollars,  
18 at a rate of up to two percent of the consideration for such conveyance.  
19 Provided, however, any such local law imposing, repealing or reimposing  
20 such tax shall be subject to a mandatory referendum pursuant to section  
21 twenty-three of the municipal home rule law. Such local law shall only  
22 be submitted for the approval of the electors at a general election.  
23 Notwithstanding the foregoing, prior to adoption of such local law, the  
24 city or town must establish a community preservation fund pursuant to  
25 section six-w of the general municipal law. Revenues from such tax shall  
26 be deposited in such fund and may be used solely for the purposes of  
27 such fund. Such local law shall apply to any conveyance occurring on or  
28 after the first day of a month to be designated by such local governing  
29 body, which is not less than sixty days after the enactment of such  
30 local law, but shall not apply to conveyances made on or after such date  
31 pursuant to binding written contracts entered into prior to such date,  
32 provided that the date of execution of such contract is confirmed by  
33 independent evidence such as the recording of the contract, payment of a  
34 deposit or other facts and circumstances as determined by the treasurer.

35 2. Notwithstanding any other provisions of law to the contrary, in  
36 addition to the tax authorized by subdivision one of this section, any  
37 city or town, acting through its governing body, is hereby authorized  
38 and empowered to adopt a local law imposing in such city or town a  
39 supplemental tax on each conveyance of real property or interest therein  
40 where the consideration exceeds five hundred dollars, at the rate of up  
41 to one half of one percent of the consideration for such conveyance.  
42 Provided, however, any such local law imposing, repealing or re-imposing  
43 such supplemental tax shall be subject to a mandatory referendum pursu-  
44 ant to section twenty-three of the municipal home rule law. Notwith-  
45 standing the foregoing, prior to adoption of such local law, the town  
46 must establish a community housing fund pursuant to section six-x of the  
47 general municipal law. Revenues from such supplemental tax shall be  
48 deposited in such community housing fund and may be used solely for the  
49 purposes of such community housing fund. Such local law shall apply to  
50 any conveyance occurring on or after the first day of a month to be  
51 designated by the governing board, which is not less than sixty days  
52 after the enactment of such local law, but shall not apply to conveyanc-  
53 es made on or after such date pursuant to binding written contracts  
54 entered into prior to such date, provided that the date of execution of  
55 such contract is confirmed by independent evidence such as the recording  
56 of the contract, payment of a deposit or other facts and circumstances

1 as determined by the treasurer. Any tax imposed pursuant to this subdivi-  
2 vision shall be administered and collected in a like manner as the tax  
3 imposed by subdivision one of this section.

4 § 1577. Payment of tax. 1. The real estate transfer tax imposed pursu-  
5 ant to this article shall be paid to the treasurer or the recording  
6 officer acting as the agent of the treasurer upon designation as such  
7 agent by the treasurer. Such tax shall be paid at the same time as the  
8 real estate transfer tax imposed by article thirty-one of this chapter  
9 is required to be paid. Such treasurer or recording officer shall  
10 endorse upon each deed or instrument effecting a conveyance a receipt  
11 for the amount of the tax so paid.

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

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

31 § 1578. Liability for tax. 1. The real estate transfer tax shall be  
32 paid by the grantee. If the grantee has failed to pay the tax imposed  
33 pursuant to this article or if the grantee is exempt from such tax, the  
34 grantor shall have the duty to pay the tax. Where the grantor has the  
35 duty to pay the tax because the grantee has failed to pay the tax, such  
36 tax shall be the joint and several liability of the grantee and the  
37 grantor.

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

46 § 1579. Exemptions. 1. The following shall be exempt from the payment  
47 of the real estate transfer tax: (a) the state of New York, or any of  
48 its agencies, instrumentalities, political subdivisions, or public  
49 corporations (including a public corporation created pursuant to an  
50 agreement or compact with another state or Dominion of Canada); and  
51 (b) the United Nations, the United States of America or any of its  
52 agencies or instrumentalities.

53 2. The tax shall not apply to any of the following conveyances: (a)  
54 conveyances to the United Nations, the United States of America, the  
55 state of New York, or any of their instrumentalities, agencies or poli-  
56 tical subdivisions (or any public corporation, including a public corpo-

1 ration created pursuant to agreement or compact with another state or  
2 the Dominion of Canada); (b) conveyances which are or were used to  
3 secure a debt or other obligation; (c) conveyances which, without addi-  
4 tional consideration, confirm, correct, modify or supplement a deed  
5 previously recorded; (d) conveyances of real property without consid-  
6 eration and otherwise than in connection with a sale, including deeds  
7 conveying realty as bona fide gifts; (e) conveyances given in connection  
8 with a tax sale; (f) conveyances to effectuate a mere change of identity  
9 or form of ownership or organization where there is no change in benefi-  
10 cial ownership, other than conveyances to a cooperative housing corpo-  
11 ration of the real property comprising the cooperative dwelling or  
12 dwellings; (g) conveyances which consist of a deed of partition; (h)  
13 conveyances given pursuant to the federal bankruptcy act; (i) conveyanc-  
14 es of real property which consist of the execution of a contract to sell  
15 real property without the use or occupancy of such property or the  
16 granting of an option to purchase real property without the use or occu-  
17 pancy of such property; (j) conveyances of real property, where the  
18 entire parcel of real property to be conveyed is the subject of one or  
19 more of the following development restrictions: (1) agricultural,  
20 conservation, scenic, or an open space easement, (2) covenants or  
21 restrictions prohibiting development, (3) a purchase of development  
22 rights agreement, (4) a transfer of development rights agreement, where  
23 the property being conveyed has had its development rights removed, (5)  
24 said real property is subject to the development restriction of an agri-  
25 cultural district or individual commitment, pursuant to article twenty-  
26 five-AA of the agriculture and markets law, (6) real property subject to  
27 any locally adopted land preservation agreement, provided said exemption  
28 is included in the local law imposing the tax authorized by this arti-  
29 cle; (k) conveyances of real property, where the property is viable  
30 agricultural land as defined in subdivision seven of section three  
31 hundred one of the agriculture and markets law and the entire property  
32 to be conveyed is to be made subject to one of the development  
33 restrictions provided for in subparagraph two of paragraph (j) of this  
34 subdivision provided that said development restriction precludes the  
35 conversion of the property to a non-agricultural use for at least three  
36 years from the date of transfer, and said development restriction is  
37 evidenced by an easement, agreement, or other suitable instrument which  
38 is to be conveyed to the city or town simultaneously with the conveyance  
39 of the real property; or (l) conveyances of real property for open  
40 space, parks, community housing, or historic preservation purposes to  
41 any not-for-profit tax exempt corporation operated for conservation,  
42 environmental, community housing or historic preservation purposes.

43 3. The governing body of a city or town, by local law may establish a  
44 community housing exemption. Such exemption may not exceed an amount  
45 equal to the residential median sale price of the county in which the  
46 city or town is located, as determined by the office of real property  
47 services within the department of taxation and finance. Such exemption  
48 shall be allowed on the consideration of the conveyance of improved real  
49 property or an interest therein. The exemption granted pursuant to the  
50 provisions of this subdivision shall only apply to conveyances for resi-  
51 dential property where the consideration is two million dollars or less.

52 § 1580. Credit. A grantee shall be allowed a credit against the tax  
53 due on a conveyance of real property to the extent tax was paid by such  
54 grantee on a prior creation of a leasehold of all or a portion of the  
55 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 grantee.

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

8 § 1581. Cooperative housing corporation transfers. 1. Notwithstanding  
9 the definition of "controlling interest" contained in subdivision two of  
10 section fifteen hundred seventy-five of this article or anything to the  
11 contrary contained in subdivision five of section fifteen hundred seven-  
12 ty-five of this article, the tax imposed pursuant to this article shall  
13 apply to (a) the original conveyance of shares of stock in a cooperative  
14 housing corporation in connection with the grant or transfer of a  
15 proprietary leasehold by the cooperative corporation or cooperative plan  
16 sponsor, and (b) the subsequent conveyance of such stock in a cooper-  
17 ative housing corporation in connection with the grant or transfer of a  
18 proprietary leasehold by the owner thereof. With respect to any such  
19 subsequent conveyance where the property is an individual residential  
20 unit, the consideration for the interest conveyed shall exclude the  
21 value of any liens on certificates of stock or other evidences of an  
22 ownership interest in and a proprietary lease from a corporation or  
23 partnership formed for the purpose of cooperative ownership of residen-  
24 tial interest in real estate remaining thereon at the time of convey-  
25 ance. In determining the tax on a conveyance described in paragraph (a)  
26 of this subdivision, a credit shall be allowed for a proportionate part  
27 of the amount of any tax paid upon the conveyance to the cooperative  
28 housing corporation of the real property comprising the cooperative  
29 dwelling or dwellings to the extent that such conveyance effectuated a  
30 mere change of identity or form of ownership of such property and not a  
31 change in the beneficial ownership of such property. The amount of the  
32 credit shall be determined by multiplying the amount of tax paid upon  
33 the conveyance to the cooperative housing corporation by a percentage  
34 representing the extent to which such conveyance effectuated a mere  
35 change of identity or form of ownership and not a change in the benefi-  
36 cial ownership of such property, and then multiplying the resulting  
37 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 grantor and the grantee,

1 the number of shares conveyed, the date of the conveyance and the  
2 consideration paid for such conveyance.

3 § 1582. Designation of agents. The treasurer is authorized to desig-  
4 nate the recording officer to act as his or her agent for purposes of  
5 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 real estate transfer tax shall be paid to such agent as  
9 provided in section fifteen hundred seventy-seven of this article.

10 § 1583. Liability of recording officer. A recording officer shall not  
11 be liable for any inaccuracy in the amount of tax imposed pursuant to  
12 this article that he or she shall collect so long as he or she shall  
13 compute and collect such tax on the amount of consideration or the value  
14 of the interest conveyed as such amounts are provided to him or her by  
15 the person paying the tax.

16 § 1584. Deposit and disposition of revenue. 1. All taxes, penalties  
17 and interest imposed by the city or town under the authority of section  
18 fifteen hundred seventy-six of this article, which are collected by the  
19 treasurer or his or her agents, shall be deposited in trust funds as  
20 provided by this section for the city or town and shall be kept in trust  
21 and separate and apart from all other monies in possession of the treas-  
22 urer. The treasurer or his or her agents shall provide for separate  
23 trust funds for community preservation and community housing revenues.  
24 Moneys in such fund shall be deposited and secured in the manner  
25 provided by section ten of the general municipal law. Pending expendi-  
26 ture from such fund, moneys therein may be invested in the manner  
27 provided in section eleven of the general municipal law. Any interest  
28 earned or capital gain realized on the moneys so deposited or invested  
29 shall accrue to and become part of such fund.

30 2. The treasurer shall retain such amount as he or she may determine  
31 to be necessary for refunds with respect to the tax imposed by the city  
32 or town, under the authority of section fifteen hundred seventy-six of  
33 this article, out of which the treasurer shall pay any refunds of such  
34 taxes to those taxpayers entitled to a refund pursuant to the provisions  
35 of this article.

36 3. The treasurer, after reserving such refunds, shall on or before the  
37 twelfth day of each month pay to the city comptroller or the town super-  
38 visor the taxes, penalties and interest imposed by the town under the  
39 authority of section fifteen hundred seventy-six of this article,  
40 collected by the treasurer, pursuant to this article during the next  
41 preceding calendar month. The amount so payable shall be certified to  
42 the city comptroller or the town supervisor by the treasurer, who shall  
43 not be held liable for any inaccuracy in such certification. Provided,  
44 however, any such certification may be based on such information as may  
45 be available to the treasurer at the time such certification must be  
46 made under this section. Where the amount so paid over to the city or  
47 town in any such distribution is more or less than the amount due to the  
48 city or town, the amount of the overpayment or underpayment shall be  
49 certified to the city comptroller or the town supervisor by the treasur-  
50 er, who shall not be held liable for any inaccuracy in such certif-  
51 ication. The amount of the overpayment or underpayment shall be so  
52 certified to the city comptroller or the town supervisor as soon after  
53 the discovery of the overpayment or underpayment as reasonably possible  
54 and subsequent payments and distributions by the treasurer to such city  
55 or town shall be adjusted by subtracting the amount of any such overpay-  
56 ment from or by adding the amount of any such underpayment to such



1 number of subsequent payments and distributions as the treasurer and  
2 city comptroller or town supervisor shall consider reasonable in view of  
3 the overpayment or underpayment and all other facts and circumstances.

4 4. All monies received from the treasurer shall be deposited in the  
5 appropriate fund of the city or town, pursuant to section six-w or  
6 section six-x of the general municipal law.

7 § 1585. Judicial review. 1. Any final determination of the amount of  
8 any tax payable under section fifteen hundred seventy-eight of this  
9 article shall be reviewable for error, illegality or unconstitutionality  
10 or any other reason whatsoever by a proceeding under article seventy-  
11 eight of the civil practice law and rules if application therefor is  
12 made to the supreme court within four months after the giving of the  
13 notice of such final determination, provided, however, that any such  
14 proceeding under article seventy-eight of the civil practice law and  
15 rules shall not be instituted unless (a) the amount of any tax sought to  
16 be reviewed, with such interest and penalties thereon as may be provided  
17 for by local law shall be first deposited and there is filed an under-  
18 taking, issued by a surety company authorized to transact business in  
19 this state and approved by the state superintendent of insurance as to  
20 solvency and responsibility, in such amount as a justice of the supreme  
21 court shall approve to the effect that if such proceeding be dismissed  
22 or the tax confirmed the petitioner will pay all costs and charges which  
23 may accrue in the prosecution of such proceeding or (b) at the option of  
24 the petitioner, such undertaking may be in a sum sufficient to cover the  
25 taxes, interest and penalties stated in such determination, plus the  
26 costs and charges which may accrue against it in the prosecution of the  
27 proceeding, in which event the petitioner shall not be required to pay  
28 such taxes, interest or penalties as a condition precedent to the appli-  
29 cation.

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

44 § 1586. Apportionment. A local law adopted by any city or town, pursu-  
45 ant to this article, shall provide for a method of apportionment for  
46 determining the amount of tax due whenever the real property or interest  
47 therein is situated within and without the city or town.

48 § 1587. Miscellaneous. A local law adopted by any city or town, pursu-  
49 ant to this article, may contain such other provisions as the city or  
50 town deems necessary for the proper administration of the tax imposed  
51 pursuant to this article, including provisions concerning the determi-  
52 nation of tax, the imposition of interest on underpayments and overpay-  
53 ments and the imposition of civil penalties. Such provisions shall be  
54 identical to the corresponding provisions of the real estate transfer  
55 tax imposed by article thirty-one of this chapter, so far as such

1 provisions can be made applicable to the tax imposed pursuant to this  
2 article.

3 § 1588. Returns to be secret. 1. Except in accordance with proper  
4 judicial order or as otherwise provided by law, it shall be unlawful for  
5 the treasurer or any officer or employee of the county, city or town,  
6 including any person engaged or retained on an independent contract  
7 basis, to divulge or make known in any manner the particulars set forth  
8 or disclosed in any return required under a local law enacted pursuant  
9 to this article. Provided, however, that nothing in this section shall  
10 prohibit the recording officer from making a notation on an instrument  
11 affecting a conveyance indicating the amount of tax paid. No recorded  
12 instrument affecting a conveyance shall be considered a return for  
13 purposes of this section.

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

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

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

41 § 5. This act shall take effect immediately.