

New York State Enacts Pied-à-Terre Tax on Expensive Non-Primary New York City Residences

*Stuart M. Saft**

In this article, the author analyzes the new Pied-à-Terre Tax enacted by New York.

The New York State Legislature has enacted the 2026–2027 New York State Budget Bill, Part HH of which amends Article 30-C of the New York State Tax Law by adding Sections 1350 to 1356 titled “City Surcharge on Property That Does Not Serve as a Primary Residence.” Also amended are the New York City Administrative Code and City Charter to provide the mechanism to collect the “surcharge” and enforce the new law.

To avoid confusion, this article will describe the surcharge¹ as a Pied-à-Terre Tax (PAT Tax). This article is subject to clarification by the New York City Department of Finance (DOF), the agency that will interpret the new law, enforce it and issue regulations explaining it. The law likely will be the subject of state and federal court litigation as a result of the speed in which the PAT Tax was enacted and the absence of public scrutiny prior to its enactment or a public hearing. Like the Housing Security and Tenant Protection Act of 2019, which applied parts of the landlord-tenant law to co-ops, and radically changed the law, there was no transparency prior to its enactment.²

It is not certain that all legislators were given the opportunity to review the legislation before they voted on it because several members, before voting, told their constituents that what was in the bill was not in the bill, and it seems those legislators were incorrect in their claim.

EFFECTIVE DATE AND OVERVIEW

The PAT Tax Law (PAT Law) became effective July 1, 2026 (but because it applies to obligations that have occurred since January 1, 2026, it has a retroactive aspect) and sunsets on June 30, 2031, unless extended by the Legislature. Because tax laws rarely get rescinded, it is likely a permanent addition to the taxes owed to the state and city that already have the highest taxes in the country - a standing that was made worse when the U.S. Congress eliminated New Yorkers’ ability to deduct most of their state and local taxes payment on federal tax returns - leaving most highly paid individuals paying more than 50 percent of their income in city, state and federal taxes.

The PAT Tax applies to any “covered owner”

*The author, a partner in Holland & Knight LLP, may be contacted at stuart.saft@hklaw.com.

of a “covered property” that does not qualify as a primary residence. A covered owner includes owners of Class 1 (1–3 family) residential property, tenant-stockholders of cooperative corporations, owners of residential condominium units, beneficial owners of trusts that are the sole beneficiaries holding such property, and majority partners, shareholders or members of partnerships, corporations or limited liability companies (LLCs) holding such property. (Note: There is an open question as to whether the individual owner of an entity that owns an entity owning property is exempt.) For the sake of clarity, the co-op and condo units will be referred to in this article as “Apartments.”

Owners of primary residences located in New York City are not impacted, even if they own multiple homes, because they already pay (or should pay) New York City and New York state income tax. However, an owner of a primary residence in New York state, but outside of New York City, with a non-primary New York City residence will be impacted if they do not pay New York City taxes.

“Covered property” includes non-excluded residential property classified as Class 1 property (e.g., 1–3 family homes) other than vacant land, Class 2 residential cooperative property in which at least one apartment meets the value threshold and is not a shareholder’s primary residence and Class 2 residential condominium apartments. Excluded property to which the PAT Tax does not apply includes (1) property lacking a required certificate of occupancy, and (2) newly developed condo or co-op units subject to a General Business Law Section 352-e Offering Plan that have not yet been sold or transferred by the sponsor.

THE PAT TAX’S 2 PHASES

Because of the apparent desire to collect tax based on the property’s fair market value, with co-ops and condos not presently assessed based on value, the PAT Tax will be rolled in over two phases. Phase 1 is from July 1, 2026, through June 30, 2028, and Phase 2 is from July 1, 2028, through June 30, 2031 (or whenever the PAT Law terminates). The PAT Law does not indicate what will happen if DOF has not established a basis for Phase 2 by June 30, 2028.

From July 1, 2026, through June 30, 2028 (Phase 1), the PAT Tax would be based on existing DOF valuations, although current assessments are based on comparable rental property, which is not an assessment that is based on value. Phase 2 presumes that by June 30, 2028, New York City will implement a new comparable sales-based valuation methodology, which the city has not been able to do in the 30 years since New York State Real Property Tax Law Section 467-a, the Co-Op and Condo Abatement, was enacted as a temporary measure. It must be noted that the reason the city has not been able to change the system incorporated in the Real Property Tax Law is because of the difficulty implementing it, which the PAT Law got wrong. It was also the hole in the middle of Mayor Bill de Blasio’s Blueprint for Tax Reform.

Phase 1: July 1, 2026-June 30, 2028

- Class 1 (Single-Family/1-3 Family Homes): Market value of \$5 million or more
- Class 2 Condominiums and Co-Ops: Market value of \$1 million or more

Phase 2: July 1, 2028-June 30, 2031, or When the PAT Tax Expires

The Phase 1 tax rates for condos and co-ops are significantly higher than the Phase 2 rates because of the different ways of calculating assessed value. It is presumed that the Phase 1 values are 20 percent of market value, but no basis for that assumption is given.

In Phase 2, the PAT Tax applies “phase two market value,” a new DOF valuation methodology that is based on comparable sales of condos and co-ops without regard to the statutory discounts under Real Property Tax Law § 581 or Real Property Law § 339-y. In Phase 2, the threshold for the PAT Tax becomes \$5 million of market value for all property.

The foregoing is encapsulated in Table 1, which describes the two phases and how each class will be taxed during each phase.

Table 1

	Phase 1	Phase 2
Market Value Method (MV)	Class 1: DOF assessed market value (existing method) Class 2 Condo: DOF market value (existing method) Class 2 Co-Op: Imputed cooperative Phase 1 market value	DOF determines market value using arm's length sales of comparable condos/co-ops, ignoring statutory valuation restrictions (RPTL § 581; RPL § 339-y)
	\$5 Million to \$15	

	Phase 1	Phase 2
Class 1 Single-family homes, 1–3 family residences Threshold: MV of \$5 million or more	Million: Rate of 0.8 percent \$15 Million to \$25 Million: Rate of 1.05 percent Over \$25 Million: Rate of 1.3 percent	Same Rates as Phase 1: But using comparable sales MV
Class 2 Condominiums Threshold: Phase 1 MV of \$1 million or more	\$1 Million to \$3 Million: Rate of 4 percent \$3 Million to \$5 Million: Rate of 5.25 percent Over \$5 Million: Rate of 6.5 percent	Rates Reset to Same as Class 1: Threshold rises to \$5 million (comparable sales MV)
Class 2		Threshold Rises to \$5 Million (Comparable Sales MV) \$5 Million to \$15 Million: Rate of 0.8 percent \$15 Million to \$25 Million: Rate of 1.05 percent

	Phase 1	Phase 2
Cooperative Apartments		
Threshold: Imputed Phase 1 MV of \$1 million	Same Rates as Condos (Using Imputed MV): Tax billed to co-op; board collects from shareholder	Over \$25 Million: Rate of 1.3 percent PAT Tax billed to co-op; board still collects tax from shareholder

CALCULATION OF IMPUTED COOPERATIVE PHASE 1 MARKET VALUE

Because co-op buildings are assessed as a single-tax lot rather than individual tax lots for each Apartment, there is no market value assigned to each Apartment during Phase 1. As described below, the PAT Law creates the “imputed cooperative phase one market value” in order to allocate a portion of the building’s assumed market value to each Apartment.

The Imputed Apartment Value is the Total Building Market Value as determined by DOF, which is allocated based on each shareholder’s share of the co-op’s shares.

This calculation is incorrect because co-op shares are *never* calculated based on the value of the apartments but rather the size and location of each apartment. If the state’s assumption was accurate and the allocation of shares is based on value, then the shares of all the apartments in a building, proportion of maintenance allocated to each apartment would have to change each time an apartment was redecorated or sold. There would be

chaos in the industry because of the changes in the percentages. One has to ask how such a simple mistake could have been made.

DETERMINATION OF A PRIMARY RESIDENCE

The next issue to consider is whether the house or apartment is the primary residence of (1) one or more covered owners (or an immediate family member, defined as the owner’s spouse, child, sibling, parent, grandparent or grandchild), provided such owners are natural persons, and (2) one or more lessees (or sublessees under a valid sublease pursuant to RPL § 226-b) the right of a tenant to sublease or assign a lease, provided the lessee is a natural person, occupying under a bona fide arm’s length lease of at least one year. Pursuant to the PAT Law, DOF is required to make an annual determination, based on information available to it, that a qualifying property is not a primary residence. For the fiscal year starting July 1, 2026, the notice (PAT Notice) must be issued to the owner no later than August 30, 2026. This means that, by the end of the second month that the PAT Law is in effect, DOF has to notify property owners that the property has been accruing a tax for the prior two months. Upon receiving the notice, an owner has the opportunity to submit proof of primary residence. If an owner fails to submit proof of primary residence within the DOF-established deadline, the initial determination becomes final and is not subject to challenge through the standard Tax Commission review process. Not responding eliminates an owner’s right to contest non-primary status for that fiscal year. If the owner is traveling, they are just out of luck.

It is important to note that there are an

estimated 14,000 apartments and homes that could be subject to the PAT Tax, and DOF is somehow going to certify that they are not their owner's primary residences. How would that happen? DOF would need to notify 14,000 New Yorkers that they have to prove they are New York residents. What stops DOF from advising every New York City resident that DOF does not think their home is their primary residence? Is there a good faith or reasonable standard that DOF has to meet or any standard at all? Given these points and others described herein, it is possible that there will be a great deal of litigation. However, the PAT Law precludes anyone going to any court other than the Tax Commission (not a court), as described below, which means that the Legislature has decided to suspend the Due Process rights of at least 14,000 New Yorkers. If DOF thinks it will go after only co-op and condo owners who do not get the Co-op and Condo Tax Abatement (Abatement), that will not work because several years ago the basis for the Abatement changed, and no one in the building could qualify if the Apartment was owned by an entity or the co-op or condo did not pay prevailing wages to the Building-Service employees (i.e., belong to the union), so many co-op and condo owners ceased to qualify for the Abatement. Interestingly, the Abatement requires owners to use the apartment as their primary residence, but Rent Stabilized tenants were not required to prove their qualification.

In its investigation of primary residents, DOF may require the following evidence that the house or apartment is a primary residence:

(1) proof that the owner listed the property as their permanent address on their New York

state resident income tax return for the prior calendar year;

(2) evidence that the property received a New York School Tax Relief exemption under RPTL § 425, which has not been given since 2015;

(3) proof that the owner received a NYC Enhanced Real Property Tax Credit under Tax Law § 606(eee); or

(4) evidence that a qualifying lessee or immediate family member occupies the property as their primary residence.

DOF may audit any certification within six years of submission, which, as discussed below, creates serious problems in transferring apartments. In the event that the owner fails to respond to the initial determination by DOF, the PAT Notice becomes a final determination not subject to challenge (except through the Tax Commission review process described below).

THE TREATMENT OF CLASS 1 (1–3 FAMILY HOUSES)

The PAT Law defines “primary residence” to include use by a qualifying lessee under a bona fide arm's length lease of at least one year. However, the PAT Law does not address how multi-unit Class 1 houses are analyzed when different portions of the house have different occupants. The key question the PAT Law leaves open is whether the PAT Tax analysis is applied at the apartment level (such as a co-op) or at the whole building level. A question that needs to be addressed is whether the owner's occupancy as its primary resident exempts the entire house, or is the PAT Tax imposed on the portions of the house that are

non-primary residences? If the PAT Tax applies, is it to the entire house, or is the tax prorated?

COOPERATIVE BOARDS AND THE PAT LAW

The PAT Law creates a significant and unprecedented administrative and financial burden and risk for cooperative boards and their shareholders, which the boards probably do not have the legal authority to fulfill. These risks include litigation exposure, possible liens against their building, interest, penalties, involvement in enforcement actions over a shareholder's residency and financial consequences and challenges by shareholders as to the board's authority.

DOF will be billing the aggregate PAT Tax for all qualifying non-primary resident apartments to the co-op corporation's statement of account in the same manner as Real Property Taxes because a co-op is only one block and lot. The co-op board is then required to forward it to the affected shareholder "as soon as practicable." This creates a timing risk: DOF's deadline runs from issuance of the Notice, not from the shareholder's receipt. A board may take days to forward a Notice or fails to identify which Apartment is affected, which may forfeit the shareholder's ability to appeal, and its managing agent or treasurer would be responsible for remitting payment of the PAT Tax to the city. The Legislature's assumption is that the co-op would pay the PAT Tax for all of its shareholders and then seek reimbursement from the shareholders.

First, few co-ops have the reserves to pay the City PAT Taxes for its shareholders.

In addition, the co-op has no way of know-

ing if the shareholder owes the money, and if it just assumes that the money is owed and the co-op is wrong, it likely will be sued.

Third, how does the co-op board have the authority to take corporate funds and pay a tax that may be owned by a single shareholder? Would the Business Judgment Rule protect the board?

The PAT Tax will also become a lien on the cooperative's building. If the co-op board fails to pay DOF, the entire building is at risk of enforcement action by New York City including potential lien sale even if the failure is due to a nonpaying or uncooperative shareholder. Upon receipt of a notice of PAT Tax from DOF, the co-op corporation must provide the notice to the shareholder(s) of the subject unit as soon as practicable. How does the co-op board determine primary vs. non-primary residence status for its shareholder units, which may require requesting information from shareholders. The board has no way to challenge the assessment but will be at risk of being sued by its shareholder if it does nothing or if it acts pursuant to the PAT Law. In the rush to push through an unworkable law, no one thought to include an indemnification for boards. Did the legislators that represent co-op buildings consider these risks? This is what happens when there is no transparency.

The co-op could be liable for the legal and administrative costs of compliance, including litigation with shareholders and enforcement of payment obligations, and review of primary residence certifications will be the responsibility of all shareholders.

(The board does not have the authority to comply under the typical corporate documents. This is the section of the PAT Law about which

members of the legislature indicated that the author was incorrect.)

The PAT Law does not address how the co-op boards were supposed to do this, which is not a surprise since the legislators did not seem to know or care that the requirement was there. The issue is much more significant than the Legislature considered because the PAT Law requires the co-op corporation to violate Business Corporation Law Section 501 as well as the Internal Revenue By-Laws Code, thereby jeopardizing every shareholder's tax deductions as well as the Basis Adjustment when shares are sold.

As a defensive measure, boards should immediately amend their Proprietary Leases and deal with these issues. Of course, Proprietary Leases require a two-thirds to three-quarters affirmative vote to be amended, which is never easy to achieve.

Another issue not addressed in the PAT Law: What will happen when the co-op's lender declares a mortgage default because of the lien that the city imposes on the building or the bankruptcy risk that arises if paying taxes that the corporation does not owe renders the co-op insolvent? There is no way to identify all the potential risks because nothing like this has ever happened before.

ADDITIONAL RISKS ON THE SALE OF CO-OPS AND CONDOS

There is an additional risk that the attorneys representing boards and purchasers and sellers of co-ops and condos that the legislature ignored: What about DOF's determination that a PAT Tax should have been paid by a former owner after an apartment or unit closes? The PAT Law provides DOF with the authority to

impose a lien for years after a closing. DOF can also audit any primary residence certification within six years of submission. The city and state need to collect transfer and mortgage recording taxes at closings, but how can anyone close without an assurance that no tax will be a lien later? Will DOF give estoppel certificates to facilitate closings? Will DOF hire hundreds of new employees to handle all of these issues? Did the authors of the bill run it by the state's attorney general to see if it is even legal?

DOF ENFORCEMENT POWER

The law authorizes DOF to promulgate rules imposing penalties of up to 50 percent of the PAT Tax imposed on the property in the following situations: any certification or documentation submitted to DOF contains inaccurate or misleading information that (1) is material to the determination of whether the PAT Tax applies, and (2) was submitted negligently or in bad faith or a covered condominium property has been divided into more than three units to avoid application of the PAT Tax and such division was made in bad faith. In addition to a lien foreclosure, the New York City Corporation Counsel is authorized to enforce payment, and the DOF Commissioner can issue warrants directed to the city sheriff to levy upon and sell real and personal property. The DOF Commissioner can also subpoena witnesses and compel production of books and records relevant to the PAT Taxes.

NO DUE PROCESS

Shockingly, the property owners have no recourse to the courts. An owner may apply to the New York City Tax Commission, which is not a court,³ and the review by the Tax Commission is limited to correction of:

- (1) the Phase 1 or Phase 2 market value;
- (2) an initial DOF determination that the property is not a primary residence if the owner also challenges the market value); or
- (3) a final DOF determination that the property is not a primary residence.

The grounds for review are that the market value is excessive or unlawful or that the property is a primary residence. Because it takes years to get the Tax Commission to rule on Tax Cert Petitions, who will be paying interest on the money the co-op has to borrow to pay the tax? Will New York City owe punitive damages for gross negligence if there was no basis for the determination?

After Tax Commission review, a property owner may seek judicial review under Article 7 of the Real Property Tax Law, which has limited jurisdiction.⁴ No other legal proceeding may be brought to challenge PAT Tax liability. Worse, DOF has been granted broad rulemaking authority and most critical operational details are left to DOF rules rather than specified in the statute.

Though the law includes trust and LLC owners as potential “covered owners,” the definition requires sole beneficial ownership (trust) or majority interest (entity). What happens in more complex ownership structures where, for instance, there are multiple beneficiaries, tiered entities or minority interests?

To be clear, this is not a tax on second homes. It is a tax on every owner of a home in New York City that is worth a certain amount if the city determines that the owner did not use the home as their primary residence and does not file New York City and New York state tax

returns. It is also a tax on retirees living out of New York most of the year who never sold their New York City home that they bought decades ago, which has appreciated in value and they use it part of the year and wanted to leave the family home to their children. The PAT Tax is based on the value of a piece of real estate and not the wealth of the owner. As such, in some instances, it is the most regressive tax that could be charged. This is not “Tax the Rich.” It is a tax on someone who owns a valuable asset and could be living on a fixed income and will now be forced to sell that asset to pay the tax.

KEY TAKEAWAYS FROM CITY COMPTROLLER’S REPORT

In preparing this article, the author also reviewed the April 30, 2026, report by the City Comptroller titled “The Pied-à-Terre Tax and Its Potential Revenues” (Comptroller’s Report).⁵ The Comptroller’s Report makes the following points:

- *Revenue Is Uncertain.* The \$500 million estimate may fall to an estimated \$340 million to \$380 million depending on assumptions (p. 2).
- *Behavior Matters.* Revenue is “critically dependent” on renting, selling or occupancy changes (p. 2).
- *Valuation Is Flawed.* Assessed value is a poor proxy for market value (p. 10–11).
- *Results Will Be Inconsistent.* Similar properties may be taxed differently due to valuation gaps (p. 10–11).
- *Co-Op Valuation Is Imprecise.* Unit values must be derived from building-level data (p. 8).

- *Key Categories Are Unresolved.* LLCs, trusts and multi-unit homes lack clear treatment (p. 18–19).
- *Co-Op Collection Is Questionable.* Feasibility of passing tax through boards “should be carefully evaluated” (p. 19).
- *Administrative Burden Is Significant.* Audits, valuations and enforcement require expanded capacity (p. 20).
- *Appeals Will Increase.* Gaps in administration may drive disputes and litigation (p. 20).
- *Uncertainty Drives Everything.* Outcomes depend on unresolved inputs, not settled analysis (p. 20–21).

Finally, the PAT Tax is not a surcharge because it is not applicable to all the owners as real property taxes are but only to a small subset of owners who are considered by New York City to be primary residents of New York City while they consider themselves to be primary residents of another state or country. This raises a question as to whether New York City and New York state have the right under the U.S. Constitution to tax residents of other states.

IN SUMMARY

- The New York State Legislature recently enacted the 2026–2027 New York State Budget Bill, part of which adds Sections 1350 to 1356 of the New York State Tax Law titled “City Surcharge on Property That Does Not Serve as a Primary Residence.”
- The surcharge is described as a “Pied-à-Terre Tax,” which applies to any “covered

owner” of a “covered property” that does not qualify as a primary residence.

- Owners of primary residences located in New York City are impacted, if they own multiple homes, because only one home can be their primary residence. They will owe the Pat Tax even if they already pay New York City and New York state income tax.

CONCLUSION

New York City’s 2026–2027 Budget is \$115.9 billion, and New York state’s is \$269 billion. Assuming that the tax raises \$500 million (although the City Comptroller thinks it instead may be closer to \$350 million), the PAT Law is undermining the operation and solvency of co-ops, likely reducing the transfer tax and mortgage tax, and will impact sales prices of all housing - all for 0.19 percent of the state budget and 0.43 percent of New York City’s budget.

Is the disruption the PAT Tax will cause worth the relatively insignificant revenue it will produce?

NOTES:

¹According to Google, a surcharge is an additional fee added by a business to recover specific costs, such as credit card processing or fuel. A new tax called a surcharge is a revenue-generating fee levied by the government, often calculated as a percentage of your base tax. Since the PAT Tax is not based on the Real Property Tax, it is a misnomer to refer to it as a surcharge.

²The New York State Constitution does not require public hearings before the Legislature enacts legislation. Instead, public hearings are left to the discretion of the legislative leaders and specific committees to which bills are assigned.

³The New York City Tax Commission is not a court but rather an independent administrative review agency. Its primary function is to provide an independent forum for property owners to appeal real property tax assess-

ments set by the New York City DOF or to dispute improper denial of tax exemptions. Though it holds hearings and makes determinations, it is not part of the state Unified Court System. If you are unsatisfied with a determination made by the Tax Commission, you must file a lawsuit in the New York State Supreme Court to pursue further legal recourse.

⁴Article 7 of the New York Property Tax Law is the legal framework property owners used to challenge real

property tax assessments. It grants taxpayers the right to seek judicial review if they believe their property is over-assessed or incorrectly classified, provided they first exhausted their administrative remedies for the local board of assessment review.

⁵ <https://comptroller.nyc.gov/wp-content/uploads/documents/The-Pied-a-Terre-Tax-and-Its-Potential-Revenues-1.pdf>.