



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Disclosure Requirements Regarding
New York State's Additional Transfer
Tax and New Supplemental Tax**

Date: June 28, 2019

The New York State Department of Law (“DOL”) publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act § 102(14).

I. INTRODUCTION

On March 31, 2019, New York State announced additions to the base real estate transfer tax (“transfer tax”) and established a new supplemental tax (“supplemental tax”) on certain conveyances of real property within New York State.¹ These amended tax rates apply only to conveyances of real property in cities with a population of 1 million or more (which includes only New York City as of the date of this guidance document). The additional transfer tax applies only to conveyances of residential real property² when the consideration for the conveyance is \$3 million or more, and conveyances of any other property when the consideration for the conveyance is \$2 million or more. The new supplemental tax applies only to conveyances of residential real property when the consideration for the conveyance is \$2 million or more.

The additional transfer tax and new supplemental tax apply to all applicable transfers occurring after **July 1, 2019**. However, transfers made pursuant to a binding agreement entered into on or before April 1, 2019 (as confirmed by independent evidence such as a recording of the contract or payment of a deposit) and closing after July 1, 2019 will not be subject to the amended tax rates. Further information regarding the amended transfer tax and additional supplemental tax is available at the following web address:

https://www.tax.ny.gov/pdf/memos/real_estate/m19-1r.pdf

¹ Please note that certain counties and municipalities within New York State also impose their own additional transfer taxes.

² For purposes of both the additional transfer tax and new supplemental tax, the term “residential real property” includes “any premises that is or may be used in whole or in part as a personal residence, and shall include a one, two, or three-family house, **an individual condominium, or a cooperative unit**” (emphasis added).

This guidance document clarifies how the additional transfer tax and new supplemental tax affect DOL disclosure requirements for sponsors of cooperative interests in realty.

II. DOL DISCLOSURE REQUIREMENTS

Due to the aforementioned changes to New York State tax law, many offering plans now contain inaccurate tax rates and typical closing costs. To provide potential purchasers with current and accurate information regarding the tax implications of their purchase, the DOL will require the following disclosures in applicable offering plans. For the purposes of this guidance document, “applicable offering plans” shall mean offering plans and amendments thereto for properties located in cities with a population of 1 million or more and with offering prices of \$2 million or more for any unit/apartment/home.

(a) Newly Submitted Offering Plans

Sponsors of applicable offering plans submitted to the DOL after the date of this guidance document must include in their offering plans tax information and typical closing costs that reflect the amended tax rates, as applicable. *See, e.g.*, 13 N.Y.C.R.R. § 20.3(s).

(b) Pending Offering Plans

Sponsors of applicable offering plans that the DOL has accepted for submission but not yet accepted for filing as of the date of this guidance document must revise their pending offering plans to include tax information and typical closing costs that reflect the amended tax rates, as applicable. *See id.*

(c) Previously Accepted Offering Plans

Sponsors of applicable offering plans that the DOL has already accepted for filing as of the date of this guidance document must disclose in detail the additional transfer tax and new supplemental tax in the next substantive³ amendment to their offering plan. In such amendment, sponsor also must disclose that (i) the additional transfer tax and new supplemental tax may increase the typical closing costs as disclosed in the offering plan, and (ii) purchasers are advised to consult with their attorney and/or a tax expert to determine the tax implications of their purchase.

Accordingly, all substantive amendments to applicable offering plans submitted to the DOL after the date of this guidance document must include the disclosures detailed in the preceding paragraph (“the aforementioned disclosures”). However, sponsors of applicable offering plans are **not** required to immediately amend their offering plans to include the aforementioned disclosures (although the DOL highly encourages them to do so). If the sponsor of an applicable offering plan chooses not to immediately amend its offering plan, the next substantive amendment to the offering plan submitted to the DOL after the date of this guidance document must include the aforementioned disclosures.

Please note that sponsors of amendments that the DOL has accepted for submission but not yet accepted for filing as of the date of this guidance document do **not** need to include the aforementioned disclosures

³ For the purposes of this guidance document, “substantive” amendment shall mean all amendments submitted to the DOL that are not solely limited to price changes.

in their pending amendment (although the DOL highly encourages them to do so). However, the next substantive amendment to the offering plan submitted to the DOL after the date of this guidance document must include the aforementioned disclosures.

Please also note that if at any time sponsor amends the offering plan to increase the offering price of any unit/apartment/home so that it is \$2 million or more, sponsor must also include the aforementioned disclosures (provided sponsor has not already disclosed the updated tax information and closing costs in the offering plan or a previously filed amendment thereto).⁴

III. FAILURE TO DISCLOSE OR ADEQUATELY DISCLOSE THE ADDITIONAL TRANSFER TAX AND NEW SUPPLEMENTAL TAX

The DOL reserves the right to reject for filing applicable offering plans and amendments that do not include the information and disclosures described herein. Additionally, the DOL reserves the right to update its disclosure requirements on this topic in the future. However, it shall be sponsor's obligation to submit updated tax information and typical closing costs if there is a change to New York State tax rates in the future, regardless of whether the DOL updates its disclosure requirements.

The Attorney General has the authority under Article 23-A of the New York General Business Law to investigate and strictly enforce violations of the statutes and regulations governing disclosure requirements. Nothing contained in this guidance document shall be construed to be a waiver of or a limitation on the Attorney General's authority to take enforcement action pursuant to Article 23-A of the New York General Business Law and other applicable provisions of law, except as expressly stated herein.

⁴ Any amendment submissions including updated transfer and supplemental tax information will automatically be deemed substantive amendments by the DOL.