

STATE OF NEW YORK

7138

2021-2022 Regular Sessions

IN SENATE

June 2, 2021

Introduced by Sen. MARTUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to apportionment of mortgage taxes for property situated in more than one tax district

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

1 Section 1. Section 260 of the tax law, as amended by chapter 372 of
2 the laws of 1930, is amended to read as follows:
3 § 260. Determination and apportionment by the state tax commission.
4 When the real property covered by a mortgage is situated in more than
5 one tax district, the state tax commission shall apportion the tax paid
6 on such mortgage between the respective tax districts upon the basis of
7 the [~~relative assessments~~] full market value estimate of such real prop-
8 erty as the same appear on the last assessment-rolls. If, however, the
9 whole or any part of the property covered by such a mortgage is not
10 assessed upon the last assessment-roll or rolls of the tax district or
11 districts in which it is situated, or is so assessed, as a part of a
12 larger tract, that the assessed value cannot be determined, or if
13 improvements have been made to such an extent as materially to change
14 the value of the property so assessed, the tax commission may require
15 the local assessors in the respective tax districts, or the mortgagor,
16 or mortgagee, to furnish sworn appraisals of the property in each tax
17 district, and upon such appraisals shall determine the apportionment.
18 If such mortgage covers real property in two or more counties, the tax
19 commission shall determine the proportion of the tax which shall be paid
20 by the recording officer who has received the same to the recording
21 officers of the other counties in which are situated the tax districts
22 entitled to share therein. When any recording officer shall pay any
23 portion of a tax to the recording officer of another county, he shall
24 forward with such tax a description sufficient to identify the mortgage
25 on which the tax has been paid, and the recording officer receiving such

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

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1 tax shall note on the margin of the record of such mortgage the fact of
2 such payment, attested by his signature. The tax commission shall make
3 an order of determination and apportionment in respect to each such
4 mortgage and file a certified copy thereof with the recording officer of
5 each county in which a part of the mortgaged real property is situated.

6 When the real property covered by a mortgage is partly within the
7 state and partly without the state it shall be the duty of the tax
8 commission to determine what portion of the mortgage or of advancements
9 thereon shall be taxable under this article. Such determination shall

10 be made in the following manner: First: Determine the respective
11 values of the property within and without the state, and deduct there-
12 from the amount of any prior existing mortgage liens, excepting such
13 liens as are to be replaced by prior advancements and the advancement
14 under consideration. Second: Find the ratio that the net value of the
15 mortgaged property within the state bears to the net value of the entire
16 mortgaged property. Third: Make the determination of the portion of
17 the mortgage or of the advancements thereon which shall be taxable under
18 this article by applying the ratio so found. If a mortgage covering
19 property partly within and partly without the state is presented for
20 record before such determination has been made, or at the time when an
21 advance is made on a corporate trust mortgage or on a prior advance
22 mortgage, there may be presented to the recording officer a statement in
23 duplicate verified by the mortgagor or an officer or duly authorized
24 agent of the mortgagor, in which shall be specified the net value of the
25 property within the state and the net value of the property without the
26 state covered by such mortgage. One of such statements shall be filed
27 by the recording officer and the other shall be forthwith transmitted by
28 him to the state tax commission. The tax payable under this article
29 before the determination by the tax commission shall be computed upon
30 such portion of the principal indebtedness secured by the mortgage, or
31 of the sum advanced thereon, as the net value of the mortgaged property
32 within the state bears to the net value of the entire mortgaged property
33 as set forth in such statement. The tax commission shall on receipt of
34 the statement from the recording officer and on not less than ten days'
35 notice served personally or by mail upon the mortgagor, the mortgagee
36 and the state comptroller, proceed to make the required determination.
37 In determining the separate values of the property within and without
38 the state the tax commission shall consider only the tangible property,
39 real and personal, except that leases of real property shall be deemed
40 tangible property. For the purpose of determining such value the tax
41 commission may require the mortgagor or mortgagee to furnish by affida-
42 vit or verified report such information or data as it may deem neces-
43 sary, and may require and take the testimony of the mortgagor, mortgagee
44 or any other person. A certified copy of the order of determination and
45 apportionment shall be delivered personally or by mail to the mortgagor,
46 the mortgagee and the state comptroller, and any tax under such determi-
47 nation which has not been paid shall be paid within ten days after
48 service of such certified copy; if, however, the tax paid at the time of
49 filing the statement hereinbefore specified with the recording officer
50 is in excess of the tax determined to be payable, the certificate of
51 determination and apportionment shall direct the recording officer to
52 refund to the person paying such tax the amount of such excess; provided
53 that no refund shall be made of any taxes paid pursuant to a previous
54 determination.

55 The tax commission shall adopt rules to govern the procedure and the
56 manner of taking evidence in all the matters provided for by this

1 section and may require verified statements to be furnished either by
2 boards of assessors, recording officers or other persons having know-
3 ledge in relation to such matters. Failure on the part of any person or
4 officer to furnish a statement or other data when required so to do
5 pursuant to the provisions of this section shall render such person or
6 officer liable to a penalty of one hundred dollars, to be recovered by
7 the attorney-general in an action brought in the name of the people of
8 the state of New York.

9 In making determination and apportionment under this section the tax
10 commission shall consider each advancement made upon a mortgage after
11 July first, nineteen hundred and six, as a new mortgage. In all cases
12 under this section where the provisions for distribution of the tax
13 among tax districts are inapplicable or inadequate, the tax commission
14 shall establish a basis of apportionment that will be equitable and
15 fair.

16 § 2. This act shall take effect immediately.