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June 24, 2026

Pied-à-Terre Tax Enacted on NYC Residences

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Originally Published in the New York Law Journal

After much hype and negotiation between the governor, legislature, and mayor, the New York State legislature recently enacted a so-called "pied-à-terre" tax on certain non-primary residences located in New York City. The tax is set to go into effect on July 1, 2026; however, the law leaves many unanswered questions and creates a few surprising results.

The tax applies to one, two, and three family homes that have a market value (as determined for real property tax purposes) of at least $5 million, as well as to individual residential condominium units and cooperative apartments that have a market value of at least $1 million, in each case if such property is not used as a primary residence. The tax generally does not apply to the ownership of entire apartment buildings, but could apply to individual condominium units or cooperative apartments that are held for rental.

For applicable one, two, and three family homes, the tax is imposed at an annual rate of 0.8% of the market value of properties with values between $5 million and $15 million, 1.05% of the market value of properties with values greater than $15 million but less than or equal to $25 million, and 1.3% of the market value of properties with values greater than $25 million. For applicable individual condominium units and cooperative apartments, the tax is imposed at an annual rate of 4% of the market value of properties with values between $1 million and $3 million, 5.25% of the market value of properties with values greater than $3 million but less than or equal to $5 million, and 6.5% of the market value of properties with values greater than $5 million.

It is important to note that these valuation thresholds are based on market values for real property tax purposes, which are usually significantly lower than actual fair market values. The reason for the difference in value thresholds and tax rates for individual condominium units and cooperative apartments compared to one, two, or three family homes is that condos and co-op units are typically valued significantly lower than houses for real property tax purposes, because they are based on valuation methods for rental buildings rather than the comparable sales method. Beginning July 1, 2028, this difference in treatment is scheduled to end, at which time condos and co-op units will be subject to the tax at the same rates and thresholds as one, two, or three family homes. The legislature apparently expected that the valuation discrepancies would be resolved during this two-year period, with condos and co-op units valued based on the comparable sales method.

It is not entirely clear how it will be determined whether a home is an individual's primary residence. The statute provides that the New York City Department of Finance will issue regulations identifying factors to be taken into account in making this determination, including, but not limited to, whether an owner occupies property for a majority of the days during a calendar year. The statute also provides that the Department of Finance may require documentation demonstrating that an owner used the address of such property as the owner's permanent address on the owner's New York State resident income tax return for the relevant year. The city recently issued proposed regulations, which have not yet been finalized.

In enacting the pied-à-terre tax, the legislature ostensibly intended to tax people who benefited from New York City's economy by maintaining a residence there, but would not normally pay income taxes to the city. However, the test for primary residency for purposes of the pied-à-terre tax may be stricter than for New York City personal income tax purposes, and thus some individuals may be subject to both taxes.

For example, assume that an individual living primarily outside the city owns an apartment in the city that is not his primarily residence and also happens to spend more than 183 days in the city. This individual would be a statutory resident of New York City and would be subject to New York City personal income tax. Despite paying taxes to the city on his worldwide income, the individual may also be subject to the pied-à-terre tax on his New York City apartment because it is not his primary residence.

Complications can arise when someone other than the owner occupies a property. The tax will not apply if the actual owner (or his immediate family members) occupies the home as a primary residence. The tax also does not apply if an individual lessee or sublessee occupies a home as a primary residence, but only if pursuant to a bona fide lease that was negotiated in an arm's length transaction with a term of at least one year. It is not clear how a landlord will be able to determine whether a tenant uses a home as a primary residence.

High net-worth individuals often own homes through trusts and LLCs rather than individually. The statute provides that a home held through a trust or an entity will be considered a primary residence if the sole beneficiaries of the trust or the owners of a majority of the interests in the entity use the home as a primary residence. It is not clear how the rules will apply to more complicated ownership structures.

Another potential complication relates to cooperatives. If a tenant-stockholder of a cooperative corporation does not use his apartment as a primary residence, the cooperative corporation would be liable for the pied-à-terre tax rather than the tenant-stockholder individually. The statute provides that in such circumstances, the cooperative corporation shall collect the tax from the tenant-stockholder. However, if the cooperative corporation is unable to collect the tax from the applicable tenant-stockholder, the other tenant-stockholders may end up bearing the burden of the tax, even if they are using their own apartments as primary residences.

These are just some of the many issues that the new pied-à-terre tax raises, some of which may eventually be addressed by regulations. It is also expected that some taxpayers may challenge the validity of the tax on constitutional and other grounds. Although the tax is set to automatically expire on June 30, 2031, it appears likely that the legislature will extend it in the future (assuming it survives legal challenges), as they have with many other tax increases. Therefore, taxpayers owning property in New York City will need to be aware of the tax and plan accordingly.

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