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New York increases rates for real estate transfer and mansion taxes

By Erica Buckley and Ari Glatt

New York State imposes a transfer tax on conveyances of commercial and residential real property located within the state, including sales of individual condominium units and cooperative apartment units. Certain counties and municipalities within New York also impose their own transfer taxes.

On March 31, 2019, the New York Legislature passed amendments to the state's Real Estate Transfer Tax Law that increases the rates of the state's real estate transfer tax (the **NYS Transfer Tax**) and the additional tax (commonly known as the **Mansion Tax**). Here is what developers, sponsors, and property owners in New York need to know about these transfer tax changes:

Changes to take effect July 1, 2019

The changes to the NYS Transfer Tax and the Mansion Tax are to take effect July 1, 2019 and apply to transfers occurring on or after such date. However, transfers made pursuant to a binding written contract entered into on or before April 1, 2019, will not be subject to the new increased tax rates (provided that the date of execution of such 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 commissioner of taxation and finance).

NYS Transfer Tax

For transfers of real property located in New York State, the NYS Transfer Tax is imposed at a rate of \$2 for each \$500 of consideration.

The newly passed amendments increases the rates for certain conveyances. For transfers of real property located in New York City (or any other city in New York State with a population of one million or more), the regular NYS Transfer Tax still applies and an extra \$1.25 for each \$500 of consideration also is added (for a *combined* tax rate of \$3.25 for each \$500 of consideration), but only when the consideration for the entire conveyance is (i) \$3 million or more for a residential real property, and (ii) \$2 million or more for the entire conveyance of any other real property (i.e., nonresidential).

The following chart shows the new NYS Transfer Tax rates (for applicable transfers as described above):

<i>Amount of Consideration</i>	<i>NYS Transfer Tax Rate (Residential)</i>	<i>NYS Transfer Tax Rate (Commercial)</i>
Under \$2 million	0.4%	0.4%
\$2 million up to \$3 million	0.4%	0.65%
\$3 million or more	0.65%	0.65%

Mansion Tax

For transfers of *residential* real property located in New York State when the total consideration is \$1 million or more, the Mansion Tax is imposed at a rate of 1% of the total consideration paid.

The newly passed amendments increases the rates for certain conveyances. For transfers of residential real property located in New York City (or any other city in New York State with a population of one million or more), the Mansion Tax will now be imposed in gradual levels, starting at the rate of 1% when the entire consideration paid is \$1 million or more, and increasing from there on a progressive scale up to the highest rate of 3.9% on transfers when the entire consideration is in excess of \$25 million.

The following chart shows the new Mansion Tax rates (for applicable transfers as described above):

<i>Amount of Consideration</i>	<i>Mansion Tax Rate</i>
\$1 million – \$1,999,999.99	1%
\$2 million – \$2,999,999.99	1.25%
\$3 million – \$4,999,999.99	1.5%
\$5 million – \$9,999,999.99	2.25%
\$10 million – \$14,999,999.99	3.25%
\$15 million – \$19,999,999.99	3.5%
\$20 million – \$24,999,999.99	3.75%
More than \$25,000,000.00	3.9%

Transfer taxes are also imposed on conveyances of interests in real property

For transfer tax purposes under the prior laws as well as the newly passed amendments, instead of just applying to sales of the entire fee title, transfer taxes are also imposed on various conveyances of *interests* in real property—such as certain transfers of a controlling interest in any entity that owns real property in New York, options to purchase with rights of occupancy, and certain leases.

Impact of new transfer tax rates

Many of our real estate and condo developer clients considering potential acquisitions or dispositions have requested that we assist them with their transfer tax planning and offering plan disclosures with respect to these transfer tax levies. Nixon Peabody's team of attorneys would be glad to help you structure future transactions and navigate disclosure requirements in connection with these changes to the Real Estate Transfer Tax Law.

For more information on the content of this alert,¹ please contact your regular Nixon Peabody attorney or:

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