

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-90 (1) R
Tax on Mortgages
January 10, 1990

1989 Amendments to the Tax on Mortgages

Chapter 241 of the Laws of 1989 was enacted July 1, 1989. Among other things, it amended Article 11 of the Tax Law, Tax on Mortgages (Mortgage Recording Tax), the Real Property Law and the Administrative Code of the City of New York. Chapter 671 of the Laws of 1989, enacted July 22, 1989, amended section 252 of Article 11 of the Tax Law, Tax on Mortgages.

This memorandum provides a brief summary of the various amendments that affect the Mortgage Recording Tax.

Chapter 241 Amendments

A. Subdivisions 2 through 6 of section 253-a of the Tax Law are renumbered as subdivisions 3 through 7 and a new subdivision 2 is added. New subdivision 2 provides that, for purposes of determining the applicable rate of New York City mortgage recording tax, the amount of principal debt or obligation subject to the tax must be aggregated in the case of multiple or "serial" mortgages where (1) such mortgages form part of the same or related transaction, and (2) such mortgages have the same or related mortgagors.

The term "related," when used with reference to mortgagors, is defined to include (but is not limited to):

(1) family members, including spouses, ancestors, lineal descendants, and brothers and sisters (whether by the whole or half blood);

(2) a shareholder and a corporation, where that shareholder owns or controls directly or indirectly more than 50% of the value of the outstanding stock of that corporation;

(3) a partner and a partnership, where that partner owns or controls directly or indirectly more than 50% of the capital or profits interest in such partnership;

(4) a beneficiary and a trust, where that beneficiary owns or controls directly or indirectly more than 50% of the beneficial interest in such trust;

(5) two or more entities (corporations, partnerships, associations, trusts or any combination thereof) owned or controlled directly or indirectly by the same person, corporation or other entity, or interests; and

(6) a grantor of a trust and such trust.

New section 253-a(2) of the Tax Law also provides that if the Commissioner of Taxation and Finance determines that a mortgage transaction or transactions have been formulated for the purpose of avoiding or evading a rate of tax in excess of the lowest authorized rate imposed by section 253-a of the Tax Law, rather than solely for an independent business or financial purpose, the

Commissioner shall treat all of the mortgages forming a part of the transaction or transactions as a single mortgage for purposes of determining the rate of tax.

New section 253-a(2) of the Tax Law further provides that all mortgages having the same or related mortgages, that are offered for recording within a 12-month period, shall be presumed to be part of a related transaction, unless the presumption is rebutted by clear and convincing evidence to the contrary. The amendments to section 253-a of the Tax Law also authorize the Commissioner of Taxation and Finance to require affidavits and forms, and to prescribe rules and regulations deemed necessary to enforce the provisions of section 253-a(2).

Note: Comparable amendments were made to section 11-2601 of the New York City Administrative Code by adding new subdivision d.

B. Subdivision 1 of section 255 of the Tax Law is amended to impose a mortgage recording tax at the rate specified in section 253(2)(a) of the Tax Law upon the recording of a supplemental mortgage that imposes the lien of a prior recorded mortgage on property not previously covered by or described in, such prior mortgage (spreader agreement), or upon the recording of an additional mortgage on additional property as further or as substitute security for the debt or obligation secured by the prior recorded mortgage. This tax is applicable where the prior recorded mortgage covers property in a county which had suspended the imposition of the additional mortgage recording tax and the spreader agreement or additional mortgage covers property located in a county where such additional mortgage recording tax is in effect.

(Applicable to supplemental mortgages or additional mortgages recorded on or after July 1, 1989, and to any instrument affecting the foregoing recorded on or after July 1, 1989.)

C. Section 258 of the Tax Law is amended by adding subdivision 2 which provides new interest and penalty provisions with respect to mortgages of property in the City of New York. New subdivision 2 also provides that where a mortgagor pays the special additional tax imposed by subdivision 1-a of section 253 of the Tax Law, plus accrued interest and penalties, in order to obtain a release or discharge of a mortgage, and the payment of such tax was, in fact, the liability of the mortgagee, the mortgagor can maintain an action to recover such amount from the mortgagee or any subsequent assignees or owners of the mortgage or such mortgagor may claim the credit allowed for the special additional tax paid, if applicable. (For taxable years beginning in 1988 and thereafter the mortgagor may claim the credit allowed for the special additional tax on its New York State Franchise Tax Return. For taxable years beginning before 1988, the credit allowed for the special additional tax may be claimed by the mortgagor on its New York State Franchise Tax Report, New York State Franchise Tax Return or New York State Personal Income Tax Return.)

The rate of interest will be the rate of interest for underpayments set by the Commissioner of Taxation and Finance under section 1096(e) of the Tax Law. The rate of penalty is 10% of the amount due for the first month plus 2% per month thereafter (up to a maximum of 25%). The Commissioner of Taxation and Finance may remit the penalties where a mortgage is recorded in good faith and it is later determined that further mortgage recording tax is due. (Interest provisions are effective September 1, 1989. Increased penalties are applicable with respect to mortgages recorded on or after July 1, 1989.)

D. Section 263 of the Tax Law is amended to provide that the interest rate to be paid on refunds of the mortgage recording tax paid on mortgages of real property within the City of New York shall be set by the Commissioner of Taxation and Finance pursuant to section 1096(e) of the Tax Law or at the rate of 6% per annum if no rate is set. (Effective September 1, 1989.)

E. Section 11-2601 of the administrative code of the City of New York is amended by adding new subdivision e. Subdivision e provides that the New York City Mortgage Recording Tax shall be imposed on the recording of a supplemental mortgage that imposes the lien of a prior recorded mortgage on property not covered in the prior mortgage (a spreader agreement), or on the recording of a supplemental mortgage that is an additional mortgage on additional property as further or substitute security for a debt or obligation secured by a prior recorded mortgage. Under subdivision e, the tax applies where the prior mortgage is on real property located outside the city and recorded without payment of the city tax and the supplemental mortgage covers real property located within the City of New York.

Chapter 241 of the Laws of 1989 also amended section 250 of Article 11 of the Tax Law and sections 275 and BBg-ee of the Real Property Law, which are the subject of TSB-M-89-(6.1)-R issued August 3, 1989.

Chapter 671 Amendment

Section 252 of the Tax Law is amended to change the reference to a federal land bank to a reference to an agricultural credit association to reflect the merger of New York's Federal Land Bank Associations and Production Credit Associations.