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NATIONAL COMMERCIAL SERVICES

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# Current Developments Special Edition

First American Title  
National Commercial Services

By Michael J. Berey  
Senior Underwriter



This Bulletin highlights amendments made to subdivision (a) of Tax Law §1404 (“Liability for tax”) and to subdivision (a) of Tax Law §1409 (“Returns”) by Part O of Senate Bill 2509-C/Assembly Bill 3009-C, just signed into law as part of New York State’s 2021-2022 Budget.

## TAX LAW SECTION 1404

New York State’s Real Estate Transfer Tax (“RETT”) and New York City’s Real Property Transfer Tax (“RPTT”) are payable by the grantor unless when the grantor is exempt (Tax Law §§1404 and 1406; New York City Admin. Code §§ 11-2104 and 11-2106). The grantee is jointly and severally liable for payment of the tax, and for any deficiency, including interest and penalties, if these taxes are not paid in full.

When a grantee is required by a contract of sale to pay the RETT and/or the RPTT, the consideration for each of those taxes is increased by the aggregate of the amounts of tax paid by the grantee, and transfer taxes are payable on this gross-up of consideration (20 NYCRR §575.4(b); 19 RCNY §23.02). The amount of tax paid by the grantee, as initially computed, has also been added to consideration for computing the Additional Tax under Tax Law §1402-a, generally known as the Mansion Tax, which is payable by the grantee.

Section 2 of Part O amends subdivision (a) of Tax Law §1404 (“Liability for tax”) to eliminate, effective July 1, 2021, for the conveyance of a one-to-four family house and an individual residential condominium unit, or interests therein, the requirement that consideration when computing the RETT and the Mansion Tax be increased when the RETT is paid by the grantee.

*“In the case of a conveyance of residential real property as defined in subdivision (a) of section 1402-a [“Additional tax”] of this article [31; “Real estate transfer tax”], if the tax imposed by this article is paid by the grantee pursuant to a contract between the grantor and the grantee, the amount of such tax shall be excluded from the calculation of consideration subject to tax under this article.”*

Under amended Tax Law §1404 (a), the grantee may only be required to pay the RETT when so “provided in a contract between grantor or grantee or as otherwise provided in this section.” Tax Law §1404 provides that the grantee has the duty to pay the RETT if the grantor is exempt.

Amended Tax Law §1404 (a) also affords a grantee who has paid the RETT for the grantor with “a cause of action against the grantor for recovery of [the] payment of such tax, interest and penalties by the grantee.”

The amendment to Tax Law §1404 “shall apply to conveyances occurring on and after [July 1, 2021]...other than conveyances that are made pursuant to binding written contracts entered into on or before April 1, 2021, provided that the date of execution of such contract is confirmed by independent evidence, such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the commissioner of taxation and finance.”

The legislation does not address the increase in consideration for the RETT when the grantee pays the RPTT for the grantor or the gross up of consideration for the RPTT when the RETT and/or the RPTT payable by the grantor is paid by the grantee.

## TAX LAW SECTION 1409

Under Tax Law Section 1409(a), as amended by Chapter 297 of the Laws of 2019, “[w]hen the grantor or grantee for a deed to residential property containing one to four-family dwelling units is a limited liability company, the joint [transfer tax return, the TP-584]...is [to be] accompanied by a document which identifies the names and business addresses of all member, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, members, managers or authorized persons, if any, of such limited liability company... If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved.”

Section 3 of Part O further amends Tax Law Section 1409(a) to provide that this disclosure requirement does not apply to “a publicly traded entity, a REIT, a UPREIT, or a mutual fund...” which is a member, manager or authorized person of a limited liability company.

This amendment is effective “immediately.”

The legislation is posted at [A3009c.pdf \(nyassembly.gov\)](#).

Michael J. Berey  
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