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MEMORANDUM

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TO: REF Review Attorneys

DATE: 7/18/86

FROM: Mary Sabatini DiStephan *msd*RE: NYC "Pan Am" Local Law Amendment to Administrative Code Section II 46.1.0 et seq (authorized by Ch. 915 of the Laws of 1981)

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The new local law which I distributed at our staff meeting last Wednesday was signed into law on July 8, 1986 and is effective as to all transfers that are made on or after the fifth day succeeding the effective date, i.e., July 13, 1986.

Please note that the tax applies to sponsors or to sellers of coop apartments who do not use these apartments as residences. (The local law and tax already applied to condos.) Note particularly at Section II 46-4.0 that although the obligation to pay the tax is on the grantor (sponsor, holder of unsold shares, syndication), the grantee (purchaser) could be liable in the event that the amount of tax due is not paid by the grantor. This fact should be disclosed in coop offering plans, particularly in post closing amendments where holders of unsold shares will have tax liability and will not be able to take advantage of the credit allowed for real property transfer taxes paid within the preceding 24 months as a result of the conveyance of the property to the coop corporation.

This problem does not really arise in condominiums where the deed cannot be recorded without the tax having been paid or an exemption granted.

Attached is a copy of the amended law. If you have any questions, see me.

MSD/kd

# THE COUNCIL

The City of New York

Int. No. 67

January 22, 1986

Introduced by Council Member DeMarco (by request of the Mayor); also Council Members Ferrer and Leffler—read and referred to the Committee on Finance.

## A LOCAL LAW

**To amend the administrative code of the city of New York, in relation to extending the coverage and application of the real property transfer tax imposed by title II of chapter forty-six of such code to include transfers of economic interests in real property.**

*Be it enacted by the Council as follows:*

1 Section 1. Section II46-1.0 of title II of chapter forty-six of the administrative code of the city of  
2 New York, as amended by local law number thirty-six for the year nineteen hundred eighty-two, is  
3 amended to read as follows:

4 §II46-1.0 **Definitions.**—When used in this title the following terms shall mean or include:

5 1. "Person." An individual, partnership, society, association, joint stock company, corpora-  
6 tion, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representa-  
7 tive capacity, whether appointed by a court or otherwise, any combination of individuals, and any  
8 other form of unincorporated enterprise owned or conducted by two or more persons.

9 2. "Deed," Any document [, instrument] or writing (other than a will), regardless of where  
10 made, executed or delivered, whereby any real property or interest therein is created, vested, granted,  
11 bargained, sold, transferred, assigned or otherwise conveyed, including any such document [, instru-  
12 ment] or writing whereby any leasehold interest in real property is granted, assigned or surrendered.

13 3. "Instrument." *Any document or writing (other than a deed or a will), regardless of where  
14 made, executed or delivered, whereby any economic interest in real property is transferred.*

15 4. *Transaction.*" *Any act or acts, regardless of where performed, and whether or not reduced  
16 to writing, unless evidenced by a deed or instrument, whereby any economic interest in real property  
17 is transferred (other than a transfer pursuant to the laws of interstate succession).*

18 [3] 5. "Real property [or interest therein]." Every estate or right, legal or equitable, present or  
19 future, vested or contingent, in lands, tenements or hereditaments, which are located in whole or in

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Note: Matter in *italics* is new; matter in brackets [ ] to be omitted.

1 [7] 12. "Director of finance[.]" or "commissioner of finance." The [director] commissioner of  
2 finance of the city of New York.

3 [8] 13. "City." The city of New York.

4 [9] 14. "Grantor." The person or persons making, executing or delivering the deed. *The term*  
5 *"grantor" also includes the person or persons who transfer an economic interest in real property.*

6 [10] 15. "Grantee." The person or persons accepting the deed or who [obtains] *obtain* any of  
7 the real property which is the subject of the deed or any interest therein. *The term "grantee" also*  
8 *includes the person or persons to whom an economic interest in real property is transferred.*

9 [11] 16. "Affixed." Includes attached or annexed by adhesion, [stapled] *stapling* or otherwise,  
10 or a notation by stamp, imprint or writing.

11 [12] 17. "Register." Includes the city register and the county clerk of the county of Richmond.

12 §2. Section II46-2.0 of such title, chapter and code, as amended by local law number thirty-six  
13 for the year nineteen hundred eighty-two, is amended to read as follows:

14 §II46-2.0. **Imposition of tax.**—a. A tax is hereby imposed on each deed at the time of delivery  
15 by a grantor to a grantee when the consideration for the real property and any improvement thereon  
16 (whether or not included in the same deed) exceeds twenty-five thousand dollars. the tax shall be:

17 (1) at the rate of one-half of one per centum of the net consideration with respect to convey-  
18 ances made before July first, nineteen hundred seventy-one, or made in performance of a contract  
19 therefor executed before such date;

20 (2) at the rate of one per cent of such net consideration with respect to—

21 (i) all conveyances made on or after July first, nineteen hundred seventy-one and before  
22 February first, nineteen hundred eighty-two, or made in performance of a contact therefor  
23 executed during such period.

24 (ii) conveyances made on or after February first, nineteen hundred eighty-two and before  
25 July first, nineteen hundred eighty-two of one, two or three-family houses and individual  
26 residential condominium units, and

27 (iii) conveyances made on or after February first, nineteen hundred eighty-two and before  
28 July first, nineteen hundred eighty-two where the consideration is less than five hundred thou-  
29 sand dollars (other than grants, assignments or surrenders of leasehold interests in real property  
30 taxable under paragraph (3) of this section;

1 (iv) provided, however, that for purposes of subparagraphs (i), (ii) and (iii) of this paragraph  
2 (7), the amount subject to tax in the case of a grant of a leasehold interest shall be only such amount  
3 as is not considered rent for purposes of the tax imposed by title L of this chapter; and

4 (8) at the rate of two percent of the consideration with respect to all other conveyances made on  
5 or after July first, nineteen hundred eighty-two.

6 Where any real property is situated partly within and partly without the boundaries of the city of  
7 New York the consideration and net consideration subject to tax shall be such part of the total  
8 consideration and total net consideration attributable to that portion of such real property situated  
9 within the city of New York or to the interest in such portion.

10 *b. (1) In addition to the taxes imposed by subdivision a, there is hereby imposed a tax on each*  
11 *instrument or transaction (unless evidenced by a deed subject to tax under subdivision a), at the time*  
12 *of the transfer, whereby any economic interest in real property is transferred by a grantor to a*  
13 *grantee, where the consideration exceeds twenty-five thousand dollars. The tax shall be (i) at the rate*  
14 *of one percent of the consideration where the real property the economic interest in which is*  
15 *transferred is a one, two or three-family house, an individual cooperative apartment, an individual*  
16 *residential condominium unit or an individual dwelling unit in a dwelling which is to be occupied or*  
17 *is occupied as the residence or home of four or more families living independently of each other, or*  
18 *where the consideration for the transfer is less than five hundred thousand dollars, and (ii) at the*  
19 *rate of two percent of the consideration with respect to all other transfers. Where any real property,*  
20 *the economic interest in which is transferred, is situated partly within and partly without the*  
21 *boundaries of the city of New York, the consideration subject to tax shall be such part of the*  
22 *consideration as is attributable to that portion of such real property which is situated within the city*  
23 *of New York.*

24 *(2) Notwithstanding the definition of "controlling interest" contained in paragraph eight of*  
25 *section II46-1.0 or anything to the contrary contained in paragraph seven of that section, in the case*  
26 *of any transfer of shares of stock in a cooperative housing corporation in connection with the grant*  
27 *or transfer of a proprietary leasehold, the tax imposed by this subdivision shall apply to (i) the*  
28 *original transfer of such shares of stock by the cooperative corporation or cooperative plan sponsor,*  
29 *and (ii) the subsequent transfer of such shares of stock by the owner thereof, if such owner held such*  
30 *shares in connection with, incidental to or in furtherance of a trade, business, profession, occupation*  
31 *or commercial activity engaged in or conducted by him or it. In determining the tax on a transfer*

1           § 3. Section II46-3.0 of such title, chapter and code, as added by local law number  
2 seventy-eight for the year nineteen hundred sixty-five, is amended to read as follows:

3           § II46-3.0 **Presumptions and burden of proof.**—For the purpose of the proper admin-  
4 istration of this title and to prevent evasion of the tax hereby imposed, it shall be presumed that  
5 all deeds *and transfers of economic interests in real property* are taxable. Where the [net]  
6 consideration includes property other than money, it shall be presumed that the consideration is  
7 the value of the real property or interest therein. Such presumptions shall prevail until the  
8 contrary is established and the burden of proving the contrary shall be on the taxpayer. The  
9 burden of proving that a lien or encumbrance existed on the real property or interest therein  
10 before the delivery of the deed and remained thereon thereafter and the burden of proving the  
11 amount of such lien or encumbrance at the time of the delivery of the deed shall be on the  
12 taxpayer.

13           § 4. Section II46-4.0 of such title, chapter and code, as amended by chapter three hundred  
14 eight-five of the laws of nineteen hundred eighty-five, is amended to read as follows:

15           § II46-4.0 **Payment.**—The tax imposed hereunder shall be paid by the grantor to the  
16 commissioner of finance at the office of the register in the county where the deed is or would be  
17 recorded within thirty days after the delivery of the deed by the grantor to the grantee but before  
18 the recording of such deed, *or, in the case of a tax on the transfer of an economic interest in*  
19 *real property, at such place as the commissioner of finance shall designate, within thirty days*  
20 *after the transfer.* The grantee shall also be liable for the payment of such tax in the event that  
21 the amount of tax due is not paid by the grantor or the grantor is exempt from tax. All moneys  
22 received as such payments by the register during the preceding month shall be transmitted to the  
23 commissioner of finance on the first day of each month or on such other day as is mutually  
24 agreeable to the commissioner of finance and the register. From the moneys so received by him,  
25 the commissioner of finance shall set aside in a special account:

26           (1) the total amount of taxes imposed pursuant to the provisions of paragraph (3) of  
27 *subdivision a of* section II46-2.0 of this title, including any interest or penalties thereon;

28           (2) fifty percent of the total amount of taxes imposed pursuant to the provisions of para-  
29 graph (4) of *subdivision a of* section II46-2.0 of this title, including fifty percent of any interest  
30 or penalties thereon, provided, however, that where such tax is measured by the consideration  
31 for a conveyance without deduction for the amount of any mortgage or other lien or encum-

1 operating needs of the private bus companies franchised by the city of New York and eligible to  
2 receive state operating assistance under section eighteen-b of the transportation law, provided,  
3 however, that such amounts shall not exceed four percent of the total funds in the account, to the  
4 New York transit authority for mass transit within the city.

5 § 5. Section II46-5.0 of such title, chapter and code, as added by local law number  
6 seventy-eight for the year nineteen hundred sixty-five, is amended to read as follows:

7 § II46-5.0 **Returns.**—a. A joint return shall be filed by both the grantor and the grantee for  
8 each deed whether or not a tax is due thereon. Such return shall be filed with the [director]  
9 *commissioner* of finance at the time of payment of any tax imposed hereunder or, in the case of  
10 a deed not subject to tax, *within thirty days after the delivery of the deed by the grantor to the*  
11 *grantee but before the recording of such deed.* Filing shall be accomplished by delivering the  
12 return to the register for transmittal to the [director] *commissioner* of finance. *In the case of a*  
13 *transfer of an economic interest in real property, a joint return shall be filed by both the grantor*  
14 *and the grantee for each instrument or transaction by which such transfer is effected, whether or*  
15 *not a tax is due thereon. Such return shall be filed with the commissioner of finance, at such*  
16 *place as he may designate, at the time of payment of any tax imposed hereunder, or, if the*  
17 *transfer is not subject to tax, within thirty days after the transfer.* The [director] *commissioner* of  
18 finance shall prescribe the form of the return and the information which it shall contain. The  
19 return shall be signed under oath by both the grantor or his agent and the grantee or his agent.  
20 Upon the filing of such return *for a deed*, evidence of the filing shall be affixed to the deed by  
21 the register. The [director] *commissioner* of finance may provide for the use of stamps as  
22 evidence of payment and that they shall be affixed to the deed before it is recorded. Where  
23 either the grantor or grantee has failed to sign the return, it shall be accepted as a return, but the  
24 party who has failed to sign the return or file a separate return shall be subject to the penalties  
25 applicable to a person who has failed to file a return and the period of limitations for assessment  
26 of tax or of additional tax shall not apply to such party.

27 b. Returns shall be preserved for three years and thereafter until the [director] *commis-*  
28 *sioner* of finance permits them to be destroyed.

29 c. The [director] *commissioner* of finance may require amended returns to be filed within  
30 twenty days after notice and to contain the information specified in the notice.

1           5. a deed delivered by any governmental body or person exempt from payment of the tax  
2 pursuant to subdivision a of this section as a result of a sale at a public auction held in  
3 accordance with the provisions of a contract made prior to May first, nineteen hundred fifty-  
4 nine:

5           6. a deed *or instrument* given solely as security for, *or a transaction the sole purpose of*  
6 *which is to secure*, a debt *or obligation* [provided that the tax imposed by article eleven of the  
7 tax law is paid for such deed,] *or a deed or instrument* given, *or a transaction entered into*,  
8 solely for *the* purpose of returning such security.

9           7. a deed, *instrument or transaction conveying or transferring real property or an eco-*  
10 *nomical interest therein* from a mere agent, dummy, straw man or conduit to his principal or a  
11 deed, *instrument or transaction conveying or transferring real property or an economic interest*  
12 *therein* from the principal to his agent, dummy, straw man or conduit.

13           § 7. Subdivision a of section II46-15.0 of such title, chapter and code, as added by such  
14 local law, is amended to read as follows:

15           a. Except in accordance with proper judicial order or as otherwise provided by law, it shall  
16 be unlawful for the [director] *commissioner* of finance or register or any officer or employee of  
17 the department of finance or register to divulge or make known in any manner any information  
18 contained in or relating to any return provided for by this title. The officers charged with the  
19 custody of such returns shall not be required to produce any of them or evidence of anything  
20 contained in them in any action or proceeding in any court, except on behalf of the [director]  
21 *commissioner* of finance in an action or proceeding under the provisions of this title, or on  
22 behalf of any party to an action or proceeding under the provisions of this title when the returns  
23 or facts shown thereby are directly involved in such action or proceeding, in either of which  
24 events the court may require the production of, and may admit in evidence, so much of said  
25 returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

26 Nothing herein shall be construed to prohibit the delivery to a grantor or grantee [of a deed] or to  
27 any subsequent owner of the real property *or economic interest therein* conveyed or *transferred*,  
28 [by such deed] or to the duly authorized representative of any of them of a certified copy of any  
29 return filed in connection with the tax [on such deed] *on such conveyance or transfer*; nor to  
30 prohibit the delivery of such a certified copy of such return or of any information contained in or  
31 relating thereto to the United States of America or any department thereof, the state of New

1 York or any department thereof, the city of New York or any department thereof provided the  
2 same is required for official business; nor to prohibit the inspection for official business of such  
3 returns by the register, the corporation counsel or other legal representatives of the city or by the  
4 district attorney of any county within the city; nor to prohibit the publication of statistics so  
5 classified as to prevent the identification of particular returns or items thereof.

6 § 8. Subdivision a of section II46-16.0 of such title, chapter and code, as added by such  
7 local law, is amended to read as follows:

8 a. Any notice authorized or required under the provisions of this title may be given by  
9 mailing the same to the person for whom it is intended in a postpaid envelope addressed to such  
10 person at the address given in the last return filed by him pursuant to the provisions of this title,  
11 in any application made by him, or in any deed *or instrument* which is the subject of the notice,  
12 or, if no return has been filed or application made or address stated in the deed *or instrument*,  
13 then to such address as may be obtainable. The mailing of such notice shall be presumptive  
14 evidence of the receipt of the same by the person to whom addressed. Any period of time which  
15 is determined according to the provisions of this title by the giving of notice shall commence to  
16 run from the date of mailing of such notice.

17 § 9. If any item, clause, sentence, subparagraph, paragraph, subdivision, section or other  
18 part of this local law, or the application thereof to any person or circumstances shall be held to  
19 be invalid, such holding shall not affect, impair or invalidate the remainder of this local law, or  
20 the sections of the administrative code of the city of New York amended by this local law, or the  
21 application of such section or part of a section held invalid to any other person or circumstances,  
22 but shall be confined in its operation to the item, clause, sentence, subparagraph, paragraph,  
23 subdivision, section or other part of this local law directly involved in such holding, or to the  
24 person and circumstances therein involved.

25 § 10. This local law shall take effect immediately, and the amendments made hereby shall  
26 apply to conveyances or transfers made on or after the fifth day succeeding such effective date,  
27 provided, however, that such amendments shall not apply to any such conveyance or transfer  
28 made pursuant to a written contract entered into prior to July thirty-first, nineteen hundred  
29 eighty-one.