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## Buyer (and Seller) Beware: Changes to NYS Transfer Tax and Mansion Tax

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As part of the New York State 2020 Budget, the State Senate and Assembly adopted legislation increasing the real estate transfer tax on certain conveyances of real property. The legislation generally applies to conveyances made after July 1, 2019.

### Background

New York State generally imposes a transfer tax on conveyances of real property located in New York State and on conveyances of a controlling interest in an entity that owns real property in New York State. The tax is currently imposed at a 0.4% rate on the transferred consideration, which is generally the amount paid or required to be paid for the purchase of the property that is subject to the tax. The grantor is generally liable to pay the tax, but if the grantor either failed to pay the tax or is exempt from the tax, the grantee is liable to pay the tax.

In addition to the base transfer tax, in the case of a transfer of “residential real property” worth \$1,000,000 or more, New York State generally imposes a “Mansion Tax” at a 1% rate on the consideration for the transfer. For purposes of the Mansion Tax, residential real property generally includes a one, two or three-family house, an individual condominium unit, or a cooperative apartment. In contrast with the base

transfer tax, the grantee is generally liable for the Mansion Tax.

Transfers of real property in New York City also are generally subject to New York City transfer tax at a 2.625% rate (or 1.425% if the property transferred is a one, two or three-family house or an individual residential condominium unit).

### Changes to the Transfer Tax

The legislation, which was passed as an alternative to a pied-à-terre tax<sup>1</sup> that would have imposed an annual tax on homes worth \$5,000,000 or more that do not serve as a buyer’s primary residence, imposes additional New York State real estate transfer tax on certain conveyances made in “cities with a population of one million or more.” In light of the fact that New York City is the only city in New York State that has a population of anywhere close to one million or more, it is clear that the legislation was specifically intended to increase the rate of tax applicable to transfers of real property in New York City.

The legislation increases the rate of the base real estate transfer tax from 0.4% to 0.65% in the case of a transfer in New York City of (i) “residential real property” where the transferred consideration is \$3,000,000 or more, and (ii) any other property subject to the tax where the transferred consideration is \$2,000,000 or more. For this purpose, residential real property is defined to include the same types of properties that

are subject to the Mansion Tax (described above).

In addition to increasing the base real estate transfer tax rate on the type of transfers described above, the legislation also creates a new transfer tax on transfers of “residential real property” in New York City where the transferred consideration is \$2,000,000 or more. The new transfer tax is imposed in addition to the base real estate transfer tax and the Mansion Tax. For purposes of the new transfer tax, residential real property is again defined to include the same types of properties that are subject to the Mansion Tax. This new transfer tax is generally imposed on the grantee, and it is imposed at varying rates that are dependent on the amount of the transferred consideration:

- Where the consideration is \$2,000,000—\$2,999,999.99, the additional tax rate is 0.25%.
- Where the consideration is \$3,000,000—\$4,999,999.99, the additional tax rate is 0.50%.
- Where the consideration is \$5,000,000—\$9,999,999.99, the additional tax rate is 1.25%.
- Where the consideration is \$10,000,000—\$14,999,999.99, the additional tax rate is 2.25%.
- Where the consideration is \$15,000,000—\$19,999,999.99, the additional tax rate is 2.50%.
- Where the consideration is \$20,000,000—\$24,999,999.99, the additional tax rate is 2.75%.

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- Where the consideration is \$25,000,000 or more, the additional tax rate is 2.9%.

As a result of the increase in tax, a grantee that receives residential real property in New York City worth at least \$2,000,000 will be subject to New York State transfer tax at a rate between 1.25% and 3.9%.

As a result of the legislation, if a taxpayer sells a residential condominium unit in New York City for \$25,000,000, the transfer will be subject to New York State transfer tax at a 4.55% rate consisting of (i) base real estate transfer tax imposed at a 0.65% rate, (ii) Mansion Tax imposed at a 1% rate, and (iii) the new transfer tax imposed at a 2.9% rate. Once the 1.425% New York City transfer tax is taken into account, the transfer would be subject to a combined State and City tax rate of 5.975%.

If the taxpayer instead sold commercial property located in New York City worth \$25,000,000, the transfer would be subject to New York State transfer tax at a 0.65% rate since the Mansion Tax and the new transfer tax are not imposed on the transfer. Once the 2.625% New York City transfer tax is taken into account, the transfer would be subject to a combined State and City tax rate of 3.275%.

Although the legislation generally applies to transfers of real property made on or after July 1, 2019, the legislation does not apply to transfers made pursuant to a binding written contract entered into before April 1, 2019. However, the binding written contract must be confirmed by independent evidence. The legislation provides examples of independent evidence such as the recording of the contract or payment of a deposit.

## Conclusion

The legislation has significantly increased the New York State transfer tax rate applicable to transfers of real property in New York City. Although the more punitive “pied-à-terre tax” was not enacted into law, the new legislation generally applies to any transfer of real property in New York City and is not limited to transfers of pied-à-terre’s. As a result of the new legislation, it is more important than ever for taxpayers to carefully consider the transfer tax consequences of different transactions.

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