



LOCAL LAW INTRO. NO. 9, 1994  
A LOCAL LAW IMPOSING A COUNTY RECORDING TAX ON OBLIGATIONS  
SECURED BY A MORTGAGE ON REAL PROPERTY

SECTION 1. There shall be imposed in Broome County a tax of twenty-five cents (\$0.25) for each one hundred dollars (\$100.00) and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after September 1, 1994, and a tax of twenty-five cents (\$0.25) on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars (\$100.00).

SECTION 2. The tax imposed by this local law shall be payable on the recording of each mortgage of real property subject to taxes thereunder. Such tax shall be paid to the recording officer of the county in which the real property or any part thereof is situated, except where real property is situated within and without the county, the recording officer of the county in which the mortgage is first recorded shall collect the tax imposed by this local law, as required by subdivision two of §253-d of the Tax Law. It shall be the duty of such recording officer to endorse upon each mortgage a receipt for the amount of the tax so paid. Any mortgage so endorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax endorsed upon each mortgage shall be recorded therewith. The record of such receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage.

SECTION 3. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under Subdivision 1 of § 253 and paragraph (b) of Subdivision 1 of § 255 of the Tax Law. Except as otherwise provided in this section, all the provisions of the Tax Law relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section, with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section, except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in the Tax Law to the tax or taxes imposed by the Tax Law shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Broome County," unless a different meaning is clearly required.

SECTION 4. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without Broome County, the amount of such tax due and payable to Broome County shall be determined in a manner similar to that prescribed in the first paragraph of § 260 of the Tax Law, which concerns real property situated in two or more counties. Where such property is situated both within Broome County and without the state, the amount due and payable to Broome County shall be determined in the manner prescribed in the second paragraph of such § 260, which concerns property situated within and without Broome County, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

SECTION 5. A tax imposed pursuant to this local law shall be in addition to the taxes imposed by § 253 of the Tax Law.

SECTION 6. The balance of all monies paid to the recording officer of Broome County during each month on account of the tax imposed pursuant to this local law, after deducting the necessary expenses of his office as provided in § 262 of the Tax Law, except taxes paid upon mortgages which under the provisions of this section or § 260 of the Tax Law, are first to be apportioned by the Commissioner of Taxation and Finance, shall be paid over by such officer on or before the 10th day of each succeeding month to the Commissioner of Finance of Broome County and, after the deduction by such Commissioner of Finance of

the necessary expenses of his or her office provided in § 262 of the Tax Law, shall be deposited in the general fund of the County of Broome and shall only be appropriated by the County Legislature of the County of Broome to fund the Office for Aging of Broome County. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties which under the provisions of this local law or § 260 of the Tax Law are first to be apportioned by the Commissioner of Taxation and Finance shall be paid over by the recording officer receiving the same as provided by the determination of said Commissioner of Taxation and Finance.

SECTION 7. This local law shall take effect on September 1, 1994.

Mr. Pasquale moved, seconded by Mr. Augostini to table the resolution. Tabled.

RESOLUTION NO. 306

By Hon. Louis P. Augostini and Hon. Vincent A. Pasquale

Seconded by Mr. Pasquale

RESOLUTION ADOPTING LOCAL LAW INTRO. NO. 10, 1994, ENTITLED: "A LOCAL LAW IMPOSING A TAX ON REAL ESTATE TRANSFERS IN THE COUNTY OF BROOME."

RESOLVED, that Local Law Intro. No. 10, 1994, entitled: "A Local Law Imposing a Tax on Real Estate Transfers in the County of Broome," be and the same hereby is adopted and approved in accordance with the Broome County Charter, the Municipal Home Rule Law, Article 31(c) of the Tax Law and all the applicable statutes and laws pertaining thereto.

LOCAL LAW INTRO. NO. 10, 1994  
A LOCAL LAW IMPOSING A TAX ON REAL ESTATE TRANSFERS  
IN THE COUNTY OF BROOME

BE IT ENACTED, by the Legislature of the County of Broome, as follows:

SECTION 1. DEFINITIONS.

SECTION 2. IMPOSITION OF TAX.

SECTION 3. PAYMENT OF TAX.

SECTION 4. LIABILITY FOR TAX.

SECTION 5. EXEMPTIONS.

SECTION 6. CREDIT.

SECTION 7. COOPERATIVE HOUSING CORPORATION TRANSFERS.

SECTION 8. DESIGNATION OF AGENTS.

SECTION 9. LIABILITY OF RECORDING OFFICER.

SECTION 10. REFUNDS.

SECTION 11. DEPOSIT AND DISPOSITION OF REVENUE.

SECTION 12. JUDICIAL REVIEW.

SECTION 13. APPORTIONMENT.

SECTION 14. DETERMINATION OF TAX.

SECTION 15. REMEDIES EXCLUSIVE

SECTION 16. PROCEEDINGS TO RECOVER TAX.

SECTION 17. GENERAL POWERS OF THE TREASURER.

SECTION 18. INTEREST AND CIVIL PENALTIES.

SECTION 19. RETURNS TO BE SECRET.

SECTION 20. SEPARABILITY.

SECTION 21. EFFECTIVE DATE.

SECTION 1. DEFINITIONS. When used in this Article, unless otherwise expressly stated:

(a) "PERSON" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

(b) "CONTROLLING INTEREST" means

(1) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and

(2) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(c) REAL PROPERTY means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the County of Broome. It shall not include rights to sepulture.

(a) "CONSIDERATION" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed or whether paid or required to be paid by money, property or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(1) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

(2) In the case of a creation of subleasehold interest, "consideration" shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

(3) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

(4) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

(5) In the case of (A) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (B) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative

housing corporation.

(e) "CONVEYANCE" means the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where:

(1) The sum of the term of the lease or sublease and any options for renewal exceeds 49 years.

(2) Substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee; and

(3) The lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the Internal Revenue Code.

(f) "INTEREST IN THE REAL PROPERTY" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

(g) "GRANTOR" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "GRANTOR" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

(h) "GRANTEE" means the person who obtains real property or interest therein as a result of a conveyance.

(i) "RECORDING OFFICER" means the County Clerk of the County of Broome.

(a) "TREASURER" means the Commissioner of Finance of the County of Broome.

SECTION 2. IMPOSITION OF TAX. There is hereby imposed in Broome County a tax on each conveyance of real property or interest therein when the consideration exceeds \$500, at the rate of \$0.50 for each \$500 or fractional part thereof. Such tax shall apply to any conveyance occurring on or after October 1, 1994, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, 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 Treasurer.

### SECTION 3. PAYMENT OF TAX

(a) The real estate transfer tax imposed pursuant to this local law shall be paid to the Treasurer or the recording officer acting as the agent of the Treasurer upon designation as such agent by the Treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by Article 31 of the Tax Law is required to be paid. Such Treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

(b) A return shall be required to be filed with such Treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this local law at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by Article 31 of the Tax Law. The return, for purposes of the real estate transfer tax imposed pursuant to this local law, shall be a photocopy or carbon copy of the real estate transfer tax return required to be filed pursuant to § 1409 of the Tax Law. However, when an

apportionment is required to be made pursuant to § 1449-r of the Tax Law, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such Treasurer or recording officer orders them to be destroyed.

(c) The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this Article shall have been paid as provided in this section.

#### SECTION 4. LIABILITY FOR TAX.

(a) The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this local law or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.

(b) for the purpose of the proper administration of this local law and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

#### SECTION 5. EXEMPTIONS

(a) The following shall be exempt from payment of the real estate transfer tax:

(1) The State of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada).

(2) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from them of liability for the tax.

The tax shall not apply to any of the following conveyances:

Conveyances to the United Nations, the United States of America, the State of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada);

Conveyances which are or were used to secure a debt or other obligation;

Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bonafide gifts;

Conveyances given in connection with a tax sale;

Conveyances to effectuate a mere change of identity of form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

Conveyances which consist of a deed of partition;

Conveyances given pursuant to the Federal Bankruptcy Act;

Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and

Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely

by the grantor as his personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

SECTION 6. CREDIT. A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

SECTION 7. COOPERATIVE HOUSING CORPORATION TRANSFERS.

Notwithstanding the definition of "CONTROLLING INTEREST" contained in subdivision (b) of section 1 of this local law or anything to the contrary contained in subdivision (e) of section one of this local law, the tax imposed pursuant to this article shall apply to

(1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and

(2) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant of transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (1) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (1) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however shall such credit reduce the tax, on a conveyance described in paragraph (1) of this subdivision, below zero, nor shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares described in paragraph (1) of this subdivision.

(b) Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

SECTION 8. DESIGNATION OF AGENTS. The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this local law. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided

in Section three of this local law.

**SECTION 9. LIABILITY FOR RECORDING OFFICER.** A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this local law that he shall collect so long as he shall compute and collect such tax on; the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

**SECTION 10. REFUNDS.** Whenever the treasurer shall determine that any moneys received under the provisions of this local law were paid in error it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filled with the treasurer within two years form the date the erroneous payment was made.

**SECTION 11. DEPOSIT AND DEPOSITION OF REVENUE.**

(a) All taxes collected or received by the treasurer or his duly authorized agent under the provision of this local law shall be paid over on or before the tenth day of each succeeding month to the Commissioner of Finance and shall be deposited into the General Fund of the County of Broome and shall only be appropriated by the County Legislature to fund Veteran's Services Programs within Broome County.

(b) The Commissioner of Finance shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this local law.

**SECTION 12. JUDICIAL REVIEW.** Any final determination of the amount of any tax payable under Section three of this local law shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article seventy-eight of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within four months after the giving of the notice of such final determination, provided however, that any such proceeding under Article seventy-eight of the Civil Practice Law and Rules shall not be instituted unless

(1) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by surety a company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or

(2) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(b) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the treasurer, and such treasurer shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under Article seventy-eight of the Civil Practice Law and Rules; provided, however , that

(1) such proceeding is instituted within four months after the giving of the notice of such denial,

(2) a final determination of tax due was not previously made, and

(3) an undertaking is filed with the treasurer in such amount and with such sureties as a justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

**SECTION 13. APPORTIONMENT.**

Where real property is situated partly within and partly without the boundaries of the County of Broome, the consideration subject to tax is such part of the total consideration as is attributable to the portion

of such real property situated within the County of Broome or to the interest in such portion. If the consideration attributable to the property located in the County of Broome is set forth in the contract, such amount may be used to compute the tax due.

(b) If the contract does not set forth the amount of consideration attributable to the portion of real property or interest therein situated within the County of Broome, the consideration must be reasonably allocated between the portion of such property or interest therein situated within the County of Broome and the portion of such property or interest therein situated without the County of Broome.

(1) If the grantor and the grantee enter into a written agreement, signed by both the grantor and the grantee, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due.

(2) If the grantor, and the grantee do not enter into such agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable by the treasurer, the allocation of consideration must be computed by multiplying the amount of consideration by a fraction, the numerator of which is the fair market value of the real property or interest therein situated within the County of Broome and the denominator of which is the total fair market value of all the real property or interest therein being conveyed. Except in the case of a transfer or acquisition of a controlling interest therein, the tax is computed on the allocated portion of the actual consideration paid even if that amount is greater or less than the fair market value as determined by appraisal.

(c) Where the methods provided under this section do not allocate the consideration in a fair and equitable manner, the treasurer may require a grantor and grantee to allocate the consideration under such method as it prescribes, as long as the prescribed method results in a fair and equitable allocation.

#### SECTION 14. DETERMINATION OF TAX.

(a) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the treasurer from such records or information as may be obtainable, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, shall petition the County Executive for a hearing, or unless the treasurer, on the treasurer's own motion, shall redetermine the same. The County Executive may designate, in writing, a hearing officer to hear the appeal and file a written report and recommendation to the County Executive. In any case before the County Executive under this article, the burden of proof shall be on the petitioner. After such hearing, the County Executive shall give notice of the determination to the person against whom the tax is assessed and the treasurer. Such determination may be reviewed in accordance with the provisions of Section 12 of this local law. A proceeding for judicial review shall not be instituted unless:

(1) The amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the treasurer and there shall be filed with the treasurer an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or

(2) at the option of the petitioner, such undertaking filed with the treasurer may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision, plus the costs and charges which may accrue against him in the prosecution of the proceeding, in which event the petitioner shall not be required to deposit such taxes, penalties and interest as a condition precedent to the commencement of the proceeding.

(b) A person liable for the tax imposed by this local law (whether or not a determination

assessing a tax pursuant to subdivision (a) of this section has been issued) shall be entitled to have a tax due finally and irrevocable fixed prior to the ninety-day period referred to in subdivision (a) of this section, by filing with the treasurer a signed statement in writing in such form as the treasurer shall prescribe, consenting thereto.

SECTION 15. REMEDIES EXCLUSIVE. The remedies provided by sections ten and fourteen of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this local law. No determination or proposed determination to tax or determination on any application for refund shall be enjoined or reviewed by any action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding under article seventy-eight of the civil practice law and rules.

SECTION 16. PROCEEDINGS TO RECOVER TAX.

(a) Whenever any person shall fail to pay any tax, penalty or interest imposed by this local law, the County Attorney shall, upon the request of the treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Broome in any court of the State of New York or of any other state or of the United States.

(b) As an additional or alternate remedy, the treasurer may issue a warrant, directed to the sheriff of Broome County commanding him to levy upon and sell the real and personal property of any grantor or grantee liable for the tax, which may be found within the county, for payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the treasurer and to pay the treasurer the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed in the department of state. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the treasurer a warrant of like terms, force and effect may be issued and directed to any officer or employee of the county and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the treasurer shall have the same remedies to enforce the amount due thereunder as if the county had recovered the judgment therefor.

SECTION 17. GENERAL POWERS OF THE TREASURER. The treasurer shall have the power:

(a) To administer and enforce the tax imposed by this local law and the treasurer is authorized to make such rules and regulations, and to require such facts and information to be reported, as the treasurer may deem necessary to enforce the provisions of this article.

(b) For the purposes of ascertaining the correctness of any return, or for the purpose of making an estimate of tax of any return, or for the purpose of making an estimate of tax of any person, to examine or to cause to have examined, by any agent or representative designated by the treasurer for that purpose, any books, papers, records or memoranda related to the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge of the matters included in the return, and may take testimony and require proof material for its information, with the power to administer oaths to such person or persons.

(c) To extend, for cause shown, the time of filing any return for a period not exceeding three months.

(d) To prescribe the methods for determining the consideration and net consideration attributable to that portion of real property located partly within and partly without the county of Broome which is located within the county of Broome or any interest therein.

(e) To require any grantor or grantee to keep such records, and for such length of time as may be required for the proper administration of this title and to furnish such records to the commissioner of taxation and finance upon request.

(f) The treasurer of the treasurer's own motion, may abate any small unpaid balance of an assessment of the tax to be levied hereunder, or any liability in respect thereof, if the treasurer determines under rules prescribed by the treasurer that the administration and collection costs involved would not warrant collection of the amount due. The treasurer may also abate, of the treasurer's own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

#### SECTION 18. INTEREST AND CIVIL PENALTIES.

(a) Any grantor or grantee failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of ten per centum of the amount of tax due plus an interest penalty of two per centum of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due, such interest penalty shall not exceed twenty-five per centum in the aggregate. If the treasurer determines that such failure or delay was due to reasonable cause and not due to willful neglect, the treasurer shall remit, abate or waive all of such penalty and such interest penalty.

(b) If any amount of tax is not paid on or before the last date prescribed in section three of this local law for payment, interest on such amount at the rate of ten percent shall be paid for the period from such last date to the date paid.

(c) The penalties and interest provided for in this section shall be paid to the treasurer and shall be determined, assessed, collected and distributed in the same manner as the tax imposed by this local law and any reference to tax in this article shall be deemed to refer to the penalties and interest imposed in this section.

#### SECTION 19. RETURNS TO BE SECRET.

(a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the County of Broome or any person engaged or retained by such County on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under this local law. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.

(b) The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County in any action or proceeding involving the collection of a tax due under this local law to which such County or an officer or employee of such County is party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

(c) Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so

classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such County of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

(d) Any officer or employee of such County who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

SECTION 20. SEPARABILTY. If any clause, sentence, paragraph, section or article of this shall be adjudged by any court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the proceeding in which such adjudication shall have been rendered.

SECTION 21.. EFFECTIVE DATE. This local law shall take effect immediately.

Mr. Augostini moved, seconded by Mr. Pasquale to table the resolution. Tabled

Mr. Pasquale moved seconded by Mr. Augostini to adjourn at 4:16 P.M. Carried