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Date: February 19, 2010
To: All Clients and Friends
From: Cliff Bernstein
Re: Mansion Tax FAQ's

**NEW YORK
FYI**

Mansion Tax - Frequently Asked Questions

The New York State Department of Taxation and Finance has recently issued Frequently Asked Questions regarding the Mansion tax. Please see attached pages for the FAQ's regarding the additional tax on transfers of residential real property for \$1 million or more.

Please feel free to call us with any questions or comments.

This bulletin is sent courtesy of CB Title Agency of NY, LLC. This article is for informational purposes only and is not intended to provide legal advice, but rather to provide insight into legal developments and issues that may be useful to our clients and friends. In no circumstance is this article intended to be a full treatment of the above subject matter. Reader is advised to obtain additional information as noted.

**FAQs
Regarding the
Additional Tax
on Transfers
of Residential
Real Property
for \$1 Million
or More**

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NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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Introduction

Tax Law Article 31 imposes a real estate transfer tax on each conveyance of real property, or interest in real property, when the consideration exceeds \$500. The tax is computed at a rate of two dollars for each \$500 of consideration, or for any fractional part of \$500. An additional tax is imposed on each conveyance of real property or interest in real property used in whole or in part as a personal residence when the consideration for the entire conveyance is \$1 million or more. The additional tax is computed at a rate of one percent of the consideration, or part of the consideration, attributable to the residential real property. This publication answers frequently asked questions related to the *additional tax*, often referred to as the *mansion tax*.

The information presented in this publication does not represent a change in any policies or procedures, but provides guidance for the relevant provisions of Tax Law Article 31 and Part 575 of the Real Estate Transfer Tax Regulations (20 NYCRR). **Unless otherwise noted in the following examples, the real estate transfer tax applies to each conveyance whether or not the additional tax is due.** Although accurate, the information in this publication has been simplified; if there is any discrepancy between this publication and the Tax Law or regulations, the Tax Law and regulations will govern.

Definitions

The following terms used in this publication are derived from definitions contained in Tax Law Article 31, or section 575.1 of the New York State Real Estate Transfer Tax Regulations. As necessary, they have been edited to apply specifically to the additional tax.

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, that are located in whole or in part within the state of New York. Real property does not include rights to sepulture.

Interest in 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 the use or occupancy of real property, or the right to receive rents, profits or other income derived from real property. It also includes an option or contract to purchase real property. It does not include a right of first refusal to purchase real property.

Consideration - is the price actually paid or required to be paid for the real property, or interest in the real property, including the 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 includes the cancellation or discharge of an indebtedness or obligation. It also includes the amount of any mortgage, purchase money mortgage, lien, or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof of the 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 will 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.

Conveyance - means the transfer or transfers of any interest in real property by any method, including but not limited to the sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by 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 includes 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. Conveyance of real property will not include a conveyance pursuant to devise, bequest or inheritance; 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 the tax law or the internal revenue code.

Grantor - means the person making the conveyance of the real property or interest therein.

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

Frequently asked questions

1) **Q:** What is the additional tax?

A: In addition to the real estate transfer tax imposed by section 1402 of the Tax Law on the conveyance of real property or interest in real property, Tax Law section 1402-a imposes an *additional tax* on each conveyance of residential real property or interest in residential real property when the consideration for the entire conveyance is \$1 million or more.

2) **Q:** Do all the provisions of the real estate transfer tax apply to the additional tax?

A: Generally, all of the provisions of the real estate transfer tax apply to the additional tax, except as described later in this publication (see questions 5 and 16).

3) **Q:** When is the additional tax due?

A: The additional tax must be paid at the same time as the real estate transfer tax imposed by section 1402 of the Tax Law. The taxes are paid by filing Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax*, **no later than the fifteenth day after the delivery of the instrument effecting the conveyance.**

4) **Q:** What is the rate of the additional tax?

A: The rate of the additional tax is one percent of the consideration, or part of the consideration, attributable to the residential real property.

5) **Q:** Who is liable for paying the additional tax?

A: The grantee is liable for and must pay the additional tax.

6) **Q:** What is meant by *residential real property*?

A: *Residential real property* means any premises that is or may be used in whole or in part as a personal residence at the time of conveyance, and includes a one-, two-, or three-family house, an individual condominium, or a cooperative apartment unit.

Example: *A building containing ten apartments sells for \$1.5 million. The grantor used one of the apartments as a personal residence. This conveyance is not subject to the additional tax since the real property conveyed is not a one-, two-, or three-family house, an individual condominium unit or a cooperative apartment unit.*

Example: *A structure contains a store on the first level with three apartments above it. Since there are four units (the store and three apartments), the structure would not be considered a three-family house for the purposes of the additional tax.*

7) **Q:** Does residential real property include premises that have not been occupied by the grantor?

A: Yes. Residential real property includes a one-, two- or three-family house, condominium unit, or cooperative apartment unit that is (or may be) rented to others for use as a residence.

Example: *A three-family house sells for \$1.2 million. The grantor did not occupy any portion of the house. The grantee is required to pay additional tax of \$12,000 (\$1.2 million x .01). The result would be the same if the grantor had occupied any portion of the house.*

8) **Q:** Does residential real property include a seasonal or part-time residence?

A: Yes. A seasonal or part-time residence is residential real property.

Example: *A woman owns a summer cottage in Lake George, New York, that she occupies only during the month of July each year. When she is not using the cottage, she may rent it to others on a temporary basis or it may remain vacant. She sells the cottage for \$1.5 million. The conveyance is subject to the additional tax.*

Example: *A man owns a house in Philadelphia and a condominium in New York City. He uses the condominium as a residence several days a week while on business. He sells the condominium for \$1.4 million. The conveyance is subject to the additional tax.*

9) **Q:** How is the additional tax applied if only part of the premises is used for residential purposes?

A: The consideration for the entire conveyance of the real property must be taken into account when determining whether the consideration is \$1 million or more. If it is, the taxable consideration is computed based on the value of the residential portion.

Example: *One unit of a two-family house is used for residential purposes, and the other unit is used for commercial purposes as a retail store. The owner sells the house for \$1.5 million. The residential unit is valued at \$500,000 while the retail unit is valued at \$1 million. In determining whether the consideration for the conveyance is \$1 million or more, the consideration for the entire conveyance must be taken into account. In this case, the consideration for the entire conveyance (\$1.5 million) exceeds \$1 million. Therefore, the conveyance is subject to the additional tax but only on the value of the residential unit (\$500,000).*

10) **Q:** When a one-, two-, or three-family house is sold, does all of the abutting land qualify as residential real property?

A: Residential real property includes the land on which the house is located and the land abutting the house unless the abutting land is used for a nonresidential purpose.

Example: *Grantor A enters into a contract to sell a parcel improved by a one-family house to Grantee B for \$900,000. Simultaneously, Grantor A contracts with Grantee B to sell an adjacent parcel of vacant land for \$300,000. The timing and terms of the contracts indicate that the conveyances are related. Prior to the conveyance, the abutting parcel was kept vacant. Both*

parcels are used in conjunction with each other and are considered residential real property. Accordingly, the consideration for the entire conveyance of \$1.2 million is subject to the additional tax. The grantee must pay an additional tax of \$12,000 (\$1.2 million x .01).

11) Q: When are ancillary structures considered part of the residential real property?

A: Ancillary structures are considered part of the residential real property when the structures are used in conjunction with, or are clearly related to, the main residential structure.

Example: *A 10-acre parcel is divided into three tax lots for real property tax purposes. Lot 1 contains the main house and a detached three-car garage located on one acre of land. Lot 2 contains a guest cottage located on half an acre of land some distance from the main house. Lot 3 is vacant land. The entire parcel is conveyed to one grantee for \$2 million. The lot with the main house and the garage is valued at \$995,000, the guest cottage is valued at \$405,000, and the abutting land is valued at \$600,000. None of the lots are used for anything other than residential purposes and the ancillary structures and abutting land are all used in conjunction with each other. Therefore, since the consideration received for all the structures and abutting land is \$1 million or more, the conveyance is subject to the additional tax. The grantee must pay an additional tax of \$20,000 (\$2 million x .01).*

12) Q: How does the additional tax apply to the conveyance of multiple condominium units or cooperative apartments?

A: Regardless of the number of contracts used to effectuate the conveyance, the conveyance of multiple condominium units or cooperative apartments to one grantee or related grantees will be treated as a single conveyance of residential real property only if the units are used in conjunction with one another or there is a clear relationship between each unit or apartment.

Example: *The sponsor of a cooperative project conveys two individual cooperative apartments to one grantee. The apartments are adjacent, but **not connected** to one another, and are not used in conjunction with one another. The purchase price of each apartment is treated separately in determining whether the \$1 million threshold for imposing the additional tax is met.*

Example: *Individual A conveys two condominium apartments to Individual B for a total purchase price of \$1.2 million. The two apartments have been used by Individual A as his residence and have been combined through certain alterations to accommodate Individual A (e.g., walls removed between apartments, stairway built connecting to the apartment above, etc.). Regardless of the number of deeds or contracts used to effectuate the conveyance, since the condominium apartments have been connected and used as a single residence, the total consideration of \$1.2 million paid for the condominium apartments would be subject to the additional tax.*

Example: *Individual X conveys three condominium units to Individual Y for \$1 million. One unit is an apartment located on the 20th floor of the building. The second unit is a storage room located in the basement. The third unit is a parking space located in the parking garage. Since*

all three condominium units are used in conjunction with one another, they comprise one residential unit and the additional tax applies to the total purchase price.

13) Q: Does residential real property include property that the grantee intends to convert to commercial property after conveyance?

A: Yes. Residential real property includes any one-, two-, or three-family house, an individual condominium unit, or a cooperative apartment that is used (or may be used) in whole or in part as a personal residence **at the time of conveyance**.

Example: *A grantor contracts to sell a two-family house for \$1 million. The grantee intends to convert the house into two offices. The grantee must pay the additional tax of \$10,000 (\$1 million x .01) because the property may be used as residential real property at the time of conveyance. After purchasing the property, the grantee converts and uses it as offices. The conversion includes remodeling the kitchen and bathrooms in a configuration suitable for commercial use, and installing cables and hardware to support an electronic telecommunications network. He later sells the property for \$1.1 million. No additional tax is due on the subsequent sale because the property had been converted and used as an office and is no longer suitable as residential real property at the time of conveyance.*

14) Q: Does the additional tax apply to the transfer or acquisition of a controlling interest in an entity that owns residential real property?

A: Yes. The additional tax applies to the transfer or acquisition of a controlling interest in an entity that owns residential real property with a fair market value of \$1 million or more.

Example: *Individual S owns 100% of the membership interest in a limited liability company (LLC). The only asset owned by the LLC is a single-family home located in Southampton, New York. The residence has a fair market value of \$1.5 million. S has used the home as a summer residence, and has also rented it to others. S transfers his 100% interest in the LLC to Individual T for \$1.5 million. The grantee (Individual T) is required to pay additional tax of \$15,000 (\$1.5 million x .01).*

For more information on the transfer or acquisition of a controlling interest, see **Publication 576, Transfer or Acquisition of a Controlling Interest in an Entity with an Interest in Real Property**.

15) Q: Does the additional tax apply to a conveyance of residential real property to a governmental entity?

A: No. The additional tax does not apply to the conveyance of residential real property to any of the following governmental entities:

- the state of New York or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created in agreement with another state or the Dominion of Canada);

- the United States of America or any of its agencies and instrumentalities; and
- the United Nations.

Example: *R conveys residential real property to the New York State Department of Environmental Conservation for \$2 million. This conveyance is not subject to the additional tax. In addition, the conveyance will not be subject to the transfer tax imposed by section 1402 of the Tax Law.*

16) Q: Is the consideration paid for the residential real property reduced by the amount of any continuing lien remaining on the property?

A: For the purposes of the real estate transfer tax imposed by Tax Law section 1402 with respect to a) the conveyance of a one-, two-, or three-family house and an individual residential condominium unit, and b) conveyances when the consideration is less than \$500,000, consideration for the interest conveyed excludes the value of any lien or encumbrance remaining on the property at the time of conveyance. **This continuing lien deduction does not apply for the purposes of computing the additional tax imposed by Tax Law section 1402-a.**

Example: *An individual residential condominium unit is sold for \$1 million. The grantee assumes an existing \$400,000 mortgage and pays \$600,000 in cash. For purposes of the **additional tax**, the grantee must pay the tax based upon the consideration of \$1 million since no continuing lien exclusion is allowed for the \$400,000 mortgage. However, for purposes of the **transfer tax**, the grantor will only pay the tax on the \$600,000.*

For special rules regarding the computation of consideration for conveyances of interests in a cooperative housing corporation, see the definition of consideration on page 1.

17) Q: Is the amount of the consideration received by the grantor reduced when the grantor pays the additional tax on behalf of the grantee?

A: No. The payment of the additional tax by the grantor on behalf of the grantee is considered to be an expense of the conveyance of the property. Therefore, the consideration received by the grantor cannot be reduced by the amount of additional tax paid by the grantor.

18) Q: Is the amount of the consideration increased when the grantee pays the transfer tax or other expenses on behalf of the grantor?

A: Yes. Where the grantee agrees to pay the transfer tax or any other expense required to be paid by the grantor as a condition of the sale, the consideration for both the transfer tax and the additional tax is increased when computing the taxes due.

Example: *Grantor A retains a lawyer to represent her regarding a conveyance of residential real property to Grantee B. However, it is agreed that Grantee B will pay Grantor A's legal fees related to the closing. This payment represents a discharge of a debt or obligation of the grantor*

and would be additional consideration. This is true in any case in which the grantee agrees or is directed to pay a debt the grantor owes in connection with the conveyance of real property.

Example: Individual A contracts to sell his single-family residence to Individual B for \$975,000. Individual B agrees to pay the real estate brokerage fee obligation incurred by Individual A in the amount of \$58,500. Since Individual B is paying an obligation on behalf of Individual A, the consideration for the conveyance is deemed to be \$1,033,500 (\$975,000 + \$58,000). Therefore, the conveyance is subject to the additional tax in the amount of \$10,335 (\$1,033,500 x .01).

Example: A one-family house, which is the grantor's residence, is sold for \$2 million. There are no liens or other encumbrances on the property at the time of conveyance. The sales contract provides that the grantee will pay the transfer tax for the grantor. The grantee would compute the **transfer tax** as follows:

$$\begin{aligned} \$2,000,000 \div \$500 &= 4,000 \times \$2 = \$8,000 \\ \$2,008,000 \div \$500 &= 4,016 \times \$2 = \$8,032 = \text{transfer tax due.} \end{aligned}$$

Compute the **additional tax** as follows:

Consideration	\$2,008,000
Tax rate of 1%	x .01
Additional tax due =	\$ 20,080

19) **Q:** How is the consideration determined for purposes of the additional tax when the residential real property is sold by related parties?

A: When the grantors are related to each other, the consideration paid to each grantor must be added together to determine if the consideration for the entire conveyance is \$1 million or more. The relationship of the grantor and grantee is determined by the facts and circumstances of the transaction.

Example: T and C each own residential real property as tenants in common. T enters into a contract to sell his 50% interest to P for \$500,000. Concurrently, C enters into a separate contract to sell her interest to P for \$500,000. At the closing, P receives separate deeds for the conveyance of T's interest and the conveyance of C's interest. Since T and C are related as tenants in common and the timing of the contracts of sale indicate that the conveyances to P are related, the separate deed transfers are treated as a single conveyance. Since the consideration is \$1 million, the conveyance is subject to the additional tax.

20) Q: How is the consideration determined if a contract to purchase residential real property is assigned to a third-party?

A: To determine if the consideration is \$1 million or more, the consideration for the contract to purchase residential real property must be considered separately from the consideration paid for the assignment.

Example: *A enters into a contract to sell residential real property to B for \$900,000. B assigns the purchase contract to C for an assignment price of \$200,000. At closing, C pays a total consideration of \$1.1 million. As long as there is no relationship between A, B or C and the transactions were not structured to avoid the tax, the closing of the purchase contract and assignment are treated as two separate conveyances. Since the consideration for each conveyance is less than \$1 million, the additional tax does not apply.*

Notes

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