

Senate One House Budget - Revenue (S. 2509-B), Part SS

Assembly One House Budget – Revenue (A. 3009-B), Part VV

Section 1. The real property law is amended by adding a new section 291-k to read as follows:

§ 291-k. Recording of mezzanine debt and preferred equity investments. 1. Within a city having a population of one million or more, a mortgage instrument is recorded in the office of the recording officer of any county, any mezzanine debt or preferred equity investment related to the real property upon which the mortgage instrument is filed shall also be recorded with such mortgage instrument. For the purposes of this section, "mezzanine debt" and "preferred equity investments" shall mean debt carried by a borrower that may be subordinate to the primary lien and is senior to the common shares of an entity or the borrower's equity and reported as assets for the purposes of financing such primary lien. This shall include non-traditional financing techniques such as a direct or indirect investment by a financing source in an entity that owns the equality interests of the underlying mortgage where the financing source has special rights or preferred rights such as: (i) the right to receive a special or preferred rate of return on its capital investment; and (ii) the right to an accelerated repayment of the investors capital contribution.

2. This section shall apply to both mezzanine debt and preferred equity investments if both used by the borrower or mortgagor, or either mezzanine debt or preferred debt, if either is used by the borrower or mortgagor.

3. For purposes of this section, "mezzanine debt" and "preferred equity investments" shall not include debt on cooperative or common shares of a residential dwelling where the unit owner of a cooperative apartment is a shareholder of the ownership entity, has exclusive occupancy of such dwelling unit, and has established and delimited rights under a proprietary lease.

4. No remedy otherwise available to a secured party under article nine of the uniform commercial code shall be available to enforce a security agreement pertaining to mezzanine debt financing and/or preferred equity investments in relation to real property upon which a mortgage instrument is filed that is evidenced by a financing statement, unless that financing statement is filed and the tax imposed pursuant to the authority of section two hundred fifty-three-aa of the tax law, has been paid.

§ 2. Section 9-601 of the uniform commercial code is amended by adding a new subsection (h) to read as follows:

(h) Security interest perfected by financing statement. 1. Notwithstanding any provision of law to the contrary, a security interest in mezzanine debt and/or preferred equity investments related to the real property upon which a mortgage instrument is filed within a city having a population of one million or more, may only be perfected by the filing of a financing statement under subpart 1 of part 5 of this article and only after the payment of any taxes due pursuant to section two hundred ninety-one-k of the real property law.

2. For purposes of this section, the terms "mezzanine debt" and "preferred equity investments" shall have the same meaning as provided in section two hundred ninety-one-k of the real property law.

3. This section shall not be applicable to any debt on cooperative or common shares of a residential dwelling where the unit owner of a cooperative apartment is a shareholder of the ownership entity, has exclusive occupancy of such dwelling unit, and has established and delimited rights under a proprietary lease.

§ 3. Paragraph (a) of subdivision 2 of section 250 of the tax law, as amended by section 1 of part Q of chapter 60 of the laws of 2004, is amended to read as follows:

(a) **(1)** The term "mortgage" as used in this article includes every mortgage or deed of trust which imposes a lien on or affects the title to real property, notwithstanding that such property may form a part of the security for the debt or debts secured thereby. An assignment of rents to accrue from tenancies, subtenancies, leases or subleases of real property, within any city in the state having a population of one million or more, given as security for an indebtedness, shall be deemed a mortgage of real property for purposes of this article. Executory contracts for the sale of real property under which the vendee has or is entitled to possession shall be deemed to be mortgages for the purposes of this article and shall be taxable at the amount unpaid on such contracts. A contract or agreement by which the indebtedness secured by any mortgage is increased or added to, shall be deemed a mortgage of real property for the purpose of this article, and shall be taxable as such upon the amount of such increase or addition.

(2) Notwithstanding anything in this section or section two hundred fifty-five of this article to the contrary, a contract or agreement whereby the proceeds of any indebtedness secured by a mortgage of real property in any city in the state having a population of one million or more are used to reduce all or any part of a mortgagee's equity interest in a wraparound or similar mortgage of such real property shall be

deemed a mortgage of real property for the purposes of this article and shall be taxable as such to the extent of the amount of such proceeds so used, without regard to whether the aggregate amount of indebtedness secured by mortgages of such real property is increased or added to.

(3) Notwithstanding any provision to the contrary in this section or section two hundred fifty-five of this article, "mezzanine debt" and "preferred equity investments" as such terms are defined in subdivision four of this section, shall be taxable and shall apply to taxes in subdivisions one, one-a and two of section two hundred fifty-three of this article, but shall not apply to any other taxes in this article on or after the effective date of this subparagraph.

§ 4. Section 250 of the tax law is amended by adding a new subdivision 4 to read as follows:

4. The terms "mezzanine debt" and "preferred equity investments" shall have the same meaning as provided in section two hundred ninety-one-k of the real property law.

§ 5. The tax law is amended by adding a new section 253-aa to read as follows:

§ 253-aa. Recording tax on mezzanine debt. 1. Within a city having a population of one million or more, a tax, measured by the amount of principal debtor obligation which is under any contingency may be secured at the date of the execution thereof, or at any time thereafter, by a security agreement pertaining to mezzanine debt financing and/or preferred equity investments in relation to real property upon which a mortgage instrument is filed, as evidenced by a financing statement, is imposed on the filing of the financing statement.

2. The rate and incidence of the tax shall be in the same amount as any tax that has been imposed by a county or city under the authority of this article on the recording of a mortgage instrument financing statement pertaining to mezzanine debt financing and/or preferred equity investments in relation to real property upon which a mortgage instrument is filed in the same manner as the local mortgage recording tax.

3. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration, collection, determination and distribution of the tax imposed by section two hundred fifty-three of this article shall apply to the tax imposed under the authority of this section with such modification as may be necessary to adapt such language to the tax so authorized. Any reference to a mortgage will be deemed to be a reference to a

financing statement that evidences a security agreement. Such provisions shall apply with the same force and effect as if those provisions had been set forth in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section.

4. No remedy otherwise available to a secured party under article nine of the uniform commercial code shall be available to enforce a security agreement pertaining to mezzanine debt financing and/or preferred equity investments in relation to real property upon which a mortgage instrument is filed that is evidenced by a financing statement, unless that financing statement is filed and the tax imposed pursuant to the authority of this section has been paid.

5. For the purposes of this section:

(a) "mezzanine debt" and "preferred equity investments" shall have the same meaning as provided in section two hundred ninety-one-k of the real property law.

(b) "financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(c) "security agreement" means an agreement that creates or provides for a security interest.

6. The tax imposed on a security agreement pertaining to mezzanine financing and/or preferred equity investments upon which a mortgage instrument is filed pursuant to this section shall be in the same amount as any that apply to the mortgage instrument that is imposed on the mortgage instrument associated with the mezzanine financing and/or preferred equity investments upon which a mortgage instrument is filed. Any tax that has been imposed by a county or city under the authority of this article shall be deemed to include the authority to impose and collect the tax on the recording of a financing statement pertaining to mezzanine debt financing and/or preferred equity investments in relation to real property upon which a mortgage instrument is filed in the same manner as the local mortgage recording tax.

§ 6. Paragraph (a) of subdivision 1 of section 255 of the tax law is amended by adding a new subparagraph (iii) to read as follows:

(iii) Notwithstanding the provisions of subparagraph (i) of this paragraph, the taxes imposed by the authority under subparagraph three of paragraph (a) of

subdivision two of section two hundred fifty of this article shall apply to mezzanine debt and/or preferred equity investments as such terms are defined by subdivision four of such section.

§ 7. Section 257 of the tax law is amended to read as follows:

§ 257. Payment of taxes. The taxes imposed by this article shall be payable on the recording of each mortgage of real property subject to taxes thereunder. Such taxes shall be paid to the recording officer of any county in which the real property or any part thereof is situated; **provided, however, the taxes imposed pursuant to section two hundred fifty-three-aa of this article, which shall be paid to the recording officer, shall be remitted to the New York city housing authority as constituted by section four hundred one of the public housing law.** It shall be the duty of such recording officer to indorse upon each mortgage **and any mezzanine debt included with such mortgage** a receipt for the amount of the tax so paid. Any mortgage so indorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax indorsed upon each mortgage shall be recorded therewith. The record of such receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage, **including any mezzanine debt.**

§ 8. Subdivision 1 of section 258 of the tax law, as amended by chapter 241 of the laws of 1989, is amended to read as follows:

1. No mortgage of real property shall be recorded by any county clerk or register, unless there shall be paid the taxes imposed by and as in this article provided. No mortgage of real property which is subject to the taxes imposed by this article shall be released, discharged of record or received in evidence in any action or proceeding, nor shall any assignment of or agreement extending any such mortgage be recorded unless the taxes imposed thereon by this article shall have been paid as provided in this article. **For purposes of the taxes imposed and authorized by subparagraph three of paragraph (a) of subdivision two of section two hundred fifty of this article, unless such taxes shall have been paid, no mortgage of real property shall be recorded by any county clerk or register, nor shall such mortgage be released, discharged, recorded or received in evidence in any action or proceeding, nor shall any assignment of agreement extending such mortgage be recorded.** Provided, however, except as otherwise provided in subdivision two of this section, in order to obtain a release or discharge of record where the mortgagor is not liable for the special additional tax imposed under subdivision one-a of section two hundred fifty-three of this chapter, such mortgagor or any subsequent owner of the mortgaged property or a part thereof may pay the tax imposed under such subdivision one-a and penalty, and may either apply for the credit allowable under this chapter for payment of such additional tax or may maintain an action to recover the amounts so

paid against any person liable for payment of the tax or any subsequent assignees or owners of such mortgage or consolidated mortgage of which such mortgage is a part, as if such amounts of tax and penalty were a debt personally owed by such persons to the mortgagor or subsequent owner. No judgment or final order in any action or proceeding shall be made for the foreclosure or the enforcement of any mortgage which is subject to any tax imposed by this article or of any debt or obligation secured by any such mortgage, unless the taxes, **including taxes authorized by subparagraph three of paragraph (a) of subdivision two of section two hundred fifty of this article** imposed by this article shall have been paid as provided in this article; and, except **as** otherwise provided in subdivision two of this section, whenever it shall appear that any mortgage has been recorded without payment of a tax imposed by this article there shall be added to the tax a sum equal to one-half of one per centum thereof for each month or fraction of a month for the period that the tax remains unpaid except where it could not be determined from the face of the instrument that a tax was due, or where an advance has been made on a prior advance mortgage or a corporate trust mortgage without payment of the tax, in which case there shall be added to the tax a sum equal to one per centum thereof for each month or fraction of a month for the period that the tax remains unpaid. In any case where a mortgage of real property subject to a tax imposed by this article has heretofore been recorded or is hereafter recorded in good faith, and the county clerk or register has held such mortgage nontaxable or taxable at one amount, and it shall later appear that it was taxable or taxable at a greater amount, the commissioner of taxation and finance may remit the penalties in excess of one-half of one per centum per month.

§ 9. This act shall take effect on the ninetieth day after it shall have become a law.