

STATE OF NEW YORK

1261

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to authorizing the county of Cortland 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:

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

3 ARTICLE 31-I

4 TAX ON REAL ESTATE TRANSFERS

5 IN THE COUNTY OF CORTLAND

6 Section 1449-aaaaaaa. Definitions.

7 1449-bbbbbbb. Imposition of tax.

8 1449-ccccccc. Payment of tax.

9 1449-ddddddd. Liability for tax.

10 1449-eeeeeee. Exemptions.

11 1449-ffffff. Credit.

12 1449-ggggggg. Cooperative housing corporation transfers.

13 1449-hhhhhhh. Designation of agents.

14 1449-iiiiiii. Liability of recording officer.

15 1449-jjjjjjj. Refunds.

16 1449-kkkkkkk. Deposit and disposition of revenue.

17 1449-lllllll. Judicial review.

18 1449-mmmmmmm. Apportionment.

19 1449-nnnnnnn. Miscellaneous.

20 1449-ooooooo. Returns to be secret.

21 1449-ppppppp. Foreclosure.

22 § 1449-aaaaaaa. Definitions. When used in this article, unless other-
23 wise expressly stated:

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

LBD03454-01-3

1 1. "Person" means an individual, partnership, society, association,
2 joint stock company, corporation, estate, receiver, trustee, assignee,
3 referee or any other person acting in a fiduciary or representative
4 capacity, whether appointed by a court or otherwise, any combination of
5 individuals, and any other form of unincorporated enterprise owned or
6 conducted by two or more persons.

7 2. "Controlling interest" means (a) in the case of a corporation,
8 either fifty percent or more of the total combined voting power of all
9 classes of stock of such corporation, or fifty percent or more of the
10 capital, profits or beneficial interest in such voting stock of such
11 corporation, and (b) in the case of a partnership, association, trust or
12 other entity, fifty percent or more of the capital, profits or benefi-
13 cial interest in such partnership, association, trust or other entity.

14 3. "Real property" means every estate or right, legal or equitable,
15 present or future, vested or contingent, in lands, tenements or heredi-
16 taments, including buildings, structures and other improvements thereon,
17 which are located in whole or in part within the county of Cortland. It
18 shall not include rights to sepulture.

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

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

35 (b) In the case of a creation of a subleasehold interest, consider-
36 ation shall include, but not be limited to, the value of the sublease
37 rental payments attributable to the use and occupancy of the real prop-
38 erty, the value of any amount paid for an option to renew and the value
39 of rental or other payments attributable to the exercise of any option
40 to renew less the value of the remaining prime lease rental payments
41 required to be made.

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

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

52 (e) In the case of (1) the original conveyance of shares of stock in a
53 cooperative housing corporation in connection with the grant or transfer
54 of a proprietary leasehold by the cooperative corporation or cooperative
55 plan sponsor and (2) the subsequent conveyance by the owner thereof of
56 such stock in a cooperative housing corporation in connection with the

1 grant or transfer of a proprietary leasehold for a cooperative unit
2 other than an individual residential unit, consideration shall include a
3 proportionate share of the unpaid principal of any mortgage on the real
4 property of the cooperative housing corporation comprising the cooper-
5 ative dwelling or dwellings. Such share shall be determined by multiply-
6 ing the total unpaid principal of the mortgage by a fraction, the numer-
7 ator of which shall be the number of shares of stock being conveyed in
8 the cooperative housing corporation in connection with the grant or
9 transfer of a proprietary leasehold and the denominator of which shall
10 be the total number of shares of stock in the cooperative housing corpo-
11 ration.

12 5. "Conveyance" means the transfer or transfers of any interest in
13 real property by any method, including but not limited to, sale,
14 exchange, assignment, surrender, mortgage foreclosure, transfer in lieu
15 of foreclosure, option, trust indenture, taking by eminent domain,
16 conveyance upon liquidation or by a receiver, or transfer or acquisition
17 of a controlling interest in any entity with an interest in real proper-
18 ty. Transfer of an interest in real property shall include the creation
19 of a leasehold or sublease only where (a) the sum of the term of the
20 lease or sublease and any options for renewal exceeds forty-nine years,
21 (b) substantial capital improvements are or may be made by or for the
22 benefit of the lessee or sublessee, and (c) the lease or sublease is for
23 substantially all of the premises constituting the real property.
24 Notwithstanding the foregoing, conveyance of real property shall not
25 include the creation, modification, extension, spreading, severance,
26 consolidation, assignment, transfer, release or satisfaction of a mort-
27 gage; a mortgage subordination agreement, a mortgage severance agree-
28 ment, an instrument given to perfect or correct a recorded mortgage; or
29 a release of lien of tax pursuant to this chapter or the internal reven-
30 ue code.

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

38 7. "Grantor" means the person making the conveyance of real property
39 or interest therein. Where the conveyance consists of a transfer or an
40 acquisition of a controlling interest in an entity with an interest in
41 real property, "grantor" means the entity with an interest in real prop-
42 erty or a shareholder or partner transferring stock or partnership
43 interest.

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

46 9. "Recording officer" means the county clerk of the county of Cort-
47 land.

48 10. "Treasurer" means the chief fiscal officer of the county of Cort-
49 land.

50 § 1449-bbbbbb. Imposition of tax. Notwithstanding any other
51 provisions of law to the contrary, the county of Cortland, acting
52 through its local legislative body, is hereby authorized and empowered
53 to adopt and amend local laws imposing in such county a tax on each
54 conveyance of real property or interest therein when the consideration
55 exceeds five hundred dollars, at the rate of one dollar for each five
56 hundred dollars or fractional part thereof. Such local law may apply to

1 any conveyance occurring on or after the date designated by such legis-
2 lative body, but shall not apply to conveyances made on or after such
3 date pursuant to binding written contracts entered into prior to such
4 date, provided that the date of execution of such contract is confirmed
5 by independent evidence such as the recording of the contract, payment
6 of a deposit or other facts and circumstances as determined by the trea-
7 surer.

8 § 1449-ccccccc. Payment of tax. 1. The real estate transfer tax
9 imposed pursuant to this article shall be paid to the treasurer or the
10 recording officer acting as the agent of the treasurer. Such tax shall
11 be paid at the same time as the real estate transfer tax imposed by
12 article thirty-one of this chapter is required to be paid. Such treasur-
13 er or recording officer shall endorse upon each deed or instrument
14 effecting a conveyance a receipt for the amount of the tax so paid.

15 2. A return shall be required to be filed with such treasurer or
16 recording officer for purposes of the real estate transfer tax imposed
17 pursuant to this article at the same time as a return is required to be
18 filed for purposes of the real estate transfer tax imposed by article
19 thirty-one of this chapter. The return, for purposes of the real estate
20 transfer tax imposed pursuant to this article, shall be a photocopy or
21 carbon copy of the real estate transfer tax return required to be filed
22 pursuant to section fourteen hundred nine of this chapter. However,
23 when an apportionment is required to be made pursuant to section four-
24 teen hundred forty-nine-~~mmmmmmmm~~ of this article, a supplemental form
25 shall also be required to be filed. The real estate transfer tax returns
26 and supplemental forms required to be filed pursuant to this section
27 shall be preserved for three years and thereafter until such treasurer
28 or recording officer orders them to be destroyed.

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

33 § 1449-ddddddd. Liability for tax. 1. The real estate transfer tax
34 shall be paid by the grantor. If the grantor has failed to pay the tax
35 imposed pursuant to this article or if the grantor is exempt from such
36 tax, the grantee shall have the duty to pay the tax. Where the grantee
37 has the duty to pay the tax because the grantor has failed to pay, such
38 tax shall be the joint and several liability of the grantor and the
39 grantee.

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

48 § 1449-eeeeeee. Exemptions. 1. The following shall be exempt from
49 payment of the real estate transfer tax:

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

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

1 The exemption of such governmental bodies or persons shall not, howev-
2 er, relieve a grantee from them of liability for the tax.

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

4 (a) Conveyances to the United Nations, the United States of America,
5 the state of New York, or any of their instrumentalities, agencies or
6 political subdivisions (or any public corporation, including a public
7 corporation created pursuant to agreement or compact with another state
8 or the Dominion of Canada);

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

11 (c) Conveyances which, without additional consideration, confirm,
12 correct, modify or supplement a prior conveyance;

13 (d) Conveyances of real property without consideration and otherwise
14 than in connection with a sale, including conveyances conveying realty
15 as bona fide gifts;

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

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

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

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

23 (i) Conveyances of real property which consist of the execution of a
24 contract to sell real property without the use or occupancy of such
25 property or the granting of an option to purchase real property without
26 the use or occupancy of such property; and

27 (j) Conveyances of an option or contract to purchase real property
28 with the use or occupancy of such property where the consideration is
29 less than two hundred thousand dollars and such property was used solely
30 by the grantor as his personal residence and consists of a one, two or
31 three-family house, an individual residential condominium unit or the
32 sale of stock in a cooperative housing corporation in connection with
33 the grant or transfer of a proprietary leasehold covering an individual
34 residential cooperative unit.

35 § 1449-ffffff. Credit. A grantor shall be allowed a credit against
36 the tax due on a conveyance of real property to the extent tax was paid
37 by such grantor on a prior creation of a leasehold of all or a portion
38 of the same real property or on the granting of an option or contract to
39 purchase all or a portion of the same real property, by such grantor.
40 Such credit shall be computed by multiplying the tax paid on the
41 creation of the leasehold or on the granting of the option or contract
42 by a fraction, the numerator of which is the value of the consideration
43 used to compute such tax paid which is not yet due to such grantor on
44 the date of the subsequent conveyance (and which such grantor will not
45 be entitled to receive after such date), and the denominator of which is
46 the total value of the consideration used to compute such tax paid.

47 § 1449-ggggggg. Cooperative housing corporation transfers. 1.
48 Notwithstanding the definition of "controlling interest" contained in
49 subdivision two of section fourteen hundred forty-nine-aaaaaaa of this
50 article or anything to the contrary contained in subdivision five of
51 section fourteen hundred forty-nine-aaaaaaa of this article, the tax
52 imposed pursuant to this article shall apply to (a) the original convey-
53 ance of shares of stock in a cooperative housing corporation in
54 connection with the grant or transfer of a proprietary leasehold by the
55 cooperative corporation or cooperative plan sponsor, and (b) the subse-
56 quent conveyance of such stock in a cooperative housing corporation in

1 connection with the grant or transfer of a proprietary leasehold by the
2 owner thereof. With respect to any such subsequent conveyance where the
3 property is an individual residential unit, the consideration for the
4 interest conveyed shall exclude the value of any liens on certificates
5 of stock or other evidences of an ownership interest in and a proprie-
6 tary lease from a corporation or partnership formed for the purpose of
7 cooperative ownership of residential interest in real estate remaining
8 thereon at the time of conveyance. In determining the tax on a convey-
9 ance described in paragraph (a) of this subdivision, a credit shall be
10 allowed for a proportionate part of the amount of any tax paid upon the
11 conveyance to the cooperative housing corporation of the real property
12 comprising the cooperative dwelling or dwellings to the extent that such
13 conveyance effectuated a mere change of identity or form of ownership of
14 such property and not a change in the beneficial ownership of such prop-
15 erty. The amount of the credit shall be determined by multiplying the
16 amount of tax paid upon the conveyance to the cooperative housing corpo-
17 ration by a percentage representing the extent to which such conveyance
18 effectuated a mere change of identity or form of ownership and not a
19 change in the beneficial ownership of such property, and then multiply-
20 ing the resulting product by a fraction, the numerator of which shall be
21 the number of shares of stock conveyed in a transaction described in
22 paragraph (a) of this subdivision and the denominator of which shall be
23 the total number of shares of stock of the cooperative housing corpo-
24 ration (including any stock held by the corporation). In no event,
25 however, shall such credit reduce the tax, on a conveyance described in
26 paragraph (a) of this subdivision, below zero, nor shall any such credit
27 be allowed for a tax paid more than twenty-four months prior to the date
28 on which occurs the first in a series of conveyances of shares of stock
29 in an offering of cooperative housing corporation shares described in
30 paragraph (a) of this subdivision.

31 2. Every cooperative housing corporation shall be required to file an
32 information return with the treasurer by July fifteenth of each year
33 covering the preceding period of January first through June thirty-first
34 and by January fifteenth of each year covering the preceding period of
35 July first through December thirty-first. The return shall contain such
36 information regarding the conveyance of shares of stock in the cooper-
37 ative housing corporation as the treasurer may deem necessary, includ-
38 ing, but not limited to, the names, addresses and employee identifica-
39 tion numbers or social security numbers of the grantor and the grantee,
40 the number of shares conveyed, the date of the conveyance and the
41 consideration paid for such conveyance.

42 § 1449-hhhhhh. Designation of agents. The treasurer is authorized to
43 designate the recording officer to act as its agent for purposes of
44 collecting the tax authorized by this article. The treasurer shall
45 provide for the manner in which such person may be designated as its
46 agent subject to such terms and conditions as it shall prescribe. The
47 real estate transfer tax shall be paid to such agent as provided in
48 section fourteen hundred forty-nine-cccccc of this article.

49 § 1449-iiiiiii. Liability of recording officer. A recording officer
50 shall not be liable for any inaccuracy in the amount of tax imposed
51 pursuant to this article that he shall collect so long as he shall
52 compute and collect such tax on the amount of consideration or the value
53 of the interest conveyed as such amounts are provided to him or her by
54 the person paying the tax.

55 § 1449-ijjjjj. Refunds. Whenever the treasurer shall determine that
56 any moneys received under the provisions of the local law enacted pursu-

1 ant to this article were paid in error, it may cause such moneys to be
2 refunded pursuant to such rules and regulations it may prescribe,
3 provided any application for such refund is filed with the treasurer
4 within two years from the date the erroneous payment was made. When
5 making any findings or determinations the treasurer may rely upon any
6 findings or determinations of the commissioner and any rules and regu-
7 lations promulgated pursuant to article thirty-one of this chapter.

8 § 1449-kkkkkkk. Deposit and disposition of revenue. All taxes
9 collected or received by the treasurer or his duly authorized agent
10 under the provisions of the local law enacted pursuant to this article
11 shall be deposited in accordance with provisions of a local law adopted
12 by the legislative body of the county of Cortland which local law shall
13 designate proper officers to be responsible for deposit of revenue
14 collected or received under this article. Such local law shall also
15 provide that any officer designated to collect, receive, or deposit such
16 revenue shall maintain a system of accounts showing the revenue
17 collected or received from the tax imposed pursuant to this article.
18 Such local law shall also provide that all revenue derived from the
19 imposition of such tax shall be deposited into the general fund of the
20 county of Cortland and shall be used for purposes deemed appropriate by
21 the legislative body of the county of Cortland.

22 § 1449-lllllll. Judicial review. 1. Any final determination of the
23 amount of any tax payable under section fourteen hundred forty-nine-
24 cccccc of this article shall be reviewable for error, illegality or
25 unconstitutionality or any other reason whatsoever by a proceeding under
26 article seventy-eight of the civil practice law and rules if application
27 therefor is made to the supreme court within four months after the
28 giving of the notice of such final determination, provided, however,
29 that any such proceeding under article seventy-eight of the civil prac-
30 tice law and rules shall not be instituted unless (a) the amount of any
31 tax sought to be reviewed, with such interest and penalties thereon as
32 may be provided for by local law shall be first deposited and there is
33 filed an undertaking, issued by a surety company authorized to transact
34 business in this state and approved by the superintendent of financial
35 services of this state as to solvency and responsibility, in such amount
36 as a justice of the supreme court shall approve to the effect that if
37 such proceeding be dismissed or the tax confirmed the petitioner will
38 pay all costs and charges which may accrue in the prosecution of such
39 proceeding or (b) at the option of the petitioner, such undertaking may
40 be in a sum sufficient to cover the taxes, interest and penalties stated
41 in such determination, plus the costs and charges which may accrue
42 against it in the prosecution of the proceeding, in which event the
43 petitioner shall not be required to pay such taxes, interest or penal-
44 ties as a condition precedent to the application.

45 2. Where any tax imposed hereunder shall have been erroneously, ille-
46 gally or unconstitutionally assessed or collected and application for
47 the refund or revision thereof duly made to the proper fiscal officer or
48 officers, and such officer or officers shall have made a determination
49 denying such refund or revision, such determination shall be reviewable
50 by a proceeding under article seventy-eight of the civil practice law
51 and rules; provided, however, that (a) such proceeding is instituted
52 within four months after the giving of the notice of such denial, (b) a
53 final determination of tax due was not previously made, and (c) an
54 undertaking is filed with the proper fiscal officer or officers in such
55 amount and with such sureties as a justice of the supreme court shall
56 approve to the effect that if such proceeding be dismissed or the tax

1 confirmed, the petitioner will pay all costs and charges which may
2 accrue in the prosecution of such proceeding.

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

5 § 1449-mmmmmmm. Apportionment. The local law adopted by the legisla-
6 tive body of the county of Cortland shall provide for a method of appor-
7 tionment for determining the amount of tax due whenever the real proper-
8 ty or interest therein is situated within and without the county of
9 Cortland.

10 § 1449-nnnnnnn. Miscellaneous. The local law adopted by the legisla-
11 tive body of the county of Cortland may contain such other provisions as
12 such legislative body deems necessary for the proper administration of
13 the tax imposed pursuant to this article, including provisions concern-
14 ing the determination of tax, the imposition of interest on underpay-
15 ments and overpayments and the imposition of civil penalties. Such
16 provisions shall be identical to the corresponding provisions of the
17 real estate transfer tax imposed by article thirty-one of this chapter,
18 so far as such provisions can be made applicable to the tax imposed
19 pursuant to this article.

20 § 1449-ooooooo. Returns to be secret. 1. Except in accordance with
21 proper judicial order or as otherwise provided by law, it shall be
22 unlawful for the treasurer or any officer or employee of the county of
23 Cortland or any person engaged or retained by such county on an inde-
24 pendent contract basis to divulge or make known in any manner the
25 particulars set forth or disclosed in any return required under a local
26 law enacted pursuant to this article. However, that nothing in this
27 section shall prohibit the recording officer from making a notation on
28 an instrument effecting a conveyance indicating the amount of tax paid.
29 No recorded instrument effecting a conveyance shall be considered a
30 return for purposes of this section.

31 2. The officers charged with the custody of such returns shall not be
32 required to produce any of them or evidence of anything contained in
33 them in any action or proceeding in any court, except on behalf of the
34 county in any action or proceeding involving the collection of a tax due
35 under a local law enacted pursuant to this article to which such county
36 or an officer or employee of such county is a party or a claimant, or on
37 behalf of any party to any action or proceeding under the provisions of
38 a local law enacted pursuant to this article when the returns or facts
39 shown thereby are directly involved in such action or proceeding, in any
40 of which events the court may require the production of, and may admit
41 in evidence, so much of said returns or of the facts shown thereby, as
42 are pertinent to the action or proceeding and no more.

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

51 4. Any officer or employee of such county who willfully violates the
52 provisions of this section shall be dismissed from office and be incapa-
53 ble of holding any public office in this state for a period of five
54 years thereafter.

55 § 1449-ppppppp. Foreclosure. Where the conveyance consists of a trans-
56 fer of property made as a result of an order of the court in a foreclo-

1 sure proceeding ordering the sale of such property, the referee or sher-
2 iff effectuating such transfer shall not be liable for any interest or
3 penalties that are authorized pursuant to this article or article thir-
4 ty-seven of this chapter.

5 § 2. This act shall take effect immediately and shall expire and be
6 deemed repealed seven years after such date.