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In this inaugural installment of All Capps, Capps reviews 2019 legislation that changed New York transfer taxes.

There were two significant changes to the transfer tax statutes in New York in 2019. The first involved an increase in New York state tax rates and "mansion" tax rates. The second and more controversial change added a requirement to disclose beneficial owners of limited liability companies that transfer real property in New York state and City.

## Tax Rate Increase

As part of the 2020 budget, the New York State Senate and Assembly enacted new revenue legislation, which included an increase in the State's transfer tax and mansion tax on transfers of real property.[1] These changes apply to all transfers occurring after July 1, 2019 in cities within New York state with a population of 1 million or more.[2] However, transfers made in accordance with a binding agreement entered into on or before April 1, 2019 (as confirmed by independent evidence such as a recording of the contract or a deposit), and closing after July 1, 2019, are not subject to the increased taxes described below. This law levies an additional tax of $1.25 for each $500 (or portion thereof) of consideration on transfers of (1) residential property when consideration exceeds $3 million and (2) commercial property when consideration exceeds $2 million.[3] The budget also increased the "mansion tax" from 1 percent on transfers of a residential real property with consideration exceeding $1 million to increased rates on a sliding scale for transfers when the consideration exceeds $2 million, up to the highest tax rate of 3.9 percent on transfers with consideration exceeding $25 million.[4]

**Table 1.**

| Consideration Amount | Total State Mansion Tax Rate |
|---|---|
| Under $1 million | Not subject to tax |
| At least $1 million, but less than $2 million | 1% |
| At least $2 million, but less than $3 million | 1.25% |
| At least $3 million, but less than $5 million | 1.5% |
| At least $5 million, but less than $10 million | 2.25% |
| At least $10 million, but less than $15 million | 3.25% |
| At least $15 million, but less than $20 million | 3.5% |
| At least $20 million, but less than $25 million | 3.75% |
| More than $25 million | 3.9% |

[1] A. 2009, 2019-2020 Sess. (N.Y. 2019), Part OOO; and S. 1509, 2019-2020 Sess. (N.Y. 2019), Part OOO.

[2] *Id.*

[3] *Id.*

[4] *Id.*



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### Additional Disclosure for Transfers Involving LLCs

On September 13, 2019, the New York State Legislature amended N.Y. Tax Law section 1409(a) to provide new disclosure requirements for transfers by deed of residential real property containing up to four-family dwelling units if either the transferor or the transferee is a limited liability company.[5] A similar disclosure provision was added to the New York City tax law through the enactment of N.Y.C. Administrative Code section 11-2105(h). The new law is in effect for all real property transfers occurring on or after September 13, 2019.[6]

The law was pushed through quickly, seemingly without thorough consideration of its scope or practical impact. The new law requires disclosure of the names and business addresses of all members, managers, and other authorized persons of the LLC. Further, if a direct member of the transferor or the transferee LLC is itself an LLC or other business entity, the members or shareholders of that "upper tier" entity "shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved."[7] There is no limitation on the number of levels for which reporting is required, no exception for de minimis ownership or ownership by a public or other widely held entity, and no guidance on what to do if that information is not otherwise available. The disclosure requirement is similarly not tied to the consideration given or whether any tax is due.

Also unclear is whether the disclosed information remains confidential in all circumstances. While the tax returns are generally not publicly available, they may be subject to disclosure through freedom of information requests. Interestingly, both laws include a disclaimer that the requirement to provide the information about beneficial owners "shall not be deemed an unwarranted invasion of personal privacy."[8]

### Initial and Subsequent Guidance

On September 27, 2019, the New York State Department of Taxation and Finance issued initial guidance that expanded the disclosure requirements from one- to four-family residential properties to include residential condominiums and requiring the tax identification numbers of each beneficial owner as well as the percentage ownership of each beneficial owner.[9]

While many current transfer tax rules on residential property define residential property as residential real property containing one to three family houses, as well as individual condominium or co-op units, there was no inclusion of condominium or co-op units in the text of the statute itself. The state's inclusion of condominiums in the guidance, despite its absence in the law, prompted great outcry from the industry, especially because there were no exclusions for sponsors or de minimis owners, resulting in a burdensome and unworkable law.

Amid the controversy, the New York State Department of Taxation and Finance issued revised guidance. First, additional guidance eliminated the requirement (from prior issued guidance) to disclose the tax identification numbers and percentage ownership of each beneficial owner. On November 4, 2019,[10] revised guidance was issued that eliminates the prior reference to condominiums and provides that disclosure is required only on transfers of property containing one- to four-family dwelling units (including residential properties that are used in part for commercial purposes). There was no mention of the elimination of condominium units from their guidance; rather, the new guidance simply no longer referenced condominiums. A similar clarification was made by the city on its website November 6, 2019.[11]

[5] *See also* A. 7190, 2019-2020 Sess. (N.Y. 2019); and S. 1730, 2019-2020 Sess. (N.Y. 2019).

[6] A. 7190 (N.Y. 2019).

[7] N.Y. Tax Law section 1409(a).

[8] *Id.*; and N.Y.C. Admin. Code section 11-2105(h).

[9] N.Y. Dep't of Tax and Fin., "Real Estate Transfer Tax" (as shown on Oct. 6, 2019).

[10] N.Y. Dep't of Tax and Fin., "Changes to the Filing Requirements for the Real Estate Transfer Tax on Certain Conveyances Involving LLCs," Tech. Mem. TSB-M-19(2)R (Nov. 4, 2019).

[11] N.Y.C. Dep't of Fin., "Real Property Transfer Tax (RPTT)" (last visited Dec. 27, 2019).



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## Reporting Process

Because of the rapid adoption and effectiveness of the law, the reporting and compliance procedures were not fully established. For example, until forms TP-584 and TP-584-NYC were recently revised, New York state and New York City transfer tax forms had no box to check to indicate that the transfer was of a four-unit dwelling (prior forms only had provision for one to three units).

Generally, the transfer tax return filing must be made within 15 days of the delivery of the deed or a similar legal document (30 days for New York City).[12] The law's effective date after the change created a complication for taxpayers who recently acquired real property but did not yet file the return, or were acquiring real property when the change in law became effective because the relevant information would not have been obtained in connection with the closing.

## Rationale

The Legislature did not provide a public policy rationale for the changes to the law. The enacting bill states as its justification that the disclosure "seeks to address the anonymity and related concerns."[13] There are several alternative thoughts on the reasoning behind the legislation, as discussed below. However, whatever the rationale, it is not at all clear that the new law will achieve its intended purpose.

One reason provided is that the law was simply intended to codify some changes made in 2015 by New York City and expand those requirements to the state.[14] The legislation states that the practice "has been successfully implemented in New York City as of 2015."[15] However, the changes were not identical to the New York City changes in 2015. For example, the 2015 New York City changes required that transferors or transferees that are multiple-member LLCs disclose the identity of their members, but disclosure through upper tiers to the ultimate beneficial owners was not required. Percentage ownership and identification numbers were also not required under the 2015 New York City changes.[16] Further, the New York City changes in 2015 were made by modifying Form TP-584 rather than through legislative action. One question is why legislative action was needed for these changes but not for the 2015 New York City changes. The 2015 rules were also not limited to LLCs — requiring, for example, disclosure of general partners of limited partnerships as well. The 2015 New York City changes were speculated to have been adopted in response to a *Wall Street Journal* article earlier that year that focused on people hiding their identity through the use of shell companies to avoid tax residency. But if that is the purpose of this statute, it seems there are better ways to identify the occupant of a residence. And there seems to be no clear reason to include four-unit dwellings in the law (when the transfer tax laws on residential properties are generally limited to three-unit dwellings), unless there was a concern about such four-unit residences specifically.

Another suggestion is that additional transparency in the ownership structure is intended to prevent money laundering, similar to the U.S. Treasury's Financial Crimes Enforcement Network. However, these new changes reach a larger target audience, and not necessarily in the targeted profile. Still another thought is that this disclosure is politically driven and designed to give communities earlier notice if developers are buying multiple sites in contemplation of starting a potentially unwanted development project or are engaging in unwanted subdivisions of property. But again, if that is the goal, the law seems to miss the mark. Finally, it has been suggested that the legislation was intended to address New York state's and municipalities' difficulty locating the owners and responsible parties for some abandoned properties that had compliance issues.

None of the suggested explanations seem to address the rationale behind the disclosure of, in addition to members, all the managers and other authorized persons of the LLC, as well as

[12] N.Y. Comp. Codes R. & Regs. Tit. 20, section 575.14(c); and N.Y.C. Admin. Code section 11-2105(a).

[13] A. 7190 (N.Y. 2019).

[14] *Id.*

[15] *Id.*

[16] Initial guidance for the disclosure statute required identification numbers of the owners, but that guidance has since been retracted.



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ownership of such entities if they are LLCs. If the concerns of New York City and state officials are about the ownership of real property, those concerns should not involve the management of an LLC that is buying or selling that property. This is especially true when the manager is merely an employee of the company and has no ownership stake in either the company or real property in question. Finally, although the law is overbroad in many respects, in other ways it is very narrow (for example, it does not apply to entity interest transfers or deed transfers by corporations, partnerships, or entities other than LLCs).

## Conclusion

The changes to New York state tax rates are relatively straightforward, although further guidance may be required to determine the application in some circumstances (for example, transfer of mixed-use property and allocation among multiple properties). And although the disclosure statute's scope has thankfully been limited by subsequent guidance, the full scope and effect of this new law remain to be seen. In the meanwhile, transferors and transferees of residential real property in New York should be aware of these reporting requirements and be prepared accordingly. The rules serve as a reminder of the importance and expanse of real property transfer tax laws in New York state and New York City. ■

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