
Important Notice

July, 2005

Recent Legislation Provides Personal Income Tax Taxpayers a Special Additional Mortgage Recording Tax Credit Retroactive to 2004

For a tax year beginning on or after January 1, 2004, if you paid the special additional mortgage recording tax to record a mortgage on or after January 1, 2004 on real property located in New York State, you may qualify for a credit for the amount of special additional mortgage recording tax you paid. Partners in a partnership (including members of an LLC that is treated as a partnership for federal income tax purposes), estates and trusts, and beneficiaries of estates and trusts may also qualify for this credit if the partnership, estate or trust, in its tax year beginning on or after January 1, 2004, paid the tax to record a mortgage on or after January 1, 2004. This new credit does not apply to shareholders of New York S corporations. A New York S corporation will continue to claim a credit for this tax directly on its New York State S corporation return using Form CT-43, *Claim for Special Additional Mortgage Recording Tax Credit*.

This credit may be claimed by the lender or borrower, as the case may be, that paid the special additional mortgage recording tax. Except for loans made by a federal credit union and some loans made by a federal savings bank or by an exempt organization, in the case of a residential mortgage (defined below), the special additional mortgage recording tax is paid by the lender. In most other cases, the special additional mortgage recording tax is paid by the borrower. You should contact your lending institution or tax advisor to determine the amount, if any, of special additional mortgage recording tax you paid.

However, the tax credit is not allowed for the special additional mortgage recording tax paid on residential mortgages (defined below) if the real property is located in Erie county or any of the counties within the Metropolitan Commuter Transportation District (MCTD). The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

A *residential mortgage*, for purposes of this credit means a mortgage on real property which is principally improved by one or more structures containing a total of not more than six **residential** dwelling units, each with its own separate cooking facilities.

If the amount of the special additional mortgage recording tax credit exceeds your tax for the tax year, you may carry over the amount of credit exceeding your tax to the following year or years, or you can elect to treat the unused amount of credit as an overpayment of tax to be credited or refunded, without interest.

If you qualify to claim this credit for 2004 and have not filed your 2004 tax return, complete new 2004 Form IT-256, *Claim for special additional mortgage recording tax credit*, and attach it to your 2004 return when you file.

If you qualify to claim this credit for 2004 and have already filed your 2004 tax return without claiming the credit, you must amend your 2004 return to claim the credit. See the following instructions on how to amend your return.

IT-201 filers - File 2004 Form IT-201-X, *Amended resident income tax return*. Be sure to complete 2004 Form IT-256, *Claim for special additional mortgage recording tax credit* and attach it to Form IT-201-X.

IT-203 filers - File 2004 Form IT-203-X, *Amended nonresident and part-year resident income tax return*. Be sure to complete 2004 Form IT-256, *Claim for special additional mortgage recording tax credit*, and attach it to Form IT-203-X.

IT-204 filers - Use a blank 2004 Form IT-204, *Partnership return*, and write **Amended** at the top. Include the amount of the special additional mortgage recording tax credit in the total for line 24. Be sure to complete 2004 Form IT-256, *Claim for special additional mortgage recording tax credit*, and attach it to your amended Form IT-204. In addition, each partner must file an amended return to claim his or her share of the credit. It is the responsibility of the partnership to inform each partner of his or her distributive share of the special additional mortgage recording tax credit.

IT-205 filers - Use a blank 2004 Form IT-205, *Fiduciary return*, and write **Amended** at the top. Be sure to complete 2004 Form IT-256, *Claim for special additional mortgage recording tax credit*, and attach it to the amended Form IT-205. In addition, each beneficiary must file an amended return to claim his or her share of the credit (if applicable). It is the responsibility of the estate or trust to inform each beneficiary of his or her share of the credit.

The 2004 version of Form IT-256 and instructions is available on our web site at www.nystax.gov or you can call 1 800 462-8100.