New York State Department of Taxation and Finance

Taxpayer Services Division
Technical Services Bureau

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Mortgage Recording Taxes
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General Questions and Answers on the Mortgage Recording Taxes

This publication addresses some general questions regarding the Tax on Mortgages (mortgage recording taxes), Article I I of the Tax Law,

1. **What is the mortgage recording tax?**

The mortgage recording tax is an excise tax on the privilege of recording a mortgage.

The mortgage recording tax consists of six separate taxes imposed on the recording of mortgages on real property located in New York State. The total amount of tax depends upon the taxes that are in effect in the county and, where applicable, the city where the real property is located.

The six separate taxes have rates varying from $.25 to $1.75 for each $ 100 and each remaining major fraction of principal debt or obligation that is secured by the mortgage (major fraction means more than half). This includes not only the amount secured at the time the mortgage is executed, but also the maximum amount that may be secured by the mortgage under any contingency anytime in the future.

The six taxes are: (i) the basic tax imposed by section 253(l) of the Tax Law, (ii) the special additional tax imposed by section 253 (1 -a) of the Tax Law, (iii) the additional tax imposed by section 253(2)(a) of the Tax Law, (iv) the New York City Tax that is authorized to be imposed by section 253- of the Tax Law, (v) the City of Yonkers Tax that is authorized to be imposed by section 253-d of the Tax Law and (vi) the Broome County Tax that is authorized to be imposed by section 253-c of the Tax Law. With certain exceptions, the rate of the mortgage recording tax varies from a total tax rate of a minimum of $.75 to a maximum of $2.75 for each $ 100 of the amount secured by the mortgage.

The rate of the mortgage recording tax imposed in each county is listed on the back of Form MT- 15, *Mortgage Recording Tax Return. Also,* information about the rate of tax in a specific county may be obtained by calling:

(1) the Technical Services Bureau at (518) 457-0556; or

(2) the recording officer of the county where the real property subject to the mortgage is located.

2. How is the term "mortgage" defined for purposes of Article 11 of the Tax Law?

The term "mortgage" is defined as an instrument in writing that imposes a I ion on or affects the title to real property or both real and personal property with the property being used as security for the payment of money or the performance of an obligation. It includes an executory contract for the sale of real property or both real and personal property under which the purchaser has, or is entitled to, possession of the real property prior to the delivery of the deed. The term mortgage also includes a contract or agreement by which the indebtedness secured by any mortgage is increased or added to, and a contract or agreement pursuant to which new funds are advanced or re-advanced under a prior recorded mortgage of real property. The term mortgage also includes an assignment of rents to accrue from tenancies, subtenancies, leases or subleases, but only with respect to real property located within New York City.

3. Is an "executory contract" for the sale of real property considered a mortgage?

Yes, but only when the purchaser has or is entitled to possession of the real property prior to the delivery of the deed from the seller to the purchaser. The principal debt or obligation used as the basis for computing the mortgage recording tax is that portion of the purchase price under the contract that remains unpaid as of the date that the purchaser has or is entitled to possession of the real property under the contract.

Example - *Corporation X entered into (in executory contract to sell a 10-unit apartment building located in Flushing, Queens County, New York City, to Y for a purchase price of $600,000. On October 1, 1990, the contract was executed and by its terms, Y was required to make a $60, 000 down payment. An additional payment of $100,000 was required on December 1, 1990, when Y was entitled to possession of the premises. The agreement also requires that the contract be recorded. Y will be required to make 10 semiannual payments over a 5- period to Corporation X to pay the remaining balance due under the contract, with the final payment due, on December 1, 1995. Upon receipt of the final payment, Corporation X will deliver a deed conveying the premises to Y*

Since the executory contract grants the purchaser possession of *the real property prior to the delivery of the deed, the contract is a mortgage. Its recording is subject to tax,*

The taxes due upon the recording of this contract are.,

Purchase price under the contract		$600,000
Less: Down payment -10/1/90	$60,000	
Additional payment - 12/1/90	100,000	
Total Subtractions		$160,000
Total amount remaining unpaid at the time Y is entitled to possession - 12/1/90		**$440,000**
Basic tax due ($440,000 $100) x $.50		$ 2,200
Additional tax due ($440,000 100) x $.25		$ 1,100
Special additional tax due ($440,000 + $100) x $.25		$ 1,100
New York City tax due @ $ 1.00 rate ($440,000- $100) x $1.00		$ 4, 400
Total taxes due		**$ 8,800**

4. Is a mortgage given pursuant to a confirmed plan of reorganization under *Chapter XI of* the Bankruptcy Code subject to the mortgage recording tax?

No. Section 1146(c) of Chapter XI of the Bankruptcy Code provides that the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of Chapter XI of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax or similar tax, The mortgage recording tax has been held to constitute a stamp tax or similar tax under this provision.

5. Is the recording of a mortgage given to a lender who Is a natural person exempt from the special additional mortgage recording tax? (Note: See question and answer number six for the definition of "natural person.")

Yes, but only if the mortgaged premises consist of real property improved by a structure containing six or fewer residential dwelling units each with separate cooking facilities.

6. How Is the term "natural person" defined in section 642.3 of the mortgage recording tax regulations for purposes of the "natural person" exemption from the special additional tax as described in question and answer number rive?

"Natural person" means a human being, as opposed to an artificial person, who is the beneficial owner of a mortgage (mortgagee). A natural person does not include: a corporation or partnership, natural person(s) operating a business under a d/b/a (doing business as), an estate such as the estate of a ban krupt or deceased person, or a trust.

7. Is the natural person exemption from the special additional tax allowed when the mortgagee (lender) is the executor or executrix of an estate, a trustee of a trust, a partner of a partnership or a

shareholder or officer of a corporation, with the estate, trust, partnership or corporation being the beneficial owner of the mortgage?

No. A person who is acting in a fiduciary capacity for a mortgagee who is not a natural person does not qualify for the exemption.

8. Is a voluntary, nonprofit hospital corporation subject to the mortgage recording tax?

No. Subdivision 3 of section 253 of the Tax Law states that the mortgage recording tax will not be imposed upon any mortgage executed by a voluntary, nonprofit hospital corporation, (See question and answer number 16 for procedure to follow to claim an exemption.)

9. Which not-for-profit organizations are exempt from the special additional mortgage recording tax?

Organizations organized and operated on a nonprofit basis, no part of the net earnings of which inures to the benefit of any officer, director or member and which are exempt from federal income taxation pursuant to section 501(a) of the Internal Revenue Code, are exempt from the special additional tax. However, where either the mortgagor or mortgagee is this type of not-for-profit organization, the mortgagor or mortgagee who is nut the not-for-profit organization must pay the special additional tax. When both the mortgagor and mortgagee arc qualifying not-for-profit organizations, the recording of the mortgage is exempt from the special additional mortgage recording tax. (See question and answer number 16 for procedure to follow to claim an exemption.)

10. Is an "assignment of rents" given as security for the payment of a debt deemed to be a mortgage subject to the mortgage recording tax?

Effective July 1, 1989, an "assignment of rents" given as security for an indebtedness, when the rents am to accrue from the rental of real property located in New York City, is deemed to be a mortgage for purposes of the mortgage recording tax. When the real property is located outside New York City, the assignment of a lessees or sublessor's right to receive rents as security for an indebtedness is not deemed to be a mortgage.

11. If I have one mortgage that covers property in more than one county, how can I record the same mortgage in each county without paying tax in each county?

Section 257 of the Tax Law provides that the tax due in each county where the real property, or any part thereof, is situated is paid to the recording officer of the county where the mortgage is first recorded. The recording officer will then endorse upon the mortgage a receipt for the amount of the tax paid. The endorsed mortgage may then be recorded in the other counties where the real property, or any part thereof covered by the mortgage, is located, without further payment.

12. If a mortgage covers real property located in more than one county, and one or more but not all of the counties have suspended the Imposition of the additional tax, or a part of the property is located in New York City, Yonkers or Broome County, what Is the procedure that must be followed for the purpose of the mortgage recording tax?

One of the following procedures must be followed:

(1) The taxpayer may compute the tax as if the property were located entirely in any one of the counties that is authorized to collect the greatest amount of tax. That amount is paid to the recording officer of the county where the mortgage is first recorded. Ile recording officer endorses on the mortgage the amount of the tax paid. Also, at the time the taxpayer presents the mortgage, he or she should present a completed Form MT-15.1, *Mortgage* Recording Tax Claim for *Refund*, to the recording officer. The taxpayer can then record the mortgage in any other county where the property or any part of it is located.

The recording officer will submit information to the Tax Department about the relative assessed value of the property located in each county, along with Form MT15. 1. The Tax Department will determine the proper total tax due and the amount of tax to be apportioned to each county. If it is determined that the tax was overpaid, the Tax Department will instruct the appropriate recording officer to refund the amount of the overpayment to the taxpayer or his or her duly authorized representative.

If the taxpayer fails to present a completed refund claim farm (Form MT-15.1) to the recording officer at the time the mortgage was first recorded, The taxpayer may file for a refund directly with the Tax Department. The refund application must be filed within two years of the payment of the tax.

(2) At the time the mortgage is presented for recording, the taxpayer may file a completed Form *MT- 15, Mortgage Recording Tax* Return and pay the tax computed on the return to the recording officer of the county where the mortgage is first recorded. Tile recording officer will endorse the payment of the tax upon the mortgage so that the mortgage can be recorded in the other county or counties. The recording officer must submit the original of the return (Form MT- IS), along with the information described in procedure number one, to the Tax Department.

The return filed is subject to audit by the Tax Department and by the recording officer in the county where the mortgage was first recorded. If there is an underpayment of the tax, the Tax Department will instruct the recording officer who collected the tax to notify the parties to the mortgage of the underpayment. If there is an overpayment of the tax, the Tax Department will instruct the appropriate recording officer to refund the amount of the overpayment to the taxpayer or his or her duly authorized representative.

13. When a mortgage is recorded that covers real property located partly in and partly out of New York State, is tax required to be paid on the entire amount secured by the mortgage?

No. When a mortgage covers real property located partly in and partly out of the State, the mortgage recording taxes are determined based on an apportionment of the principal debt or obligation that is, or under any contingency may be, secured at the date of the execution of the mortgage or any time in the future. The apportionment is made by multiplying the principal debt or obligation by a fraction. The numerator is the net value of the mortgaged property within this state, and the denominator is the net value of the entire mortgaged property. For this computation, net value of-the mortgaged property means the property's fair market value less the unpaid amount of any prior existing mortgage lien(s) that remain on the property subsequent to the execution of the mortgage.

Example *- Mr. Smith borrows$ 100, 000 from Bank X, and gives the bank a mortgage on two commercially improved parcels. One of the parcels is located in Albany, New York and the other is located in Paterson, New Jersey. The parcel located in Albany has a fair market value of $400, 000, and has a prior existing mortgage lien totaling $33, 000, which remains on the parcel after execution of the mortgage and which represents an amount owed to Bank Z The parcel located in Paterson has a fair market value of $200, 000, and has no prior existing mortgage liens. The net value of the Alban - y parcel is $367,000 ($400, 000 - $33, 000) and the net value of both parcels is $567,000($367,000+$200,000). The portion of the $100, 000 debt secured by the mortgage subject to the mortgage recording taxes is computed as follows:*

Net value of Albany parcel *$367,000*
Net value of both parcels *$567,000* *X $100,000 = $64,727*

Accordingly, $64,700 ($64,727 rounded to the nearest $100) would be the amount used to compute the mortgage recording taxes,

In determining the separate not values of the mortgaged property, the Tax Department will consider only tangible property, both real and personal, with leases of real property deemed to be tangible property.

To record a mortgage of property located in and out of this state, one of the following procedures may be used:

Procedure 1 - A request for an order of determination and apportionment may be made before recording the mortgage. After receiving the request and the required documentation, the Tax Department will issue an order of determination and apportionment to the mortgagor, the mortgagee and the State Comptroller. It will state the portion of the principal debt or obligation secured by the mortgage that is subject to the mortgage recording taxes. The mortgage may then be. recorded and the tax paid based on that amount.

When making a request for an order of determination and apportionment prior to the recording of the mortgage, send the Tax Department the following documentation:

(1) a copy of the mortgage

(2) book values and appraised values of the property covered by the mortgage, separated into the following categories;

(i) real property in the State;

(ii) real property outside the State;

(iii) tangible personal property located in the State-, and

(iv) tangible personal property located outside the State;

(3) assessed values of the real property located in the State by tax district as they appear on the assessment rolls most recent to the date of recording the mortgage;

(4) a brief description of each parcel of real property, including the page of the mortgage where described; and

(5) a statement of all prior encumbrances upon the property covered by the mortgage, including a description of each encumbrance, and the amount outstanding.

The Tax Department may also require additional information necessary to make a proper order of determination and apportionment.

Procedure 2 - When a mortgage covering property situated partly in and partly out of the state is presented for recording and a request for an order of determination and apportionment has not been made, the mortgage recording taxes must be computed as if the property were situated entirely within this State.

However, the mortgage recording taxes may be computed based on the apportionment described in Procedure I if, at the lime of recording the mortgage, a statement in affidavit form, in duplicate, executed by the mortgagor or his or her authorized representative, containing the following information, is presented to the recording officer:

(1) the names and addresses of the parties to the mortgage;

(2) the net value of the property covered by the mortgage in this state;

(3) the net value of the property covered by the mortgage outside this state;

(4) a mathematical computation of the portion of the, amount secured by tile mortgage which is subject to tax.

The Tax Department, after receiving the statement from the recording officer, may request from any person having knowledge of the transaction the documentation described in Procedure 1, which it deems necessary to make a proper order of determination and apportionment.

A certified copy of the order of determination and apportionment will be given to the mortgagor, the mortgagee and the State Comptroller. Any additional taxes due, as set forth in the order, must be paid within 10 days of delivery of the certified COPY.

If the taxes paid at the time of filing exceed the taxes determined to be payable, the order of determination and apportionment will instruct the appropriate recording officer to refund to the person who paid the taxes, the amount overpaid plus applicable interest.

14. In computing the additional tax imposed by section 253(2)(a) of the Tax Law, is the first $10,000 of principal debt or obligation excluded from taxation if the mortgage is on real property improved by two or more one or two-family residences?

No. The first $10,000 of principal debt or obligation is excluded only if the mortgage is on real property that is or will be principally improved by a one- or two-family residence or dwelling. If the mortgage covers real property improved by two or more one or two-family residences or dwellings, the $10,000 exclusion does not apply.

15. Can a supplemental instrument or mortgage be recorded without the payment of mortgage tax, when the proper tax had been paid upon the recording of the prior mortgage, and the supplemental instrument or mortgage secures no new or further indebtedness?

Generally, yes. Section 255 or the Tax Law provides that a supplemental instrument or mortgage may be, recorded without payment of mortgage tax if the instrument or mortgage is recorded:

(1) for the purpose of correcting or perfecting the prior recorded mortgage., or

(2) pursuant to some provision or covenant in the prior recorded mortgage; or

(3) for the purpose of imposing alien upon property not originally covered by or not described in such recorded primary mortgage,

However, for purposes of (3) above, section 255(l)(b) of the Tax Law provides that if the supplemental instrument or mortgage is recorded in a county that imposes the additional tax and the primary mortgage was recorded in a county that does not impose the additional tax, the additional tax must be paid. The recording officer of the county where the supplemental instrument or mortgage is recorded will collect the additional tax based on the amount secured by the primary mortgage less principal payments. This rule applies in the case of the locally authorized taxes. If the supplemental instrument or mortgage is recorded in any of the New York City counties and the primary mortgage was recorded in a county other than a New York City county, New York City mortgage recording tax must be paid. The recording officer of the New York City county where the supplemental instrument or mortgage is recorded will collect the New York City mortgage recording tax based on the amount secured by the primary mortgage less principal payments. If the supplemental instrument or mortgage extends the lien to real property in the City of Yonkers or Broome County, the recording officer of Westchester County will collect the City of Yonkers mortgage recording tax and the recording officer of Broome County will collect the Broome County mortgage recording tax based on the amount secured by the primary mortgage less principal payments.

Examples of supplemental instruments or mortgages follow.

Example -1 - *The correct tax was* paid on a *mortgage containing an error in the description of the property covered A supplemental mortgage correcting the* description *may be recorded tax free.*

Example 2 - *The correct tax* was paid upon recording of *an executory contract for the sale of real property in which the contract vendor (seller) agreed to* convey title *at a later date and lake back a mortgage to secure the then unpaid balance of the purchase price. The mortgage given* pursuant to the contract *is a supplemental instrument,* within the *meaning of section 255 of the Tax Law, and may he recorded tax free.*

Example 3 - *A mortgage securing a principal amount of $10, 000 was recorded covering parcel A and the correct tax was paid. A supplemental mortgage or instrument spreading the lien of the original mortgage to Parcel A so that the mortgage will cover both parcels A and B, may he recorded tax free, subject to the rule of section 255(l) (b)* of *the Tax Law as* outlined *in item number 3 above.*

A supplemental instrument or mortgage is taxable to the extent of any new or further indebtedness or obligation secured.

16. When a mortgage is presented for recording and an exemption from the mortgage recording tax is requested, must any additional documents he filed with the recording officer?

Yes. At the time the mortgage is presented for recording, an affidavit made in duplicate must be filed, signed by the Mortgagor or mortgagee or any other person who has knowledge of the facts, describing the mortgage sufficiently to identify it and setting forth the basis for claiming the exemption.

If an exemption is claimed because the mortgage is a reverse mortgage that conforms to the provisions of section 280 or section 280-a of the Real Property Law, then at the time the mortgage is recorded, the following documentation must be submitted:

(1) For a reverse mortgage made pursuant to the provisions of section 280 of the Real Property Law, an affidavit, made in duplicate, signed by the mortgagee, setting forth the following:

   (a) the mortgage is a reverse mortgage given by a mortgagor who is, or mortgagors all of whom are, at least sixty Mrs of age;

   (b) the reverse mortgage is of real property improved by a one- to four-family residence or condominium unit that is the residence of the mortgagor or mortgagors: and

   (c) the reverse mortgage conforms to all other provisions of section 280 of the Real Property Law.

(2) For a reverse mortgage made pursuant to the provisions of section 280-a of the Real Property Law, an affidavit, made in duplicate, signed by the mortgagee, setting forth the following:

   (a) the mortgage is a reverse mortgage given by a mortgagor who is, or mortgagors all of whom are, at least seventy years of age.,

   (b) the reverse mortgage is of real property improved by a one- to four-family residence or condominium unit that is the residence of the mortgagor or mortgagors; and

   (c) the reverse mortgage conforms to all other provisions of section 280-a of the Real Property Law.

The Tax Department and the recording officer reserve the right to request additional information to substantiate the right to claim an exemption.

17. If the mortgage recording tax was erroneously paid, or if the mortgagor exercises a "statutory right or rescission" according to section 257-a of the Tax Law, how may a taxpayer claim a refund?

A taxpayer may claim a refund by filing with the Tax Department Form MT- 15. *1, Mortgage Recording Tax Claim for Refund. Form MT- 15.1* should contain the following information:

(1) a description of the mortgage instrument;

(2) the party or parties who paid the tax; and

(3) the facts upon which the refund claim is based.

In addition, the taxpayer must furnish a complete copy of the recorded mortgage which is the subject of the refund claim and any other information or documentation necessary to adequately support the grounds upon which the refund claim is based.

Also, if the basis for a refund claim is the mortgagor's exercise of the "statutory right of rescission," the taxpayer must furnish a copy of the recorded satisfaction or discharge of the mortgage and an executed copy of the "Notice of Right to Cancel," in addition to the information and documents outlined in the preceding paragraph.

The taxpayer claiming a refund must file Form MT15.1 within two years of the date the erroneous payment of taxes was received by the recording officer or, for a refund resulting from the mortgagor's exercise of the "statutory right of rescission," the later of two years from the time of the payment of the taxes or one year from the date the mortgage was discharged.

Form MT- 15.1 and copies of the required supporting documentation will be mailed to the following address:

NYS TAX DEPARTMENT
TTTB-MORTGAGE TAX
PO BOX 5045
ALBANY, NY 12205-5045

If a refund is to be. paid to someone other than the mortgagor or the mortgagee, attach an acknowledged assignment consenting to the payment of the refund to the named recipient to Form MT- 15. 1.

Note: A "statutory right of rescission" means the right of a borrower (mortgagor) to cancel a consumer credit transaction in which a security interest, including a real property mortgage, is retained or acquired in any real property that is used, or is expected to be used, as a residence of the borrower.

FORMS REQUEST

If you need forms pertaining to the mortgage recording taxes, call to] I free (from New York State only) 1800 462-8100. From areas outside New York State call (518) 438-1073.