

Transfer and Mortgage Recording Taxes in New York Title Closings
2006 Edition
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CHAPTER 8

**MT. VERNON; ERIE COUNTY; YONKERS;
BROOME COUNTY; EAST HAMPTON;
RIVERHEAD; SHELTER ISLAND;
SOUTHAMPTON AND SOUTHOLD**

SYNOPSIS

- § 8.01** **City of Mount Vernon Real Estate Transfer Tax.**
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§ 8.01 City of Mount Vernon Real Estate Transfer Tax.

The City of Mount Vernon imposes on each deed, at the time of delivery, when the consideration for the real property and any improvement thereon exceeds \$100,000, a tax at the rate of one percent of the consideration in excess of \$100,000. [Mount Vernon Code Article VII.]

The tax is payable by the grantor. The grantee is liable if the grantor is exempt. [Local Law 3, 2000, approved October 16, 2000.] Prior to January 1, 2001, the liabilities of the parties were reversed. [Mount Vernon Code § 23447.]

Exempt parties are the State of New York and any of its agencies, instrumentalities, public corporations or political subdivisions, the United States of America and any of its agencies and instrumentalities, "insofar as they are immune from taxation," it being expressly provided that the exemption does not apply to a grantee. This proviso is unclear inasmuch as the tax is payable by grantees. The likelihood is that "grantor" was intended. [Mount Vernon Code § 234-49A.]

The tax does not apply to deeds by, or to the United Nations or other worldwide international organizations of which the United States of America is a member. The tax is also inapplicable to deeds to various charities (see enumeration in Mount Vernon Code § 234-49B(2)), deeds to any governmental body or person exempt from payment of the tax, and deeds from a mere agent, dummy, strawman or conduit to his principal or a deed from the principal to his agent, dummy, strawman or conduit. [Mount Vernon Code § 234-49B(6).]

A deed is any document, instrument or writing other than a will, "whereby any real property or interest therein is created, vested, granted, bargained, sold, transferred, assigned or otherwise conveyed." [Mount Vernon Code § 234-44.] Real property or interest therein, is every "estate or right, legal or equitable, present or future, vested or contingent in lands, tenements or hereditaments" located in whole or in part in the City of Mount Vernon; excluding a mortgage, release of mortgage or a leasehold for a stated term of years or part of a year, or rights to sepulture. Consideration is the price paid or required to be paid, without deduction for mortgages, liens or encumbrances. [Mount Vernon Code § 234-44.]

The statute requires a joint return. There is a presumption that "all deeds are taxable." [Mount Vernon Code § 234-46.] For nonpayment, the penalty is eight percent, and there is an interest charge of 11/2% per month commencing after the month the return was required to be filed or the tax became due. The Comptroller, "if satisfied that the delay was excusable, may remit all or part of such penalty," but not interest. [Mount Vernon Code § 234-56B.]

Any grantor, grantee or officer of a corporation failing to file a return required by this Article or filing or causing to be filed or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information . . . which is willfully false, and any grantor, grantee or officer of a corporation failing to keep the required (sic) by § 234-54F of this Article, shall . . . be guilty of a misdemeanor, punishment for which shall be a fine, of not more than one thousand dollars (\$1,000), or imprisonment for not more than one (1) year, or both such fine and imprisonment.

[Mount Vernon Code § 234-56B.]

Refunds may be applied for within one year of payment. [Mount Vernon Code § 234-5 IA.] The provisions for administrative hearing and appeal are similar to those for the other

transfer taxes. There would be a hearing before the Comptroller, with right to appeal by Article 78 proceeding. [Mount Vernon Code § 234-51B.]

Refunds do not bear interest. [Mount Vernon Code § 234-51C.]

The provisions regarding the issuance of notices of determination and the power of the City to issue warrants are substantial) similar to those under the New York State real estate transfer tax.

Effective January 1, 2001, there is a credit, in the amount of the allocated portion of the surcharge paid upon acquisition, upon conveyance where the grantor purchased land not improved by residential premises and constructed a residence. See Bernard M. Rifkin, Esq., "Summary" of transfer and mortgage recording taxes prepared for Chicago Title Insurance Company.

§ 8.02 Erie County Transfer Tax.

The Erie County Transportation Assistance Tax Law imposes a tax of \$2.50 for each \$500 of consideration. [Local Law No. 4-1990, County of Erie.]

The tax is substantially a reproduction of the New York State real estate transfer tax. Accordingly, deeds, certain leases, transfers and acquisitions of controlling interests and transfers of cooperatives are taxed.

Unlike the real estate transfer tax, there is an exemption for:

Conveyances of real property owned and occupied as a principal residence by one or more persons, at least one of whom is sixty-two years of age or over, provided that such property was both owned and occupied by at least one of such persons for a period of at least one year prior to the date of transfer, and further provided that such exemption shall be limited to transfers of residential properties consisting of one or two dwelling units.

[Erie Local Law No. 4-1990, § 62(i).]

The tax does not apply to conveyances made pursuant to binding written contract entered into prior to June 1, 1990, provided that the date of execution can be confirmed by independent evidence such as recording of the contract or payment of a deposit.

§ 8.03 Yonkers Real Property Transfer Tax.

The City of Yonkers transfer tax is 1 % of gross consideration. The tax is payable by the grantor. [General Ordinance 8-1968, as amended.]

The tax is on "deeds," which are defined to mean any document, other than a will, whereby any real property or interest therein is created, vested, granted or otherwise conveyed. [Yonkers General Ordinance No. 8-1973, § 92-56b.]

The tax applies where the consideration exceeds \$25,000.

The tax is similar to the New York State real estate transfer tax.

Exemptions include the State of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another State) or political subdivisions, the United States of America, and any of its agencies and instrumentalities, insofar as they are immune from taxation, provided, however, that the exemption of such governmental bodies or person shall not relieve a grantee of liability. The tax is not applied to deeds by or to the United Nations or any other world-wide international organization of which the United States is a member, a deed by or to any corporation or other entity operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

The penalties and interest for failure to file a return or to pay the tax are an 8% penalty plus interest, commencing after the first month, at the rate of 1% per month. [Yonkers General Ordinance No. 8-1973, § 92-68a.]

Refunds of overpayment shall be made, without interest, if application is made to the Comptroller within one year from payment. [Yonkers General Ordinance No. 8-1973, § 92-63.]

§ 8.04 Broome County Real Estate Transfer Tax.

Broome County, effective October 1, 1994, imposes a transfer tax of \$.50 for each \$500, or fractional part, of consideration. [Local Law Intro No. 10, 1994.]

This tax, which is substantially similar to the New York State real estate transfer tax, taxes real estate conveyances, certain transfers of cooperative apartments and the transfer or acquisition of a controlling interest in an entity owning an interest in real property. The Local Law does not adopt the New York State real estate transfer tax deductions for mortgages on residential sales and sales for less than \$500,000.

§ 8.05 East Hampton, Riverhead, Shelter Island, Southampton and Southold Real Estate Transfer Tax.

East Hampton, Riverhead, Shelter Island, Southampton and Southold (i.e., the Towns in the Peconic Bay Region) have a two (2%) percent real estate transfer tax on the grantee of "conveyances".

This tax follows the State real estate transfer tax, with the following exceptions:

As stated above, the tax is on the grantee. If the grantee does not pay, then the grantor is liable. If the grantee is exempt, the grantor is liable.

In Shelter Island, East Hampton and Southampton, the first \$250,000 of consideration for improved land, or interest therein, is exempt; and the first \$100,000 of consideration for unimproved land, or interest therein, is exempt.

In Riverhead and Southold, the first \$150,000 of consideration for improved land, or interest therein, is exempt and the first \$75,000 of consideration unimproved land, or interest therein, is exempt.

The deductions under the State real estate tax for mortgages are not available.

There is no exemption for transfers to REITs.

There is no exemption for conveyance of an option or contract to purchase with the use or occupancy of the property where the consideration is less than \$200,000, as provided in Tax Law section 1405 (b) 10.

In entity transactions, only transfers or acquisitions of interests occurring on or after April 1, 1999 are added together. The three year rule (transfers more than three years apart, unless timed pursuant to a plan to avoid the transfer tax) applies. Although independent transfers will probably not be aggregated, grantees should obtain grantor indemnities against transfer tax claims arising by reason of other transfers by the grantor.

There are the following additional exemptions:

(j) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:

- (1) agricultural, conservation, scenic, or an open space easement,
- (2) covenants or restrictions prohibiting development,
- (3) a purchase of development rights agreement,
- (4) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,
- (5) said real property is subject to the development restriction of an agricultural district or individual commitment, pursuant to the article twenty-five-AA of the agriculture and market law,
- (6) real property subject to any locally adopted land preservation agreement, provided said exemption is included in the local law imposing the tax authorized by this article;

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

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

[Tax Law ¶1449-ee.]

The tax took effect for conveyances recorded after April 1, 1999 for East Hampton, Riverhead, Shelter Island and Southampton, and for conveyances recorded after March 1, 1999 for Southold. However, there is an exemption for conveyances made after the effective date pursuant to binding written contracts entered into before such date if the execution of the contract is confirmed by "independent evidence such as the recording of the contract, payment of a deposit, or other facts and circumstances as determined by the County Treasurer". Regulations provide that the independent evidence requirement can be met by "recording of the contract, payment of a deposit, a notarized contract, or the taxpayer has engaged in other actions such as seeking a zoning approval or obtaining an environmental impact statement, or such other facts and circumstances as may be determined by the Treasurer." The tax expires December 31, 2010. East Hampton Local Law No. 8, 1999; Riverhead Local Law No. 14, Shelter Island Chapter 50 Community Preservation Fund; Southampton Local Law No.39, 1998; Southold Local Law No. 20, 1998. Regulations have been issued for East Hampton, as discussed below. By the publication of this book, the other Towns may have issued regulations.¹

East Hampton has adopted regulations, following the State real estate transfer tax regulations.

There are definitions of improved and unimproved real property:

"IMPROVED REAL PROPERTY-shall mean a lot improved with a principal building or a principal use. Pursuant to the Property Type Classification Code, promulgated by the New York State Office of Real Property Services, all lots included within the 100, 200, 400, 500, 600, 700, 800, and 900 categories within said classification system shall be defined as "improved" for the purposes of this Chapter. To be considered "improved" pursuant to this Chapter, a principal building shall be habitable. It shall be presumed that the category for a particular lot shall be as shown on the most recent tax roll approved by the town.

UNIMPROVED REAL PROPERTY-shall mean a lot with no principal building or use. Pursuant to the Property Type classification Code, promulgated by the New York State Office of Real Property Services, all lots included within the 300 category within said classification system shall be defined as "unimproved" for the purposes of this chapter. It shall be presumed that the category for a particular lot shall be as shown on the most recent tax roll approved by the town."

The exemption for land encumbered by development restrictions is modified by a requirement that the restriction be conveyed to any of the State of New York, a town, village, county or not for profit tax exempt organization operated for conservation, environmental or historic preservation purposes and that the Town Attorney or other official designated by the Town Board has determined that the restrictions prohibit any use other than agriculture, recreation or conservation. Accordingly, insofar as this exemption is concerned, East Hampton imposes a tax where the State enabling legislation does not.

§ 8.06 Principles Applicable to All Taxes.

See Appendix A, § A5.05 for principles regarding refund application and Article 78.

Regarding grandfathering, see: *In the Matter of American Express Company v. Tax Appeals Tribunal*, 190 A.D.2d 104, 597 N.Y.S.2d 485 (A.D.3 1993), a gains tax case, and *In the Matter of David Schoonmaker v. Commissioner of Taxation and Finance of the State of New York*, 202 A.D.2d 723, 608 N.Y.S.2d 357 (A.D.3 1994), where, for "mansion tax" purposes, grandfathering was lost by a supplement reducing the price by \$20,000 and increasing the purchase money mortgage by \$55,000. For gains tax purposes, purchases pursuant to options entered into prior to March 29, 1983, remained exempt, notwithstanding that the options were exercised prior to the option exercise dates and the parties entered into a letter agreement specifying the terms of sale. Although the letter provided among other things, for a "tax free" exchange, the Tax Appeals Tribunal observed that "an option to purchase by its nature requires a subsequent contract between the parties if the option is exercised" and determined that the letter agreement did not replace the options, but "merely summarized the circumstances of the parties." [*In the Matter Fulton Associates; In the Matter of Joseph M. Mattone and The Estate of James J. Mannix*, 1995 N.Y. Tax LEXIS 240, Tax Appeals Tribunal, May 11, 1995, DTA Nos. 809679 and 809680.] Also see *In the Matter of Allan V. Rose*, 1994 N.Y. Tax LEXIS 357, Tax Appeals Tribunal, June 30, 1994, as to standard of proof of date the instrument was executed.

¹ Special thanks for assistance from Bernard Rifkin, Esq., and Tomson S. Sheh, Esq., both of Chicago Title Insurance Company, and Michael J. Berey, Esq., of First American Title Insurance Company of New York.