

# STATE OF NEW YORK

5882

2023-2024 Regular Sessions

## IN ASSEMBLY

March 23, 2023

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

AN ACT to amend the town law, in relation to authorizing the town of Wawayanda, county of Orange to establish community preservation funds; to amend the tax law, in relation to authorizing the town of Wawayanda to impose a real estate transfer tax with revenues therefrom to be deposited in said community preservation fund; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. The town law is amended by adding a new section 64-1 to  
2 read as follows:

3 § 64-1. Town of Wawayanda preservation funds. 1. As used in this  
4 section, the following words and terms shall have the following mean-  
5 ings:

6 (a) "Town" means the town of Wawayanda.

7 (b) "Community preservation" shall mean and include any of the  
8 purposes outlined in subdivision five of this section.

9 (c) "Board" means the advisory board required pursuant to subdivision  
10 six of this section.

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

13 (e) "Tax" shall mean the real estate transfer tax imposed pursuant to  
14 section fourteen hundred thirty-nine-bbb of the tax law or, if the  
15 context clearly indicates, shall mean the real estate transfer tax  
16 imposed pursuant to article thirty-one of the tax law.

17 2. The town board of the town of Wawayanda is authorized to establish  
18 by local law a community preservation fund pursuant to the provisions of  
19 this section. Deposits into the fund may include revenues of the local  
20 government from whatever source and shall include, at a minimum, all  
21 revenues from a tax imposed upon the transfer of real property interests

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

LBD09931-01-3

1 in such town pursuant to article thirty-one-A-four of the tax law. The  
2 fund shall also be authorized to accept gifts of any such interests in  
3 land or of funds. Interest accrued by monies deposited into the fund  
4 shall be credited to the fund. In no event shall monies deposited in the  
5 fund be transferred to any other account. Nothing contained in this  
6 section shall be construed to prevent the financing in whole or in part,  
7 pursuant to the local finance law, of any acquisition authorized pursu-  
8 ant to this section. Monies from the fund may be utilized to repay any  
9 indebtedness or obligations incurred pursuant to the local finance law  
10 consistent with effectuating the purposes of this section.

11 3. The purposes of the fund shall be exclusively: (a) to implement a  
12 plan for the preservation of community character as required by this  
13 section, (b) to acquire interests or rights in real property for the  
14 preservation of community character within the town including villages  
15 therein in accordance with such plan and in cooperation with willing  
16 sellers, (c) to establish a bank pursuant to a transfer of development  
17 rights program consistent with section two hundred sixty-one-a of this  
18 chapter, and (d) to provide a management and stewardship program for  
19 such interests and rights consistent with subdivision ten of this  
20 section and in accordance with such plan designed to preserve community  
21 character. Not more than ten percent of the fund shall be utilized for  
22 the management and stewardship program.

23 4. If the implementation of the community preservation project plan,  
24 adopted by the town board, as provided in subdivision seven of this  
25 section, has been completed, and funds are no longer needed for the  
26 purposes outlined in this subdivision, then any remaining monies in the  
27 fund shall be applied to reduce any bonded indebtedness or obligations  
28 incurred to effectuate the purposes of this section.

29 5. Preservation of community character shall involve one or more of  
30 the following:

- 31 (a) preservation of open space;
- 32 (b) establishment of parks, nature preserves, or recreation areas;
- 33 (c) preservation of land which is predominantly viable agricultural  
34 land, as defined in subdivision seven of section three hundred one of  
35 the agriculture and markets law, or unique and irreplaceable agricul-  
36 tural land, as defined in subdivision six of section three hundred one  
37 of the agriculture and markets law;
- 38 (d) preservation of lands of exceptional scenic value;
- 39 (e) preservation of freshwater marshes or other wetlands;
- 40 (f) preservation of aquifer recharge areas;
- 41 (g) preservation of undeveloped beach-lands or shoreline;
- 42 (h) establishment of wildlife refuges for the purpose of maintaining  
43 native animal species diversity, including the protection of habitat  
44 essential to the recovery of rare, threatened or endangered species;
- 45 (i) preservation of unique or threatened ecological areas;
- 46 (j) preservation of rivers and river areas in a natural, free-flowing  
47 condition;
- 48 (k) preservation of forested land;
- 49 (l) preservation of public access to lands for public use including  
50 stream rights and waterways;
- 51 (m) preservation of historic places and properties listed on the New  
52 York state register of historic places and/or protected under a munici-  
53 pal historic preservation ordinance or law; and
- 54 (n) undertaking any of the purposes of this subdivision in furtherance  
55 of the establishment of a greenbelt.

6. The town board which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer. Board members' terms shall be staggered.

7. The town board which has established a community preservation fund shall, by local law, adopt a community preservation project plan. Such plan shall list every project which the town plans to undertake pursuant to the community preservation fund. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in such plan. Such plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in such plan. Such plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of such plan shall be filed with the town clerk, the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Such plan shall be completed at least sixty days before the submission of the mandatory referendum required by section fourteen hundred thirty-nine-bbb of the tax law. If at the time of referendum, the town shall have in place an adopted open space plan, such plan shall be deemed sufficient to waive the preservation plan requirements of this subdivision. Any monies expended from the community preservation plan shall, however be consistent with the purposes outlined in subdivisions three and five of this section and with the open space plan for a period not to exceed twelve months.

8. The town board which has established a community preservation fund pursuant to this section may study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

9. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any

1 resolution of the town board approving an acquisition of rights or  
2 interest in real property pursuant to this section, shall find that  
3 acquisition was the best alternative for the protection of community  
4 character of all the reasonable alternatives available to the town.

5 10. Rights or interest in real property acquired pursuant to this  
6 section shall be administered and managed in a manner which (a) allows  
7 public use and enjoyment in a manner compatible with the natural,  
8 scenic, historic and open space character of such lands; (b) preserves  
9 the native biological diversity of such lands; (c) with regard to open  
10 spaces, limits improvements to enhancing access for passive use of such  
11 lands such as nature trails, boardwalks, bicycle paths, and peripheral  
12 parking areas provided that such improvements do not degrade the ecolog-  
13 ical value of the land or threaten essential wildlife habitat; and (d)  
14 preserves cultural property consistent with accepted standards for  
15 historic preservation. Notwithstanding any other provision of this  
16 subdivision there shall be no right to public use and enjoyment of land  
17 used in conjunction with a farm operation as defined by subdivision  
18 eleven of section three hundred one of the agriculture and markets law.  
19 In furthering the purposes of this section, the town may enter into  
20 agreements with corporations organized under the not-for-profit corpo-  
21 ration law and engage in land trust activities to manage lands including  
22 less than fee interests acquired pursuant to the provisions of this  
23 section, provided that any such agreement shall contain a provision that  
24 such corporation shall keep the lands accessible to the public unless  
25 such corporation shall demonstrate to the satisfaction of the town that  
26 public accessibility would be detrimental to the lands or any natural  
27 resources associated therewith.

28 11. Rights or interests in real property acquired with monies from  
29 such fund shall not be sold, leased, exchanged, donated, or otherwise  
30 disposed of or used for other than the purposes permitted by this  
31 section without the express authority of an act of the state legisla-  
32 ture, which shall provide for the substitution of other lands of equal  
33 environmental value and fair market value and reasonably equivalent  
34 usefulness and location to those to be discontinued, sold or disposed  
35 of, and such other requirements as shall be approved by the state legis-  
36 lature. Any conservation easements, created under title three of article  
37 forty-nine of the environmental conservation law, which are acquired  
38 with monies from such fund may only be modified or extinguished as  
39 provided in section 49-0307 of such law. Nothing in this section shall  
40 preclude the town, by local law, from establishing additional  
41 restrictions to the alienation of lands acquired pursuant to this  
42 section. This subdivision shall not apply to the sale of development  
43 rights by the town acquired pursuant to this section, where said sale is  
44 made by a central bank created by the town, pursuant to a transfer of  
45 development rights program established by the town pursuant to section  
46 two hundred sixty-one-a of this chapter, provided, however that (a) the  
47 lands from which said development rights were acquired shall remain  
48 preserved in perpetuity by a permanent conservation easement or other  
49 instrument that similarly preserves the community character referenced  
50 in subdivision five of this section, and (b) the proceeds from such sale  
51 shall be deposited in the community preservation fund.

52 § 2. The tax law is amended by adding a new article 31-A-4 to read as  
53 follows:

54 ARTICLE 31-A-4

55 TAX ON REAL ESTATE TRANSFERS IN THE TOWN OF WAWAYANDA

56 Section 1439-aaa. Definitions.

1439-bbb. Imposition of tax.

1439-ccc. Payment of tax.

1439-ddd. Liability for tax.

1439-eee. Exemptions.

1439-fff. Credit.

1439-ggg. Cooperative housing corporation transfers.

1439-hhh. Designation of agents.

1439-iii. Liability of recording officer.

1439-jjj. Refunds.

1439-kkk. Deposit and disposition of revenue.

1439-lll. Judicial review.

1439-mmm. Apportionment.

1439-nnn. Miscellaneous.

1439-ooo. Returns to be secret.

1439-ppp. Foreclosure proceedings.

§ 1439-aaa. Definitions. When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

1. "Person" means an individual, partnership, limited liability company, 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 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 town of Wawayanda. 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



1 of rental or other payments attributable to the exercise of any option  
2 to renew less the value of the remaining prime lease rental payments  
3 required to be made.

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

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

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

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

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

1     7. "Grantor" means the person making the conveyance of real property  
2 or interest therein. Where the conveyance consists of a transfer or an  
3 acquisition of a controlling interest in an entity with an interest in  
4 real property, "grantor" means the entity with an interest in real prop-  
5 erty or a shareholder or partner transferring stock or partnership  
6 interest, respectively.

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

9     9. "Fund" means a community preservation fund created pursuant to  
10 section sixty-four-1 of the town law.

11     10. "Recording officer" means the county clerk of the county of  
12 Orange.

13     11. "Town" means the town of Wawayanda, county of Orange.

14     12. "Treasurer" means the treasurer of the county of Orange.

15     13. "Town supervisor" means the town supervisor of the town of Waway-  
16 anda.

17     14. "Tax" shall mean the real estate transfer tax imposed pursuant to  
18 section fourteen hundred thirty-nine-bbb of this article or, if the  
19 context clearly indicates, shall mean the real estate transfer tax  
20 imposed pursuant to article thirty-one of this chapter.

21     15. "Residential real property" means property which satisfies at  
22 least one of the following conditions:

23     (a) the property classification code assigned to the property on the  
24 latest final assessment roll, as reported on the transfer report form,  
25 indicates that the property is a one, two or three family home or a  
26 rural residence; or

27     (b) the transfer report indicates that the property is a one, two or  
28 three family residential property that has been newly constructed on  
29 vacant land; or

30     (c) the transfer report form indicates that the property is a residen-  
31 tial condominium.

32     § 1439-bbb. Imposition of tax. Notwithstanding any other provisions of  
33 law to the contrary, the town of Wawayanda, acting through its town  
34 board, is hereby authorized and empowered to adopt a local law imposing  
35 in such town a tax on each conveyance of real property or interest ther-  
36 ein not to exceed a maximum of three-quarters of one percent of the  
37 consideration for such conveyance, subject to the exemptions set forth  
38 in section fourteen hundred thirty-nine-eee of this article; any such  
39 local law shall fix the rate of such tax. Provided, however, any such  
40 local law imposing, repealing or reimposing such tax shall be subject to  
41 a mandatory referendum pursuant to section twenty-three of the municipal  
42 home rule law. Notwithstanding the foregoing, prior to adoption of such  
43 local law, the town must establish a community preservation fund pursu-  
44 ant to section sixty-four-1 of the town law. Revenues from such tax  
45 shall be deposited in such fund and may be used solely for the purposes  
46 of such fund. Such local law shall apply to any conveyance occurring on  
47 or after the first day of a month to be designated by such town board,  
48 which is not less than sixty days after the enactment of such local law,  
49 but shall not apply to conveyances made on or after such date pursuant  
50 to binding written contracts entered into prior to such date, provided  
51 that the date of execution of such contract is confirmed by independent  
52 evidence such as the recording of the contract, payment of a deposit or  
53 other facts and circumstances as determined by the treasurer.

54     § 1439-ccc. Payment of tax. 1. The real estate transfer tax imposed  
55 pursuant to this article shall be paid to the treasurer or the recording  
56 officer acting as the agent of the treasurer upon designation as such

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

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

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

25 § 1439-ddd. Liability for tax. 1. The real estate transfer tax shall  
26 be paid by the grantee. If the grantee has failed to pay the tax imposed  
27 pursuant to this article or if the grantee is exempt from such tax, the  
28 grantor shall have the duty to pay the tax. Where the grantor has the  
29 duty to pay the tax because the grantee has failed to pay the tax, such  
30 tax shall be the joint and several liability of the grantee and the  
31 grantor.

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

40 § 1439-eee. Exemptions. 1. The following shall be exempt from the  
41 payment of the real estate transfer tax imposed by this article:

42 (a) The state of New York, or any of its agencies, instrumentalities,  
43 political subdivisions, or public corporations (including a public  
44 corporation created pursuant to an agreement or compact with another  
45 state or the Dominion of Canada); and

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

48 2. The tax shall not apply to any of the following conveyances:

49 (a) Conveyances to the United Nations, the United States of America,  
50 the state of New York, or any of their instrumentalities, agencies or  
51 political subdivisions (or any public corporation, including a public  
52 corporation created pursuant to agreement or compact with another state  
53 or the Dominion of Canada);

54 (b) Conveyances which are or were used to secure a debt or other obli-  
55 gation;



1 (c) Conveyances which, without additional consideration, confirm,  
2 correct, modify or supplement a deed previously recorded;

3 (d) Conveyances of real property without consideration and otherwise  
4 than in connection with a sale, including deeds conveying realty as bona  
5 fide gifts;

6 (e) Conveyances given in connection with a tax sale;

7 (f) Conveyances to effectuate a mere change of identity or form of  
8 ownership or organization where there is no change in beneficial owner-  
9 ship, other than conveyances to a cooperative housing corporation of the  
10 real property comprising the cooperative dwelling or dwellings;

11 (g) Conveyances which consist of a deed of partition;

12 (h) Conveyances given pursuant to the federal bankruptcy act;

13 (i) Conveyances of real property which consist of the execution of a  
14 contract to sell real property without the use or occupancy of such  
15 property or the granting of an option to purchase real property without  
16 the use or occupancy of such property;

17 (j) Conveyances of real property or a portion or portions of real  
18 property that are the subject of one or more of the following develop-  
19 ment restrictions:

20 (1) agricultural, conservation, scenic, or an open space easement,

21 (2) covenants or restrictions prohibiting development where the prop-  
22 erty or portion of property being conveyed has had its development  
23 rights permanently removed,

24 (3) a purchase of development rights agreement where the property or  
25 portion of property being conveyed has had its development rights perma-  
26 nently removed,

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

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

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

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

46 3. An exemption of one hundred thousand dollars shall be allowed on  
47 the consideration of the conveyance of improved real property or an  
48 interest therein, and an exemption of fifty thousand dollars shall be  
49 allowed on the consideration of the conveyance of unimproved real prop-  
50 erty.

51 § 1439-fff. Credit. A grantee shall be allowed a credit against the  
52 tax due on a conveyance of real property to the extent tax was paid by  
53 such grantee on a prior creation of a leasehold of all or a portion of  
54 the same real property or on the granting of an option or contract to  
55 purchase all or a portion of the same real property by such grantee.  
56 Such credit shall be computed by multiplying the tax paid on the

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

7 § 1439-ggg. Cooperative housing corporation transfers. 1. Notwith-  
8 standing the definition of "controlling interest" contained in subdivi-  
9 sion two of section fourteen hundred thirty-nine-aaa of this article or  
10 anything to the contrary contained in subdivision five of section four-  
11 teen hundred thirty-nine-aaa of this article, the tax imposed pursuant  
12 to this article shall apply to (a) the original conveyance of shares of  
13 stock in a cooperative housing corporation in connection with the grant  
14 or transfer of a proprietary leasehold by the cooperative corporation or  
15 cooperative plan sponsor, and (b) the subsequent conveyance of such  
16 stock in a cooperative housing corporation in connection with the grant  
17 or transfer of a proprietary leasehold by the owner thereof. With  
18 respect to any such subsequent conveyance where the property is an indi-  
19 vidual residential unit, the consideration for the interest conveyed  
20 shall exclude the value of any liens on certificates of stock or other  
21 evidences of an ownership interest in and a proprietary lease from a  
22 corporation or partnership formed for the purpose of cooperative owner-  
23 ship of residential interest in real estate remaining thereon at the  
24 time of conveyance. In determining the tax on a conveyance described in  
25 paragraph (a) of this subdivision, a credit shall be allowed for a  
26 proportionate part of the amount of any tax paid upon the conveyance to  
27 the cooperative housing corporation of the real property comprising the  
28 cooperative dwelling or dwellings to the extent that such conveyance  
29 effectuated a mere change of identity or form of ownership of such prop-  
30 erty and not a change in the beneficial ownership of such property. The  
31 amount of the credit shall be determined by multiplying the amount of  
32 tax paid upon the conveyance to the cooperative housing corporation by a  
33 percentage representing the extent to which such conveyance effectuated  
34 a mere change of identity or form of ownership and not a change in the  
35 beneficial ownership of such property, and then multiplying the result-  
36 ing product by a fraction, the numerator of which shall be the number of  
37 shares of stock conveyed in a transaction described in paragraph (a) of  
38 this subdivision, and the denominator of which shall be the total number  
39 of shares of stock of the cooperative housing corporation (including any  
40 stock held by the corporation). In no event, however, shall such credit  
41 reduce the tax, on a conveyance described in paragraph (a) of this  
42 subdivision, below zero, nor shall any such credit be allowed for a tax  
43 paid more than twenty-four months prior to the date on which occurs the  
44 first in a series of conveyances of shares of stock in an offering of  
45 cooperative housing corporation shares described in paragraph (a) of  
46 this subdivision.

47 2. Every cooperative housing corporation shall be required to file an  
48 information return with the treasurer by July fifteenth of each year  
49 covering the preceding period of January first through June thirtieth  
50 and by January fifteenth of each year covering the preceding period of  
51 July first through December thirty-first. The return shall contain such  
52 information regarding the conveyance of shares of stock in the cooper-  
53 ative housing corporation as the treasurer may deem necessary, includ-  
54 ing, but not limited to, the names, addresses and employee identifica-  
55 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 § 1439-hhh. Designation of agents. The treasurer is authorized to  
4 designate the recording officer to act as his or her agent for purposes  
5 of 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 fourteen hundred thirty-nine-ccc of this article.

10 § 1439-iii. Liability of recording officer. A recording officer shall  
11 not be liable for any inaccuracy in the amount of tax imposed pursuant  
12 to 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 § 1439-jjj. Refunds. Whenever the treasurer shall determine that any  
17 moneys received under the provisions of the local law enacted pursuant  
18 to this article were paid in error, he or she may cause such moneys to  
19 be refunded pursuant to such requirements as he or she may prescribe,  
20 provided that any application for such refund is filed with the treasurer  
21 within two years from the date the erroneous payment was made.

22 § 1439-kkk. Deposit and disposition of revenue. 1. All taxes, penal-  
23 ties and interest imposed by the town under the authority of section  
24 fourteen hundred thirty-nine-bbb of this article, which are collected by  
25 the treasurer or his or her agents, shall be deposited in a single trust  
26 fund for the town and shall be kept in trust and separate and apart from  
27 all other monies in possession of the treasurer. Moneys in such fund  
28 shall be deposited and secured in the manner provided by section ten of  
29 the general municipal law. Pending expenditure from such fund, moneys  
30 therein may be invested in the manner provided in section eleven of the  
31 general municipal law. Any interest earned or capital gain realized on  
32 the moneys so deposited or invested shall accrue to and become part of  
33 such fund.

34 2. The treasurer shall retain such amount as he or she may determine  
35 to be necessary for refunds with respect to the tax imposed by the town,  
36 under the authority of section fourteen hundred thirty-nine-bbb of this  
37 article, out of which the treasurer shall pay any refunds of such taxes  
38 to those taxpayers entitled to a refund pursuant to the provisions of  
39 this article.

40 3. The treasurer, after reserving such refunds, shall on or before the  
41 twelfth day of each month pay to the town supervisor the taxes, penal-  
42 ties and interest imposed by the town under the authority of section  
43 fourteen hundred thirty-nine-bbb of this article, collected by the trea-  
44 surer, pursuant to this article during the next preceding calendar  
45 month. The amount so payable shall be certified to the town supervisor  
46 by the treasurer, who shall not be held liable for any inaccuracy in  
47 such certification. Provided, however, any such certification may be  
48 based on such information as may be available to the treasurer at the  
49 time such certification must be made under this section. Where the  
50 amount so paid over to the town in any such distribution is more or less  
51 than the amount due to the town, the amount of the overpayment or under-  
52 payment shall be certified to the town supervisor by the treasurer, who  
53 shall not be held liable for any inaccuracy in such certification. The  
54 amount of the overpayment or underpayment shall be so certified to the  
55 town supervisor as soon after the discovery of the overpayment or under-  
56 payment as reasonably possible and subsequent payments and distributions

1 by the treasurer to the town shall be adjusted by subtracting the amount  
2 of any such overpayment from or by adding the amount of any such under-  
3 payment to such number of subsequent payments and distributions as the  
4 treasurer and town supervisor shall consider reasonable in view of the  
5 overpayment or underpayment and all other facts and circumstances.

6 4. All monies received from the treasurer shall be deposited in the  
7 fund of the town, pursuant to section sixty-four-1 of the town law.

8 § 1439-lll. Judicial review. 1. Any final determination of the amount  
9 of any tax payable under section fourteen hundred thirty-nine-ccc of  
10 this article shall be reviewable for error, illegality or unconstitu-  
11 tionality or any other reason whatsoever by a proceeding under article  
12 seventy-eight of the civil practice law and rules if application there-  
13 for is made to the supreme court within four months after the giving of  
14 the notice of such final determination, provided, however, that any such  
15 proceeding under article seventy-eight of the civil practice law and  
16 rules shall not be instituted unless (a) the amount of any tax sought to  
17 be reviewed, with such interest and penalties thereon as may be provided  
18 for by local law shall be first deposited and there is filed an under-  
19 taking, issued by a surety company authorized to transact business in  
20 this state and approved by the state superintendent of financial  
21 services as to solvency and responsibility, in such amount as a justice  
22 of the supreme court shall approve to the effect that if such proceeding  
23 be dismissed or the tax confirmed the petitioner will pay all costs and  
24 charges which may accrue in the prosecution of such proceeding or (b) at  
25 the option of the petitioner, such undertaking may be in a sum suffi-  
26 cient to cover the taxes, interest and penalties stated in such determi-  
27 nation, plus the costs and charges which may accrue against it in the  
28 prosecution of the proceeding, in which event the petitioner shall not  
29 be required to pay such taxes, interest or penalties as a condition  
30 precedent to the application.

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

45 § 1439-mmm. Apportionment. A local law adopted by the town of Wawayan-  
46 da, pursuant to this article, shall provide for a method of apportion-  
47 ment for determining the amount of tax due whenever the real property or  
48 interest therein is situated within and without the town.

49 § 1439-nnn. Miscellaneous. A local law adopted by the town of Wawayan-  
50 da, pursuant to this article, may contain such other provisions as the  
51 town deems necessary for the proper administration of the tax imposed  
52 pursuant to this article, including provisions concerning the determi-  
53 nation of tax, the imposition of interest on underpayments and overpay-  
54 ments and the imposition of civil penalties. Such provisions shall be  
55 identical to the corresponding provisions of the real estate transfer  
56 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 § 1439-ooo. 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 or town, includ-  
6 ing any person engaged or retained on an independent contract basis, to  
7 divulge or make known in any manner the particulars set forth or  
8 disclosed in any return required under a local law enacted pursuant to  
9 this article. However, that nothing in this section shall prohibit the  
10 recording officer from making a notation on an instrument effecting a  
11 conveyance indicating the amount of tax paid. No recorded instrument  
12 effecting a conveyance shall be considered a return for purposes of this  
13 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 or town in any action or proceeding involving the collection of a  
18 tax due under a local law enacted pursuant to this article to which such  
19 county or town is a party, or a claimant, or on behalf of any party to  
20 any action or proceeding under the provisions of a local law enacted  
21 pursuant to this article when the returns or facts shown thereby are  
22 directly involved in such action or proceeding, in any of which events  
23 the court may require the production of, and may admit in evidence, so  
24 much of said returns or of the facts shown thereby, as are pertinent to  
25 the action or proceeding and no more.

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

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

39 § 1439-ppp. Foreclosure proceedings. Where the conveyance consists of  
40 a transfer of property made as a result of an order of the court in a  
41 foreclosure proceeding ordering the sale of such property, the referee  
42 or sheriff effectuating such transfer shall not be liable for any inter-  
43 est or penalties that are authorized pursuant to this article or article  
44 thirty-seven of this chapter.

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

51 § 4. This act shall take effect immediately; provided, however, that  
52 section two of this act shall take effect on the ninetieth day after it  
53 shall have become a law and shall expire December 31, 2050 when upon  
54 such date the provisions of such section shall be deemed repealed.