Roberts & Holland LLP

June 11, 2026

New York City Pied a Terre Tax

The newly enacted Surcharge creates intricate valuation, residency, and compliance issues for owners of luxury homes, condos, and co-ops.

The 2026 New York State Budget Legislation which was recently passed and signed into law by Governor Kathy Hochul enacts a new annual surcharge (the "Surcharge") on residences valued at $5,000,000 or more and are not occupied as primary residences.

Due to numerous factors, including the speed at which the bill was drafted, there are many surprising features in the law and many unanswered questions. Although beyond the scope of this mailing, it is expected that some taxpayers will attempt to have the statute declared invalid as unconstitutional or on other possible theories.

The Surcharge goes into effect for the upcoming fiscal period beginning July 1, 2026. The Surcharge applies to one, two and three family homes ("class one properties") and individual co-op and condominium units ("class two properties"). It does not apply to the ownership of entire apartment buildings but does appear to apply to entities that own multiple condominium or co-op apartments for investment or rental.

The $5 million threshold for application of the Surcharge applies to class one properties and is the "market value" of such property determined for purposes of the Real Property Tax. (The market value is the full value of the assessed property; the Real Property Tax is based on the "assessed value" of the property which is 45 percent of the market value.) However, co-op and condominium units are valued differently and significantly lower for Real Property Tax purposes because the Real Property Tax values the entire co-op or condo building as if it were a rental apartment building.

Partners
Ellen S. Brody
Quincy Cotton
Ezra Dyckman
Allen J. Erreich
Aaron S. Gaynor
Stuart J. Gross
David E. Kahen
Howard J. Levine
Richard A. Levine
Joseph Lipari
Michael J. Miller
Norman J. Misher
Charles S. Nelson
Elliot Pisem
Mark David Rozen
Daniel W. Stahl
Chase B. Steinlauf
Lary S. Wolf

Counsel
Lionel Etra
Michael S. Grisolia
Debra G. Kosakoff
Jessica G. Weinberg

To address the different valuation methods, the Surcharge threshold for class two properties is $1 million during the first two years of the statute, one-fifth of the value of class one properties. To address the same disparity in valuation methods, during the first two fiscal years to which the statute applies, the rate of the Surcharge for co-op and condominiums is five times the rate for class one properties.

For class one properties, the Surcharge is imposed at the following rates:
(i) 0.8% of market value on properties valued between $5 million and $15 million;
(ii) 1.05% of market value on properties valued between $15 million and up to $25 million; and
(iii) 1.3% of market value on properties valued over $25 million.

For co-ops and condominiums, the Surcharge is imposed at the following rates:
(iv) 4.0% of market value on properties valued between $1 million and $3 million;
(v) 5.25% of market value on properties valued between $3 million and $5 million; and
(vi) 6.25% of market value on properties valued over $5 million.

The Surcharge applies to the entire market value of the property. Properties at the highest valuation do not get the benefit of the lower rates applicable to less valuable properties.

Starting with the third fiscal year, co-ops and condominiums will be valued in the same way as class one properties for purposes of the Surcharge (the existing valuation rules will, however, continue to apply for purposes of the Real Property Tax). As a result, the thresholds and rates of Surcharge will be the same as the rates for class one properties during the first two years.

As noted above, the Surcharge does not apply to properties that are used and occupied as the primary residence of the owner of the property or the owner's immediate family (defined to include spouses, children, siblings, parents, grandchildren and grandparents). Proof of primary residence can be provided in various ways, most significantly by showing that the occupant is treating the property as his or her primary residence for purposes of the New York City Personal Income Tax, that is, by filing a New York State resident income tax return showing the address of the property as the taxpayer's permanent home address, a position consistent with the taxpayer being a New York City domiciliary. It is important to note, however, that individuals who are also subject to New York City Personal Income Tax on their worldwide income because they are statutory residents (i.e. individuals who are not domiciled in New York City but maintain a permanent place of abode in New York City and spend all or a portion of more than 183 days in the City) are not exempt from the Surcharge on their New York City residences.

Questions arise with respect to individuals who own more than one residence in New York City. In one notable example, a famous entertainer owned at one point 5 apartments in one apartment building in Manhattan. Although she clearly lived in at least one of the apartments, the others were used as an art studio, for storage and for guests. It is unclear whether some of the apartments would be subject to the Surcharge. It is also not unusual for a family to own two adjacent apartments, sometimes with the adjoining walls demolished, where each apartment is separately valued for property tax purposes. Would the City argue that only one of the apartments is the primary residence? On the other hand, can an individual argue that the apartments should be considered separate if, by doing so, the value of each apartment would fall below the threshold for applying the tax?

If a property is leased to a third party on arm's length terms and the lessee occupies the apartment as his or her primary residence, the Surcharge will not apply. It is not yet clear what steps a lessor will need to take in order to determine whether the tenant qualifies for the primary residence exemption as well as the consequences if the tenant ceases to use the residence.

Additional issues apply to a property owned by a trust which is not subject to the Surcharge if the property is occupied by the beneficiary of the trust as a primary residence. How this rule applies to trusts or sub trusts with multiple beneficiaries is unclear as are properties owned as tenants in common. More complicated rules apply to properties owned by entities such as limited liability companies or in situations where the ownership is held through multiple layers.

The application of the Surcharge to co-op apartments is particularly confusing. In a co-op, the building is owned by the co-op corporation, and each apartment is represented by shares of stock in the corporation and a proprietary lease of the unit. The Real Property Tax, however, is imposed on the corporation and is allocated among the shareholders in proportion to the number of shares they own. The Surcharge applicable to any of the co-op apartments that is valued in excess of the threshold and not exempt as a primary residence will also be imposed on the co-op corporation. The co-op corporation will then need to collect the Surcharge from the owners of the co-op shares allocable to the apartment on which the Surcharge is imposed.

Enforcing the tax will be difficult since it involves first, determining what properties are subject to the Surcharge. Initially, the City is expected to notify owners of properties that the City believes may be covered by the Surcharge by August 30.

The taxpayer can respond by claiming that the residence is a primary residence and provide evidence there is to support the claim. The City can then dispute a taxpayer's assertion that the property is used as a primary residence. The City proposes to set up separate hearing officers under the Office of Administrative Trials and Hearings (which is not part of the City Tax Appeals Tribunal) to hear disputes and make "final" determinations. Those determinations, presumably, can be subject to Article 78 appeals to the New York courts. If forms or evidence are false or misleading, penalties can be assessed of as much as 50% of the Surcharge.

Enforcement will be more difficult after two years if the statute's provisions on revaluing co-ops and condominiums go into effect. It is unclear how many apartments would need to be appraised and whether the Department has the manpower and skill to do so. The rules require valuations based on comparable sales but it may often be difficult to come up with this information.

As a result, it is possible that the City will find it impossible to conduct the necessary revaluations of class two properties by 2028 and the statute will be amended to leave in place the existing disparity in valuations, thresholds and rates of Surcharge. Finally, the statute provides that the Surcharge will sunset in five years. The projected elimination of the Surcharge may be viewed with extreme skepticism.

If you have any questions, please contact Joseph Lipari (jlipari@rhtax.com), Lary S. Wolf (lwolf@rhtax.com), Stuart J. Gross (sgross@rhtax.com), Elliot Pisem (episem@rhtax.com) or David E. Kahen (dkahen@rhtax.com).

###