STATE OF NEW YORK

10019

IN ASSEMBLY

April 29, 2022

Introduced by M. of A. GANDOLFO -- read once and referred to the Committee on Local Governments

AN ACT to amend the tax law and the village law, in relation to authorizing the village of Saltaire, county of Suffolk, 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:

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

ARTICLE 31-H

TAX ON REAL ESTATE TRANSFERS IN THE VILLAGE OF SALTAIRE

Section 1449-aaaaaa. Definitions.
1449-bbbbbb. Imposition of tax.
1449-cccccc. Payment of tax.
1449-dddddd. Liability for tax.
1449-eeeeee. Exemptions.
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1449-iiiiii. Liability of recording officer.
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1449-kkkkkk. Deposit and disposition of revenue.
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1449-nnnnnn. Miscellaneous.
1449-oooooo. Returns to be secret.
1449-pppppp. Foreclosure.

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

1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of

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

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individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the village of Saltaire, in the county of Suffolk. It shall not include rights to sepulture.

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

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

(b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

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

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

(e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

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

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

7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

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

9. "Recording officer" means the village clerk of the village of Saltaire.

10. "Treasurer" means the chief fiscal officer of the village Saltaire.

11. "Local legislative body" means the board of trustees of the village of Saltaire.

12. "Village" means the village of Saltaire, town of Islip, county of Suffolk.

§ 1449-bbbbbb. Imposition of tax. Notwithstanding any other provisions of law to the contrary, the village of Saltaire, in the county of Suffolk, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such village a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at a rate not to exceed a maximum of two percent of the consideration for such conveyance. Such local law may apply to any conveyance occurring on or after the date designated by such legislative body, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

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

2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by article thirty-one of this chapter. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to section fourteen hundred nine of this chapter. However, when an apportionment is required to be made pursuant to section fourteen hundred forty-nine-mmmmmm of this article, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

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

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

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

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

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

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

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 real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

(i) agricultural, conservation, scenic, or an open space easement,

(ii) covenants or restrictions prohibiting development where the property or portion of property being conveyed has had its development rights permanently removed,

(iii) a purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed,

(iv) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(v) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

(k) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agriculture and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in subparagraph (ii) of paragraph (j) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the village simultaneously with the conveyance of the real property; or

(l) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental, or historic preservation purposes.

3. An exemption of one hundred thousand dollars shall be allowed on the consideration of the conveyance of improved real property or an interest therein, and an exemption of fifty thousand dollars shall be

allowed on the consideration of the conveyance of unimproved real property.

§ 1449-ffffff. Credit. A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantee 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 grantee. 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 grantee on the date of the subsequent conveyance (and which such grantee 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-gggggg. Cooperative housing corporation transfers. 1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section fourteen hundred forty-nine-aaaaaa of this article or anything to the contrary contained in subdivision five of section fourteen hundred forty-nine-aaaaaa 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 is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year

covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

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

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

§ 1449-jjjjjj. Refunds. Whenever the treasurer shall determine that any moneys received under the provisions of the local law enacted pursuant to this article were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made. When making any findings or determinations the treasurer may rely upon any findings or determinations of the commissioner and any rules and regulations promulgated pursuant to article thirty-one of this chapter.

§ 1449-kkkkkk. Deposit and disposition of revenue. All taxes collected or received by the treasurer or his or her duly authorized agent under the provisions of the local law enacted pursuant to this article shall be deposited in accordance with provisions of a local law adopted by the legislative body of the village of Saltaire which local law shall designate proper officers to be responsible for deposit of revenue collected or received under this article. Such local law shall also provide that any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this article. Such local law shall also provide that all revenue derived from the imposition of such tax shall be deposited into the special reserve account fund of the village of Saltaire established pursuant to section 5-532-a of the village law and shall be used for purposes authorized by subdivision three of such section.

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

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

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

§ 1449-mmmmmm. Apportionment. The local law adopted by the legislative body of the village of Saltaire shall provide for a method of apportionment for determining the amount of tax due whenever the real property or interest therein is situated within and without the village of Saltaire.

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

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

2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in

them in any action or proceeding in any court, except on behalf of the village in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such village or an officer or employee of such village is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

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

4. Any officer or employee of such village who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

§ 1449-pppppp. Foreclosure. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

§ 2. The village law is amended by adding a new section 5-532-a to read as follows:

§ 5-532-a Village of Saltaire authorized to impose a transfer tax on conveyances of real property. 1. Notwithstanding any other provision of law to the contrary, the village of Saltaire, in the county of Suffolk, is hereby authorized and empowered to adopt and amend a local law imposing in such village a tax pursuant to article thirty-one-H of the tax law, and may make provision for the collection thereof by the chief fiscal officer of such village; provided, however, that nothing herein contained shall be construed so as to prevent such village from adopting local laws exempting from such tax omnibus corporations subject to the supervision of the state department of public service under the public service law. A tax imposed pursuant to this section shall have application only within the territorial limits of any such village, and shall be in addition to any and all other taxes. This section shall not authorize the imposition of a tax on any transaction originating or consummated outside of the territorial limits of any such village, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

2. Revenues resulting from the imposition of taxes authorized by this section and article thirty-one-H of the tax law heretofore or hereafter imposed shall be paid to the treasurer of the village imposing the same, and shall be credited to and deposited to the special reserve account established pursuant to subdivision three of this section.

3. A local law adopted pursuant to this section shall provide for the establishment and maintenance of a special reserve account for infrastructure resiliency and sustainability initiatives. The purposes of such account shall be to stabilize the annual real property tax burden and

preserve the environment and character of the community by funding improvements to and continuing maintenance of public water delivery systems, wastewater and stormwater systems, and other coastal protections and providing incentives for sustainability and resiliency projects.

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

§ 4. This act shall take effect immediately and shall expire ten years after it shall have become a law.