

TAX SECTION

New York State Bar Association

REPORT ON PROPOSED AMENDMENTS TO THE NEW YORK CITY  
REAL PROPERTY TRANSFER TAX REGULATIONS

June 25, 1990

**Table of Contents**

Cover Letter:.....	i
1) It would be helpful.....	2
2) Article 17(a)(2).....	3
3) Article 17(a).....	3
4) Article 17(a).....	4
5) Article 17(b).....	5
6) Article 22(g).....	8
7) Article 22(h).....	9
8) Article 31(b)(2) .....	15
9) All examples in the Proposed Regulations .....	15
AMENDMENTS TO REGULATIONS.....	16

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June 25, 1990

The Honorable Carol O'Cleireacain  
Commissioner of Finance  
The City of New York  
One Centre Street, Room 500  
New York, New York 10007

Re: Real Property Transfer Tax Regulations

Dear Commissioner O'Cleireacain:

I enclose a report, prepared by our Committee on New York City Tax Matters, on the recently proposed regulation under the New York City Real Property Transfer Tax. The report points out certain aspects of the proposed regulations that could be clarified and suggests various examples of transfers of cooperative apartments that will qualify for individual residential unit treatment.

In offering these comments, we in no sense withdraw from the recommendations in our December 5, 1988 and November 20, 1986 reports, copies of which are enclosed. Those reports raise several important points not yet addressed in the regulations. For example, both our reports urged the issuance of regulations to ameliorate the severe burdens that result from taxing transfers of controlling interests in change-in-form transactions. Specifically, we recommended that a credit be allowed against transfer tax to the extent a transfer of a controlling interest constitutes a change in the

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form of ownership with no change in beneficial ownership. This approach is, we believe, consistent with the intent of the anti-Pan Am legislation, and is necessary to avoid the substantial inequities that currently result from the duplicative and theoretically inconsistent application of the tax.

Even if the Department concludes that it cannot provide for an overall mere change exemption, there remain many situations in which the regulations could be improved to avoid duplicative taxes. Thus, the inconsistent treatment of debts in the entity context, the insufficient scope of the existing credit provisions, and the unnecessarily narrow rules of the restructuring provisions in Article 20, could all be improved to make the tax more fair and equitable.

In addition, the regulations generally presume that all transfers within a three-year period are aggregated, but do not clarify the treatment of "few-to-few" transfers. As stated in our 1988 report, we believe it inappropriate to aggregate transfers of minority interests by unrelated transferors or the transferees are acting pursuant to a plan to dispose of or acquire a controlling interest. The regulations currently contain one example suggesting that analysis, but the fact situation described in that example is so unusual that it provides little practical guidance in many common transactions.

We also repeat our earlier objection to the regulations' treatment of payments made to a cooperative reserve fund. Including such amounts in consideration ignores the fact that the sponsor must pay these funds over to the cooperative. Amounts collected on cooperative conversions and dedicated to cooperative reserve funds are in no sense consideration for the real property, and the regulations should so provide.

We thank you for the opportunity to comment on the regulations. As always, we would be happy to meet you and your staff to discuss our comments further.

Very truly yours,

Arthur A. Feder  
Chair

Enclosures

cc: Kathleen Grimm, Esq.  
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NEW YORK STATE BAR ASSOCIATION TAX SECTION  
COMMITTEE ON NEW YORK CITY TAX MATTERS

REPORT ON PROPOSED AMENDMENTS TO THE NEW YORK CITY  
REAL PROPERTY TRANSFER TAX REGULATIONS

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New York State Bar Association  
Tax Section

Report on Proposed Amendments to the  
New York City Real Property Transfer Tax Regulations<sup>1</sup>

This report comments on the amendments to the New York City Real Property Transfer Tax Regulations proposed by the New York City Department of Finance and published in the City Record on May 11, 1990 at page 1784 ("Proposed Regulations"). The Proposed Regulations principally relate to the increase in tax rates and expansion of the scope of the tax to cover sales of residential cooperative apartments. These changes in the law were effected by local laws 58 and 59 enacted in 1989.

We find particularly helpful the definitions of an individual residential condominium unit and an individual residential cooperative unit in the Proposed Regulations. The Proposed Regulations consider ownership and use of individual condominium and cooperative units as residential, as long as residential use is not de minimis. The new definitions are relevant in determining the applicable tax rate and determining whether underlying mortgages are included in consideration on the sale of a cooperative apartment.

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<sup>1</sup> This report was prepared by Carolyn Ichel and Ronald Rabkin. Helpful comments were received from Arthur A. Feder and Robert J. Levinsohn.

Our substantive comments on the Proposed Regulations are set forth below. In addition, attached to this report is a copy of the Proposed Regulations marked to indicate those portions of the regulations addressed in this report and to show other, less significant comments.

1) It would be helpful if the Proposed Regulations contained definitions of a "cooperative housing corporation" and a "cooperative ownership entity" and used those defined terms instead of repeating the rather unwieldy descriptions. This will make the regulations easier to read and provide clear rules regarding when an entity is classed as a cooperative housing corporation or cooperative ownership entity.

The recommended definitions are as follows:

Cooperative Housing Corporation - A "cooperative housing corporation" is a corporation formed or availed for the purpose of cooperative ownership of residential real property in connection with the grant, use or transfer of proprietary leaseholds, but exclusive of a housing company organized and operating pursuant to the provisions of article two, four, five or eleven of the private housing finance law which generally relate to urban renewal, low income, aged, and handicapped housing.

Cooperative Ownership Entity - A "cooperative ownership entity" is a corporation (other than a cooperative housing corporation or a housing company organized and operating pursuant to the provisions of article two, four, five or eleven of the private housing finance law), partnership, association, trust or other entity, formed or availed for the purpose of cooperative ownership of real property in connection with the grant, use or transfer of proprietary leaseholds. An "interest in a cooperative ownership entity" includes the ownership of shares, partnership interests, or beneficial interests in and cooperative ownership entity.

2) Article 17(a)(2) - This article should state that the tax will apply to transfers of controlling economic interests and shares in a cooperative housing corporation where the consideration given exceeds \$25,000. This need only be expressed once, as follows:

In the first line of article 17(a), after "General" insert, When consideration given for a transfer or conveyance exceeds \$25,000, [The] the...

3) Article 17(a) - The presumption of application of the tax should apply to the three basic forms of real property transfer: a conveyance of real property; a transfer of a controlling economic interest in real property; and a transfer of shares of stock in a cooperative housing corporation or interests in a cooperative ownership entity.

To clarify the regulation, the sentence beginning on the nineteenth line of article 17 should be amended and revised to read as follows:



The tax applies to each such deed, instrument or transaction evidencing the conveyance of real property, the transfer of a controlling economic interest in real property or the transfer of shares of stock in a cooperative housing corporation or interests in a cooperative ownership entity, where the real property is situated in whole or in part within the City of New York, unless the deed, instrument or transaction is expressly exempt by the law.

4) Article 17(a) - The grandfathering provision should also include a discussion of the treatment of transfers of shares of stock in a cooperative housing corporation or interests in a cooperative ownership entity under the 1989 legislation. The last sentence in article 17(a) should therefore be amended and a new sentence added to read as follows:

Conveyances or transfers of controlling economic interests in real property or transfers of shares in a cooperative housing corporation held in connection with, incidental to, or in furtherance of a trade, business profession, occupation or commercial activity, made pursuant to a written contract (including option contracts but not rights of first refusal) entered into before July 31, 1981 are not subject to tax. Transfers of shares in a cooperative housing corporation not held in connection with, incidental to, or in furtherance of a trade, business, occupation or commercial activity, and transfers of interests in a cooperative ownership entity, made pursuant to a written contract (including an option contract but not rights of first refusal) entered into before July 25, 1989, are not subject to tax.

5) Article 17(b) - The recitation of the tax rates upon conveyances of deeds and transfers of leaseholds is confusing. It would be clearer and more helpful if, rather than simply following the statute's historical approach, the regulations grouped rates applicable to the transfer of each type of interest in real property together and presented the most current rates first. It would also be more efficient to omit the rates for transfers before July 1, 1982, and refer the reader to the statute for this information.

Delete article 17(b) other than the examples contained in article 17(9) and 17(10). Article 17(b) might then be revised as follows:

(b) Rates of Tax. The tax upon deeds, instruments and transfers occurring after June 30, 1982 is computed at the following rates:

(1) Upon the conveyance of 1-, 2-, 3-family houses and individual residential condominium units:

(i) after July 31, 1989 where the consideration is \$500,000 or less, 1% of consideration.

(ii) after July 31, 1989 where the consideration is more than \$500,000, 1.425% of consideration.

(iii) before August 1, 1989, 1% of consideration,

(2) Upon the conveyance of real property other than 1-, 2-, 3-family houses and individual residential condominium units:

(i) after July 31, 1989 where the consideration is \$500,000 or less, 1.425% of consideration.

(ii) after July 31, 1989 where the consideration is more than \$500,000, 2.625% of consideration.

(iii) before August 1, 1989 where the consideration for the conveyance is less than \$500,000 1% of consideration.

(iv) before August 1, 1989 where the consideration for the conveyance is \$500,000 or more, 2% of consideration.

(3) Upon the grant, assignment or surrender of a leasehold interest in a 1-, 2-, or 3-family house, an individual residential condominium unit, or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other:

(i) after July 31, 1989 where the consideration is \$500,000 or less, 1% of consideration.

(ii) after July 31, 1989 where the consideration is more than \$500,000, 1.425% of consideration.

(iii) before August 1, 1989, 1% of consideration.

(4) Upon the grant, assignment or surrender of a leasehold interest in real property other than a leasehold interest in a 1-, 2-, or 3-family house, a individual residential condominium unit, or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other:

(i) after July 31, 1989 where the consideration is \$500,000 or less, 1.425% of consideration.

(ii) after July 31, 1989 where the consideration is more than \$500,000, 2.625% of consideration.

(iii) before August 1, 1989 where the consideration is less than \$500,000, 1% of consideration.

(iv) before August 1, 1989 where the consideration is \$500,000 or more, 2% of consideration.

(5) For rates of tax upon conveyances of deeds or grants, assignments, or surrenders of leasehold interests occurring prior to July 1, 1982 refer to Chapter 21, Title 11 Section 11-2102 of the New York City Administrative Code.

(6) For purposes of paragraphs (3) and (4) of this article the amount subject to tax in the case of a grant of a leasehold interest shall be only such amount as is not considered rent for purposes of the New York City Commercial Rent or occupancy Tax (Chapter 7 of Title 11 of the New York City Administrative Code);

(7) For purposes of paragraphs (1),(2),(3) and (4) of this article an individual condominium unit used for residential purposes shall be classified as a residential condominium unit, unless such residential use is de minimis.

Insert the examples contained in article 17(9) and 17(10).

6) Article 22(g) - The statute provides that the amount of any underlying mortgage attributable to shares in a cooperative housing corporation or interests in a cooperative ownership entity will be included in the consideration for the transfer of real property if the shares or interests are not attributable to an individual residential unit or when the shares are originally transferred from the cooperative corporation or plan sponsor to the initial purchaser. Article 22(g) would be more helpful if it stated this clearly, rather than relying upon the inference of this treatment provided in example 1 of article 22(h). Accordingly we suggest that the first sentence of article 22(g) be deleted and a new sentence added to read as follows:

In the case of the original transfer of the shares or interests in a cooperative housing corporation or cooperative ownership entity by the cooperative or the plan sponsor, or where the transfer is of shares in a cooperative housing corporation or interests in a cooperative ownership entity which are not attributable to an individual residential unit, the proportionate amount of any underlying building mortgage attributable to the shares or interests shall be included in consideration.

The following example would also be helpful:

Example 1: on July 1, 1989 A sells 10% of the shares in a cooperative housing corporation attributable to an apartment used by A in a commercial activity. The cooperative housing corporation's building is encumbered by a \$500,000 mortgage. A receives \$100,000 cash for his shares. The transfer tax is calculated as follows:

<u>Cash received for shares</u>	<u>\$100,000</u>	
<u>10% of \$500,000 mortgage</u>		<u>\$ 50,000</u>
<u>Total consideration</u>		<u>\$150,000</u>
<u>Tax rate = 1%; Tax is</u>		<u>\$ 1,500</u>

7) Article 22(h) - Example 1 of article 22(h) appears to state that the 1%/1.425% rate structure applies to all transfers of individual cooperative apartments regardless of the use of the apartment. Thus, the transfer of cooperative apartments where the residential use is de minimis, like the condominium apartments described in article 17(b)(10), examples A and B, appears to qualify for the lower rate structure.

Differentiating in tax rates between nonresidential cooperative apartments and nonresidential condominium apartments is anomalous, and does not appear to have any sound basis in tax policy. Nonetheless, the statute itself draws a clear distinction, applying the lower rates to all "individual cooperative apartments", but only to "individual residential condominium apartments". Moreover, by referring to "individual residential units" in the statutory provision relating to the inclusion of "inside" debts in consideration on sales of cooperative apartments, the legislature did distinguish

nonresidential cooperative units in that context. It may therefore be the more prudent course to follow the specific statutory language and apply the lower rates to individual transfers of all cooperative apartments. The higher rates should apply to multiple or related transfers of more than one cooperative apartment.

Whichever approach is chosen, it would be useful if the regulations stated specifically what rates apply to sales of "nonresidential" cooperative apartments and the examples were modified to show how this issue is to be treated.

Example 3 suggests a number of issues and conclusions. It would be useful to expand this regulation to set forth clear examples illustrating when a cooperative apartment will be treated as an individual residential unit.

First, example 3 should be altered to provide that X Corporation owns less than 50% of the shares in the cooperative housing corporation. This change will make it clear that the basis of the tax is not the transfer of a controlling economic interest in real property, but rather the transfer of shares in a cooperative housing corporation.

Second, it should be made clear that, in appropriate circumstances, a corporation or other entity which owns stock or interests in a cooperative housing corporation or a cooperative ownership entity is eligible to receive "individual residential unit" treatment. There appears to be no reason to distinguish between a individual who uses a cooperative apartment for residential purposes and a corporation which holds a cooperative apartment that is used for residential purposes. Thus, a corporation that sells shares or interests in one cooperative

apartment used for residential purposes should be taxed on the basis that it has transferred an individual residential unit. The same result should occur where a controlling economic interest in the corporation is transferred and the corporation only owns one cooperative apartment unit which is used for residential purposes.

Third, the existing example seems to conclude that the higher rates and higher consideration are appropriate because the effect of the sale of the corporation's stock was to transfer ownership of three apartments from seller to purchaser. Thus, it appears the transaction is not considered a sale of "individual residential units". This analysis should be set forth in the regulation. Furthermore, where an individual or corporate taxpayer makes sales of individual cooperative apartments to different transferees or different transferors sell apartments to the same transferee, aggregation of these multiple sales would be improper; the regulations should contain examples illustrating this result.

We therefore suggest that example 3 should be deleted and replaced with the following examples:

Example 3: A owns 100% of the stock of X Corporation, whose sole asset consists of 40% of the shares of stock in a cooperative housing corporation. X Corporation's shares of stock are attributable to three separate apartments located in the building owned by the cooperative housing corporation. The building is encumbered by a \$500,000 mortgage. X Corporation has no liabilities. If A sells his entire interest in X Corporation to B for \$600,000, the tax is calculated as follows:



<u>Cash consideration received for shares</u>	<u>\$600,000</u>
<u>40% of \$500,000 mortgage</u>	<u>\$200,000</u>
<u>Total consideration</u>	<u>\$800,000</u>
<u>Tax rate = 2.625%; Tax is</u>	<u>\$ 21,000</u>

The tax rate is 2.625% and the underlying mortgage is included in the consideration because the shares of stock in the cooperative corporation that were transferred were attributable to several apartments, not to an individual residential unit.

Example 3A: X Corporation owns shares of stock in a cooperative housing corporation attributable to an apartment. The shares of X Corporation stock are owned by Q, a foreign individual. Q uses the apartment for residential purposes when Q is in New York. If X Corporation sells the stock attributable to the apartment for \$600,000, the tax will be calculated as follows: 1.425% of \$600,000, for a tax due of \$8,550. Since the apartment is used for residential purposes, it is deemed an individual residential unit and no portion of the unpaid principal of any mortgage on the real property of the cooperative housing corporation is included in the consideration for the transfer. Since consideration for the individual residential unit exceeds \$500,000, the 1.425% rate applies.

It would also be useful to indicate how the tax applies to transfers of corporate apartments that are used to provide short-term lodging to corporate employees. If such apartments are considered residential, the following example would be a helpful illustration of the application of the transfer tax.

Example 4: X Corporation owns shares of stock in a cooperative housing corporation attributable to an apartment used solely house certain officers of the corporation while in New York City. The apartment is not used as a business office or showroom by the corporation. If X Corporation sells the stock for \$600,000, the tax will be 1.425% of \$600,000 or \$8,550.

Example 5: Assume the same facts as in example (4) above, except that 100% of the stock in X Corporation is sold. X Corporation owns no other real property or economic interests therein and \$600,000 of the purchase price for the X stock is entirely attributable to the cooperative apartment. The tax due upon the sale of X Corporation stock will be calculated as follows; 1.425% of \$600,000, for a tax due of \$8,550. Since the cooperative apartment owned by X is used for residential purposes, it is deemed an individual residential unit and no portion of the unpaid principal of any mortgage on the real property of the housing corporation is included in the consideration for the transfer. Since the consideration for the individual residential unit exceeds \$500,000 the 1.425% rate applies.

Example 6: X Corporation is a "relocation company" that is in the business of purchasing and selling residences of its client's employees. X Corporation owns 120 shares in a cooperative housing corporation attributable to three separate apartments in the building owned by the cooperative housing corporation. X Corporation sells the shares as follows: 30 shares to A for \$300,000, 40 shares to B for \$400,000 and 50 shares to C for \$500,000. The three transactions are separate and unrelated. Upon the sale of the shares to A the tax due is \$3,000; upon the sale to B the tax due is \$4,000; and upon the sale to C

the tax due is \$7,125. Since the apartments are used for residential purposes and the transfers are unrelated, each is deemed to be a transfer of an individual residential unit.

Example 7: x Corporation owns 15% of the shares in a cooperative housing corporation # 1 attributable to five separate apartments in the building. X Corporation owns 20% of the shares in a cooperative housing corporation # 2 attributable to six separate apartments in that building. X Corporation leases all eleven apartments to tenants for residential purposes. Whenever a tenant vacates an apartment X corporation sells the shares attributable to the vacant apartment. Since the apartments are used for residential purposes and the transfers are unrelated, each is deemed to be a transfer of an individual residential unit.

Example 8: A owns 20 shares in a cooperative housing corporation attributable to one apartment used as A's residence. A acquires 10 additional shares in the cooperative housing corporation attributable to an adjacent apartment and combines the two units into one. A uses the combined units as a residence. If A then sells the 30 shares representing the combined apartments, he will transfer an individual residential unit and no portion of the unpaid principal of and mortgage on the real property of the cooperative housing corporation will be included in the consideration for the transfer.

Example 9: A owns 80 shares in a cooperative housing corporation attributable to four separate apartments in the building. The apartments are leased to tenants for residential use. A's 80 shares constitute 20% of the cooperative housing corporation stock, and the building is encumbered by a \$1,000,000 mortgage. If A sells the 80 shares in the cooperative housing corporation to B for \$800,000, the tax is calculated as follows:

<u>Cash consideration received for shares</u>	<u>\$800,000</u>
<u>20% of \$1,000,000 mortgage</u>	<u>\$200,000</u>
<u>Total consideration</u>	<u>\$1,000,000</u>
<u>Tax rate = 2.625%; Tax is</u>	<u>\$ 26,250</u>

The consideration received for the transfer of stock attributable to each of the four apartments is combined to determine the tax base. Since the consideration exceeded \$500,000 and the transaction does not constitute the sale of an individual cooperative apartment, the underlying mortgage is included in the consideration, and the tax rate is 2.625%.

8) Article 31(b)(2) - Insert the following at the end of the paragraph: The cooperative housing corporation shall be permitted to rely upon information provided to it by the grantor and grantee and need not independently verify or confirm information submitted by the parties to any transfer.

9) All examples in the Proposed Regulations should be numbered for ease of reference.

AMENDMENTS TO REGULATIONS  
HEAL PROPERTY TRANSFER TAX  
Promulgated July 30, 1965

Section 1. Article 9 of the Regulations of the Commissioner of Finance Relating to the Real Property Transfer Tax is amended by adding a new subdivision (d) to read as follows:

(d) Croc Reference. For rules relating to the determination of consideration to the ease of transfers of cooperative units, see Article 22.

§2. The first unnumbered paragraph of Article 10 of such regulations is amended to read as follows

Article 10. Net Consideration Any consideration, exclusive of any mortgage or other lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and remains thereon after the delivery of the deed. The term "net consideration" [,] as a basis for computing the real property transfer tax, applies to conveyances made prior to February 1, 1982, or conveyances made after that date if made in performance of a contract executed prior thereto. It also applies to conveyances made on or after February 1, 1982 and before July 1, 1982 where the conveyance involves a 1, 2 or 3 family house of individual residential condominium unit or where the consideration for the conveyance is less than \$500,000. (See Article 13 of these Regulations.)

§3. Article 17 of such regulations is amended to read as follows:

Article 17. Imposition of Tax (a) General The tax is imposed 20 (1) each deed at the time of delivery by a grantor to a grantee, see written comments (2) after July 12, 1988, (i) on each instrument or transaction (unless evidenced by a deed otherwise subject to tax) at the time of the transfer, whereby any controlling economic interest in real property is transferred by a grantor to a grantee, (ii) on initial transfers of shares of stock in a cooperative housing corporation by the cooperative housing corporation or sponsor, and (iii) on subsequent transfers (resales) or cooperative housing corporation stock [if] (except that not subsequent transfer (resale) of shares of stock in a cooperative housing corporation made before August 1, 1989 shall be taxable unless the owner held the shares in connection with,

incidental to or in furtherance of a trade, business, profession, occupation or commercial activity engaged in or conducted by him or (it) and (3) on or after August 1, 1989, on each transfer of shares of stock in a cooperative partnership entity see written comments. Anything to the contrary notwithstanding, after July 12, 1986, in complete or partial liquidation of a corporation, partnership, association, trust or other entity, the tax imposed shall be measured by (i) the consideration for such conveyance or transfer, or (ii) the value of the real property or economic interest therein, whichever is greater. See written comments.

To Illustrates

(A) X owns an individual condominium unit in New York City with a value of \$800,000. X leases the unit to Y, who uses the unit solely as a residence. During the term of the lease X sells the unit to Z. The unit is deemed a residential condominium unit, and the tax is calculated as follows: 1.425% of \$500,000, for a tax due to \$3,550. Although the unit produced income for X, the unit was used for residential purposes.

(B) An artist owns an individual condominium unit in New York City worth \$600,000. The artist both resides and maintains a studio in the unit. When the artist sells the unit, the transfer tax will be calculated as follows: 1.425% of \$600,000, for a tax due of \$5,550. The unit is deemed a residential condominium unit because the unit was used for residential purposes.

To Illustrates

(A) An artist owns an individual condominium unit in New York City worth \$300,000 that is located in a building classified as class two property pursuant to section 1802 of the Real Property Tax Law, and which the artist uses as a studio. Although the artist maintains a separate residence, the artist keeps a bed in the studio and spends twelve nights per year in the studio. When the artist sells the unit, the tax will be calculated as follows: 1.425% of \$300,000, for a tax due of \$4,275. Since the residential use of the unit is de minimis, the unit is not deemed a residential condominium unit.

(B) A physician owns an individual condominium unit in New York City worth \$800,000 which is used only as the physician's office. When the physician sells the unit the tax will be calculated as follows: 2.625% of \$800,000, for a tax due of \$21,000. Since the unit is not used for residential purposes, it is not deemed a residential condominium unit.

(C) Rates of tax on Transfers of Economic Interests: The tax is computed:

(1) at the rate of 1% of the consideration with respect to transfers of economic interests in real property made on or after July 12, 1986 and before August 1, 1989 where the real property the economic interest in which is transferred is a 1-, 2- or 3-family house, an individual cooperative apartment, an individual residential condominium unit or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of [4] four or more families living independently of each other, or where the consideration for the transfer is less than \$500,000[,and];

(2) at the rate of 2% of the consideration with respect to all other transfers of economic interests in real property made on or after July 12, 1986 and before August 1, 1989:

(3) at the rate of 1% of the consideration with respect to transfers made on or after July 31, 1986 where the real property, in which the economic interest is transferred, is a 1-, 2- or 3-family house, an individual cooperative apartment, an individual residential condominium unit or an individual dwelling unit in a dwelling that is to be occupied or is occupied as the residence or home of four or more families living independently of each other and where the consideration is \$500,000 or less, and the rate of 1.425% of the consideration with respect to such transfers made after July 31, 1989 where the consideration is more than \$500,000; and

(4) at the rate of 1.425% of the consideration with respect to all other transfers of an economic interest in real property made after July 31, 1989 where the consideration is \$500,000 or less, and at the rate of 2.825% of the consideration with respect to such transfers made after July 31, 1989

Where the consideration is more than \$500,000.

Where the transfer of a controlling economic interest involves more than parcel of real property, the applicable rate is determined based upon consideration apportioned to each parcel.

Example: X Corporation owns two parcels of commercial property in New York City. Building A is worth \$400,000 Building B is, worth \$600,000. Y, X's sole shareholder, sells his X Corporation stock, which represents After July

31, 1989 his entire interest in both parcels, to Z for \$1,000,000. The tax is calculated as follows: [1] 1.425% of \$400,000 (Building A) + [2] 2.525% of \$500,000 (Building B). The tax due is [8] 6,000 \$11,000.

§4. Subdivision (d) of Article 31 of such regulations is emended to read as follows:

(d) Credit, If a grantee(s) acquires a controlling economic interest in corporations, partnership, association, trust or other entity owning real property in such acquisition, the entity owning the real property is conveyed to the grantee (3) of the controlling economic interest, a credit is available against the transfer tax due on the liquidation in the amount of the transfer tax paid with respect of the original acquisition of the controlling economic interest. In no event shall this credit be greater than the tax payable upon the conveyance liquidation.

To illustrate (assume that all transfers are made on or after August 1, 1989):

Example [(1)]: A owns 100% of the stock of X Corporation. X Owns unencumbered New York City real property with a fair market value of \$1,000,000. A sells all of the stock of X to C. A [~~\$20,000~~] \$25,250 transfer tax is paid. One year after the sale, C Liquidates X and receives the real property. At that time, the fair market value of X's real property is \$1,200,000. The measure of the transfer tax will be based on the fair market value of the real property (\$1,200,000). The transfer tax, therefore, is [2] 2.625% of \$1,200,000, or [~~\$24,000~~] \$31,500. Since this liquidation has occurred within 24 months of the transfer of the stock of X to C, a credit will be evaluable against the [~~\$24,000~~] \$31,300 tax. The amount of the credit may not exceed the amount of tax paid upon the prior transfer of the economic interest in X's real property. Accordingly, a credit of [~~\$20,000~~] \$26,250 will be available against the [~~\$24,000~~] \$31,500 transfer tax due on the liquidation of X. The transfer tax due is [~~\$24,999~~] \$31,500 minus [~~\$20,000~~] \$25,250, or [~~34,000~~] \$3,250.

Example [(2)]: Assume the same facts as in illustration (1) above, except that C sells 40% of X to prior to the liquidation of X. Upon X's liquidation,



C receives 50% of X's realty and D receives the remaining 40%. The transfer tax due is [~~\$24,000~~] \$31,500. The amount of credit available, however, is limited to the percentage of X's realty received by C (50%). [This] Thus, the credit available is [~~\$12,000~~] \$15,750 (60% x [~~\$20,000~~] \$26,250), and the transfer tax due is [~~\$12,000~~] \$15,750 (~~\$24,000~~] \$31,500-[~~\$12,000~~] \$15,750).

A owns 100% of the stock of X Corporation. X owns an unencumbered parcel of New York City real stock of X to C. A [~~\$20,000~~] \$25,250 transfer tax is paid. One year after the sale to C, X acquires a second unencumbered parcel of New York City real property with a fair market value of \$1,200,000. A [~~\$24,000~~] \$31,500 transfer tax is paid on this transfer. Eighteen months after the sale by A to C of X stock, C decides to liquidate X and receives both parcels of real property. At this time, X's first parcel of property is worth \$800,000. The measure of the tax on the transfer of each parcel will be based on the fair market value of each parcel. Since the fair market value of the first parcel is \$800,000, the tax on the transfer of this parcel is [~~16,000~~] \$21,000. Since the fair market value of the second parcel is \$1,200,000, the tax on the transfer of this parcel is [~~\$24,000~~] \$31,500. A [~~\$16,000~~] \$21,000 credit will be available against the tax on the transfer of the first parcel. The tax on the transfer of the second parcel must be paid in full. No credit is available for the prior tax of [~~\$24,000~~] \$31,500 paid when X acquired the second parcel.

§5. Article 22 of such regulations is amended to read follows:

Article 22. [Cooperative Housing Corporation] Transfer Relating to Cooperatives (a) A conveyance of realty (or an economic interest therein) by a sponsor or other party to an cooperative partnership entity or a cooperative housing corporation is subject to the tax. The consideration includes the amount of cash paid or required to be paid, the amount of any mortgages, liens of encumbrances on the realty and the fair market value of [shares] interests in the cooperative

[corporation transferred to] entity received by the sponsor. Consideration shall not be reduced by the amount of any expenses incurred by the sponsor, including payments made to a reserve fund or working capital fund.

(b) Notwithstanding the definition of "controlling interest" in Article or anything to the contrary contained these regulations, the [the] transfer of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold is subject to tax in the following situations.

- (1) [In] in the case of the original transfer of cooperative housing corporation stock by the cooperative corporation or cooperative sponsor [and]
- (2) [In] in the case of any subsequent transfer of the cooperative housing corporation stock by the owner there of made before August 1, 1989, if the owner held these shares in connection with, incidental to or in furtherance of a trade, business, profession, occupation or commercial activity engaged in or conducted by the owner; and
- (3) In the case of any subsequent transfer of the cooperative housing corporation stock by the owner thereof made on or after August 1, 1989. Where such a transfer relates to an individual residential unit, the consideration for such a transfer shall not include any portion of the unpaid principal of any mortgage on the real property of the cooperative housing corporation.

[The transfer tax applies in these two situations even if a controlling economic interest in the cooperative housing corporation has not been transferred]

For the purpose of this subdivision (b), in the case of transfers made on or after August 1, 1989, the term "cooperative housing corporation" shall not include a housing company organized and operating pursuant to the provision of Article 2, 4, 4 or 11 of the Private Housing Finance Law.

(c) Notwithstanding the definition of "controlling interest" contained Article 8 or anything to the contrary contained in these regulations, in the case a cooperative partnership the transfer tax shall apply to each transfer made on or after August 1, 1989 of shares of stock in such corporation, interests in such partnership, association or other entity or beneficial interests in such trust, in connection with the grant or transfer of

proprietary leasehold. Where such a transfer relates to an individual residential unit (other than the original transfer of such a unit by the cooperative ownership entity or cooperative plan sponsor), the consideration for such transfer shall not include any portion of the unpaid principal of any mortgage on the real property of such corporation, partnership, association, trust or other entity.

(d) For purposes of subdivision (b) before (c) of this article 22, a transfer shall be deemed to have been made August 1, 1989 if such a transfer was made pursuant to a written contract entered into before July 25, provided that the date of execution of such contract is confirmed by independent evidence, such as recording of the contract, payment of a deposit of other facts and circumstances as determined by the Commissioner of Finance.

(e) For purposes of subdivisions (b) and (c) of this Article 22, and individual unit is used for residential purposes shall be presumed to be an individual residential unit, unless such residential use is de minimis.

[(c) The application of paragraph (b) above may be illustrated by the] (f) The following examples Adulterate the application of subdivision (b) or this Article 22 only to transfers made before August 1, 1989:

Example [(1)]: An individual purchases stock from a cooperative housing corporation or cooperative plan sponsor which is allocated to an occupied apartment. Thereafter the individual sells this stock together with his proprietary leasehold. The transfer tax applies to each transfer. The initial transfer by the cooperative housing corporation or sponsor is subject to the transfer tax. In addition the subsequent transfer by the individual who has subleased the apartment is a transfer of stock held in connection with a commercial activity conducted by transferor and is, therefore, also subject to the transfer tax.

Example [(2)]: An individual purchases stock from a cooperative housing cooperation or sponsor as an "insider" and occupies the apartment unit allocated to the stock for residential purposes. The individual then transfers the stock along with the proprietary leasehold to another individual. The initial transfer from the cooperative housing corporation or sponsor to the individual "insider" is subject

to transfer tax. The sale by the resident individual "inside" to another is not subject to the transfer tax.

Example [(3)]: A commercial artist owns stock in a cooperative housing corporation and holds a proprietary leasehold on an apartment therein. The artist both resides and maintains a studio in this apartment. The sale of this stock is subject to the transfer tax. Although the artist resides in the apartment, the stock was nevertheless held in connection with his business. The tax is based on the total amount paid for the stock. No apportionment of the consideration for the portion of the apartment used for residential purposes is permitted.

For transfers made before August 1, 1989, In [in] determining whether a cooperative apartment used for residential purposes is also used for business purposes, the Commissioner of Finance will consider, among other factors, whether a home office expense deduction has been claimed for federal income tax purposes and whether the premises have been held out to clients or customers as a place of business within the 24 months preceding the sale.

Example [(4)]: (A) an individual owns stock in cooperative housing corporation and holds the proprietary lease for an apartment which he rents to a residential tenant. The sale of this stock is subject to the transfer tax. The renting of an apartment is a commercial activity and the stock is considered to be held in connection with that commercial activity.

(B) An individual owns stock in cooperative corporate and holds the proprietary lease for an apartment which occupied rent-free by a close family member. The sale of the stock is not subject to the transfer tax.

Example [(5)]: A subleased his residential cooperative apartment for 3 weeks while he was on vacation. Later that same year the apartment was sold. The transfer tax is applicable to the sale of this cooperative apartment. Temporary rentals for 15 days or more during any 12 month period within the 24 months preceding the transfer will be deemed to be a commercial activity.

Example [(6)]: A wishes to sell his cooperative apartment. A subleases the apartment for 6 months until a sale is made. This sale is subject to the transfer tax. Since the apartment has been rented for 15 more days, this rental constitutes commercial activity.

Example [(7)]: A allows B, a family member, to reside in his cooperative apartment. B pays all of the maintenance charges attributable to the apartment but does not pay any additional amounts to A. The sale of this apartment is subject to the transfer tax. B's occupancy of the apartment in return for payment of the maintenance charges constitutes a rental of the apartment. Therefore, the stock representing the apartment is held in connection with a commercial activity.

Example [(8)]: A sells his stock in a cooperative housing corporation on December 21, 1983. A had subleased his apartment December 20, 1986. A has not subleased his cooperative apartment nor has A conducted any business activity in his apartment within the 24 months preceding the sale. This sale of stock is not subject to the transfer tax. A cooperative residential apartment which had in the past been subleased by the current owner-tenant loses its commercial status after 24 months have passed during which the apartment has not been subleased for 15 or more days. Similarly, a cooperative apartment in which business activity has been conducted by the current owner-tenant loses its commercial status after 24 months have passed during which no commercial activity has been conducted in the apartment. Accordingly, the transfer would not be subject to the transfer tax.

Example [(9)]: A, B, C and D each own 25% of the stock of X Corporation, a cooperative housing corporation with four apartments. These four individuals each use their apartments solely for residential purposes. E purchases from A and B 50% of the cooperative housing corporation stock representing two of these apartments. The sales by A and B are not subject to the transfer tax. Cooperative apartment sales made prior to August 1, 1989 are taxes only in the case of original sales by the cooperative corporation or sponsor or in the case of resoles of apartments which had been used or held in connection with a commercial activity.

Thus, even though a controlling interest in real property has been transferred, the transfer tax does not apply to these sales.

Example [(10)]: A misrepresents to B that A's cooperative apartment had not been held or used in connection with 2 commercial activities. B purchases A's cooperative apartment believing it is not subject to the transfer tax based on A's misrepresentations. A prescribed affidavit of non-commercial use is filed with the Department of Finance. As the grantee, B will be liable for the appropriate transfer tax if A does not pay it.

Example [(11)]: A purchases stock from a cooperative housing corporation incorrectly believing that a transfer tax credit would be available against the transfer tax due. A return is filed claiming such credit. As the grantee, A will be liable for the appropriate transfer tax if the cooperative housing corporation does not pay it.

Example [(12)]: A corporation owns stock in a cooperative housing corporation and holds the proprietary lease for a residential apartment in the building. The apartment is used solely as the residence of its chief executive officer. The sale of this stock by the corporation is subject to the transfer tax. The corporation is deemed to maintain the apartment in the City in connection with, incidental to or in furtherance of its business or commercial activity. The result would be the same if the apartment was used to house out-of-town employees or customers of the corporation.

Example [(13)]: B, an attorney, owns stock in a cooperative housing corporation and resides in his cooperative apartment. B does not hold himself out as doing business in his apartment, does not meet with clients in his apartment and takes no business deductions relating to his apartment. B occasionally brings work home on weekends for his own convenience. B's occasional work at home will not render the sale of his apartment subject to tax.

A makes a taxable purchase of 10% of the stock of a cooperative housing corporation in connection with the grant of a proprietary leasehold in one of the ten

apartments of the cooperative housing corporation. The building is encumbered with a \$500,000 mortgage. A pays \$100,000 for the stock. The transfer tax is calculated as follows:

Amount paid for the apartment	\$100,000
10% of \$500,000 mortgage	<u>50,000</u>
Total consideration	\$150,000

(h) The application of subdivisions (b), (e) and (g) of this Article 22 to transfers made after July 31, 1989, is illustrated the following examples:

Example 1: A, as an "insider," purchases 2% of the stock of a cooperative housing corporation that is allocated to one to one fifty apartments in the building. The sales price is \$200,000, and there is an unpaid mortgage principal balance of \$5,000,000 on the real property. The transfer is taxable and because this is an initial transfer by the cooperative housing corporation pram sponsor a proportionate share of the mortgage is included in the consideration for the transfer, regardless of the use of the apartment. The tax is calculated as follows.

<u>Amount paid for the apartment</u>	<u>\$200,000</u>
<u>2% of the \$5,000,000 mortgage</u>	<u>100,000</u>
<u>Total consideration</u>	<u>\$300,000</u>

Compute 1% of \$300,000, for a tax due \$3,000. (A credit again this tax may be available)

A then subleases the apartment to B, who uses the apartment as a residence. Subsequently, A transfers the stock to C for \$500,000. Since the apartment was used as a residence, no portion of the underlying mortgage on the real property is included in the consideration for the subsequent transfer to C. The tax is calculated as follows: 1.425% of \$500,000, for a tax due to \$8,550.

Example 2: An accountant owns stock in a cooperative housing corporation and beads a proprietary leasehold on one of the fifty apartments located on the real property of the housing corporation. The apartment is used both as the accountant's residence and as an office for an accounting practice, and the accountant is eligible for a home office deduction for federal income tax purposes. There is an unpaid mortgage balance of \$2,000,000 on the real property. If the accountant

sells the stock for \$800,000, the tax will be calculated as follows: 1.425% of \$800,000, for a tax due of \$11,400. Since the apartment is used for residential purposes, it is deemed an individual residential unit and no portion of the unpaid principal of any mortgage on the real property of the housing corporation is included in the consideration for the transfer.

[(e)] (1) Credit In the CAM of the original transfer of cooperative housing corporation stock by a cooperative corporation or cooperative plan sponsor in connection with the grant or transfer of a proprietary leasehold, a credit is allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the land and building or buildings comprising the cooperative dwelling or dwellings. This credit is calculated as follows:

Credit=	Amount of tax paid upon the conveyance to the cooperative housing <u>[cooperation] corporation</u>	x	Number of shares transferred in this <u>transaction</u> Total number of outstanding shares of the cooperative housing <u>[cooperation] corporation</u> , as well as any shares held by the corporation
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To illustrate: X, the owner of a ten unit apartment building, sells the property to Y Cooperative Corporation for \$1,000,000. A transfer tax of \$20,000 is paid in connection with this transfer. T is authorized to issue 100 shares of stock. Each of the 10 apartments is allocated 10 shares. Y sells 10 shares to Z for \$300,000 within 24 months of payment by X of the \$20,000 transfer tax. A credit is allowed against the \$3,000 transfer tax due on this subsequent sale from Y to Z, computed as follow:

$$\text{Credit} = \$20,000 \times \frac{10}{100} = \$2,000$$

This credit shall not reduce the transfer tax due on the stock sale from the cooperative housing corporation or sponsor below zero.

This credit applies only for original transfers of stock by the cooperative housing corporation or cooperative plan



sponsor. It does not apply to taxable resoles of cooperative housing corporation stock.

No credit is allowed for any tax paid more than 24 months prior to the date on which occurs the first in a series of transfers of shares of stock in the offering of cooperative housing corporation shares. Thus, if the first of the original transfers of shares from the cooperative housing corporation or sponsor is made within 24 months of the payment of the tax imposed on the conveyance of the property to the cooperative housing corporation, then all original transfers wroth the cooperative housing corporation or plan sponsor, regardless of when nude, will be entitled to an appropriate credit. If the first transfer is made more than 24 months after payment of the tax imposed on the conveyance of the property to the cooperative housing corporation, then no credit is allowed.

§6. Article 27 of such regulations is amended by adding a new subdivision (c) to read as follows:

(c) Cross Reference. For the rule concerning transfers of interests in housing companies organized and operating pursuant to Article 2, 4, 5 or 11 of the Private Housing Finance Law, see subdivision (b) of Article 22 of these regulations.

§7. Article 30 of such regulations is amended to read as follows:

Article 30. Payment of Tax The tax shall be paid by the grantor to the Commissioner of Finance at the office of the Register in the county where deed is or would be recorded within thirty days, after the delivery of the deed by the grantor to the grantee but before the recording of such deed or, in the case of a tax on the transfer of a controlling economic interest in real property, within thirty days after such transfer by the grantor at [any of the borough offices of the Register or at] the Department of Finance, [Bureau of Tax] Operations Division, Real Property Transfer Tax Group, [25 Elm Place, 3rd Floor, Brooklyn, N.Y. 11201, or] at [such other place as may be specified in] the address provided on the return.

In the absence of satisfactory proof as to the date of delivery of a deed, the date of the deed shall be deemed to be the date of delivery thereof.

In case the tax due is not paid by the grantor, or if the grantor is exempt from tax under subdivision (a) of Article 27 of

these regulations, the grantee shall also be liable for payment of the tax to the Commissioner of Finance.

Payment of the tax may be made in cash, or by certified check, bank check or money order drawn to the order of the Commissioner of Finance.

§8. Article 31 of regulations is amended to read as follows:

Article 31. Filing of Returns (a) A joint return shall be filed by both the grantor and the grantee for each deed, instrument, or transaction, whether or not a tax is due thereon. Thus, a return must be filed although the consideration for the deed, instrument, or transaction is \$25,000 or less. The actual amount of the consideration for each deed, Instrument, or transaction must be set forth on the return at at the place provided therefor, regardless of the amount of the considerations. Where the consideration is [~~\$1,000,000~~] \$400,000 or more, a copy of the contract of sale or closing statement, if any must be attached to the return. A return need not be filed for the grant of a leasehold interest in a 1, 2 or 3 family house or an individual dwelling unit except where tax is owed or the lease is to be recorded. In the case of a transfer of stock in cooperative housing corporation made before August 1, 1989, other than the initial transfer of stock by the corporation or sponsor, if the owner did not hold the shares in connection with, incidental to or in furtherance of a trade, business, profession, occupation or commercial activity, the grantor and grantee may jointly file an affidavit of noncommercial use in lieu of a return. The return must be filed with the Commissioner of Finance by delivering the same to the Register for transmittal to the Commissioner of Finance, except that in the case of transfers of controlling economic interests in real property, the return must be filed with the Department of Finance, Operations Division, Real Property Transfer Tax Group. The return must be so filed at the time of payment of the tax, or, in the case of a deed not subject to tax, within 30 days after delivery of the deed by the grantor to the grantee, but before the recording of such deed. In the case where a transfer of an economic interest in real property is not subject to tax or the tax is zero (because of available credits), the return must be filed within 30 days after such transfer. [In addition, a cooperative housing corporation must file a semi-annual information return on January 31 and July 31 or each year which reflects all transfers of its stock made within the 5 months preceding the month in which such return is due.]

If either the grantor or grantee has failed to sign the return, it shall be accepted as a return, but the party who has

failed to sign the return or to file a separate return shall be subject to the penalties applicable to a person who has failed to file a return and the period of limitations for assessment of tax or of additional tax shall not apply to such party.

Where a deed, instrument, or transaction has more than one grantor or more than one grantee, a return may be signed by any one of the grantors and by any one of the grantees provided, however, that those not signing shall not be relieved of any liability for the tax imposed by the law.

The form of return shall be prescribed by the Commissioner of Finance and shall contain such Information as he deems necessary for the proper administration of the law. The return must be signed under oath by both the grantor or his agent and the grantee or his agent. Upon the filing of such return In the case of a deed, evidence thereof shall be affixed to the deed by the Register to indicate that a tax return has been filed. If no tax is paid at the time of the recording of the deed, the Register may indicate on the deed that no tax was paid. Where no return is filed at the time of the recording of the deed, the Register may indicate on the deed that no return was filed. The Register shall, at such times as may be mutually agreeable to the Register and the Commissioner of Finance, transmit to the Commissioner of Finance all returns filed with the Register, including receipt returns, returns filed without payment of taxes, and information of deeds record without filling or returns.

(b)(1) Pursuant to subdivision (g) of section 11-2105 of the Administrative Code as added by Local Law 53 of 1989, every cooperative housing corporation must file an information return with the commissioner or Finance by July 15 of each year covering the preceding period of January 1 through June 30 and by January 15 of each year covering the preceding period of July 1 through December 31. Provided, however, that for the period from January 1 through June 30, 1989, such information return shall have been filed by July 31, 1989.

(2) The Commissioner shall present be such forms as are necessary for the information return, information regarding the transfer of stock in the cooperative housing corporation required to be provided on the return shall include but not be limited to the names, addresses and employer identification numbers or social security numbers of the grantor and the grantee, the number of shares transferred, the date of the transfer and the consideration paid for such transfer.

(c) The acceptance by the Register of a return for filing shall in no way indicate the propriety of correctness of the return. [The] Except in the case of transfers of controlling economic interests in real property of transfers of shares or interests in a corporation or other entity formed for the purpose of cooperative ownership of real property, the Register shall accept any return offered for filling provided it is signed under oath by the grantor or his agent or by the grantee or his agent, unless it appears that the return is insufficient on its face, as where the return shows that the amount of the consideration paid or required to be path without deductions is less than the amount of mortgages or other liens or encumbrances. The Register is also authorized to reject a return which states that there was no consideration for the deed unless there is attached to such return a statement setting forth the grounds upon which it it claimed that there was not consideration.

Returns are required to be filed at the office of the Register in the county where the deed is or would be recorded. In the case of transfers of controlling economic interests in real property and transfers of shares or interests in a cooperative housing corporation or cooperative ownership entity returns of affidavits, whichever are applicable, may only be filed [at any office of the Register or] with the Department of Finance, [Bureau of Tax] Operations Division, Real Property Transfer Tax Group, [25 Elm Place, 3<sup>rd</sup> Floor, Brooklyn, N.Y. [201] at the address provided on the return. The locations of the Register's office are as follows:

Manhattan	(New York County) 31 Chambers Street New York, N.Y. 10007
Bronx	1932 Arthur Avenue Bronx, N.Y. 10457
Brooklyn	(Kings County) Municipal Building Brooklyn, N.Y. 11201
Queans	90-27 Sutphin Boulevard Jamaica, N.Y. 11435
Staten Island	(Richmond County) County Clerk's Office Staten Island, N.Y. 10301

Where a return is not filed at the time of the recording of a deed, or the deed is not recorded, the return may instead be

filed with the Department of Finance, [Bureau of Tax] Operations Division, Real Property Transfer Tax Group, [25 Elm Place, 3rd Floor, Brooklyn, N.Y. 11201] at the address provided on the return.

Forms of returns or affidavits will be furnished on request by the Commissioner of Finance or Register.

The Commissioner of Finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

If a return or affidavit required by the law is not filed or if a return or affidavit when filed is incorrect or insufficient on its face the Commissioner of Finance shall take the necessary steps to enforce the filing of such a return or affidavit or of a corrected return or affidavit.

The Commissioner of Finance may provide for the use of stamps as evidence of payment and that they shall be affixed to the deed before it is recorded.

§9. Paragraph (1) of subdivision (b) of Article 33 of such regulations is amended to read as follows:

(b) Civil Penalties -

Any person failing to file a return or to pay over any tax due prior to February 24, 1983, within the time required by law shall be subject to a penalty of five percent of the amount due. If the Commissioner of Finance is satisfied that the delay was excusable he may remit all or any part of such penalty.

With respect to returns or payments which become due on or after February 24, 1983, the following penalties apply:

(1) Failure to File Return - (1) In case of failure to file a return on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause (paragraph 5 of this subdivision) and not due to willful neglect, there is to be added to the amount required to be shown as tax on such return five percent of the amount of such tax for each month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(ii) With respect to returns required to be filed on or after July 16, 1985, in the case of a failure to file a tax return within 60 days, of the date prescribed for filing such return (determined with regard to any extension of time for

filling), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (i) of this paragraph shall not be less than the lesser of one hundred dollars (\$100) or one hundred percent (100%) of the amount required to be shown as tax on such return.

(iii) In the case of the failure of a cooperative housing corporation to file an information return on or before the date prescribed for filing by subdivision (g) of these regulations (determined with regard to any extension of time for filing), unless it is shown that such failure was due to reasonable cause and not due to willful neglect, there shall be imposed on such cooperative housing corporation a penalty of \$100 for each such failure.

(iv) For purposes of subparagraphs (i) and (ii), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.