New York State
Department of
Taxation and Finance
Taxpayer Guidance Division

Tax Bulletin
Mortgage Recording Tax
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$10,000 Residential Property Exclusion on Certain Mortgages

Introduction

This bulletin explains when $10,000 of the principal debt or obligation can be excluded when computing the additional tax component of the mortgage recording tax.

Discussion

Mortgage recording tax must be paid when a mortgage on real property located in New York State is recorded. The tax consists of several components, including:

- the basic tax,
- the special additional tax, and
- the additional tax.

Several cities and counties also impose a separate mortgage recording tax. The total amount of tax depends upon which of these taxes are in effect in the city or county where the real property is located. The rate of mortgage recording tax imposed in each city and county is listed on Form MT-15, *Mortgage Recording Tax Return.*

Calculation of additional tax

The additional tax component is calculated per $100 of the mortgage debt or obligation secured. If the real property is principally improved or to be improved by a one- or two-family residence or dwelling, however, the first $10,000 of the mortgage debt or obligation is excluded from the additional tax.

The $10,000 exclusion:

- applies only once to each mortgage that is not supplemental to a previously recorded mortgage.

- does not apply to any instrument modifying a previously recorded mortgage that originally secured an indebtedness or obligation of $10,000 or more.

Example 1: In 1998, Mr. Smith buys a one-family residence in Nassau County for $320,000. He borrows $200,000 from Bank X and gives the bank a mortgage on the residence as security for the loan. Since the mortgaged property is principally improved by a one-family residence, he can exclude $10,000 and the additional tax due is computed on $190,000 ($200,000 borrowed minus $10,000).

In 2001, Mr. Smith takes out a second loan and mortgage on the same residence and borrows $50,000 from Bank X. Since this is a new mortgage on the residence, he can exclude $10,000 and the additional tax due is computed on $40,000 ($50,000 borrowed minus $10,000).

In June 2010, Mr. Smith wants to refinance the debt and consolidate the two mortgages he has with Bank X on his residence. The combined balance of the first mortgage debt and the second mortgage debt is $120,000. As part of the refinancing, *he borrows an additional $30,000 but a separate mortgage is not recorded for that amount. Instead, the primary recorded mortgage is modified to include the additional $30,000 and then the liens of both mortgages are consolidated to cover the total debt of $150,000. The $10,000 exclusion doesn't apply to the modified and consolidated mortgage because it is supplemental to the first mortgage and the second mortgage. A section 255 affidavit must be submitted at the time of recording with the modified and consolidated mortgage indicating that it is supplemental to the first mortgage and the second mortgage.*

Example 2: Same facts as Example 1, except prior to consolidating the mortgages, Mr. Smith executes a new note and a new mortgage is recorded for $30,000. Mr. Smith can exclude $10,000 because it's a separate mortgage and the additional tax component due is computed on $20,000 ($30,000 borrowed minus $10,000). An agreement consolidating the liens of all three debts may then be recorded with a section 255 affidavit indicating that it is supplemental to the first mortgage, the second mortgage and the new mortgage.

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References and other useful information

Tax Law: Sections 253; 253.2; and 255

Regulations: Sections 640.2; 642.2; and 645