

COUNTY OF ERIE

Local Law No. 4 - 1990

Intro No. 5 - 1990

A LOCAL LAW in relation to the imposition of a tax on deeds in Erie county.

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

Section 1. Short title. This local law may be referred to as the "Erie county transportation assistance tax law."

Section

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§ 2. Definitions.

When used in this article, unless otherwise expressly stated:

1. "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.

2. "Controlling interest" means (a) 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 (b) 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.

3. Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands,

tenements or hereditaments, including buildings, structures or any other improvements thereon which are located in whole or in part within the county of Erie. It shall not include rights to sepulture.

4. "Consideration" means the price actually paid or required to be paid for real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of any 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.

(a) 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.

(b) In the case of a creation of a 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.

(c) 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.

(d) 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.

(e) In the case of (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 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.

5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignments, 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 (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) 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 the tax law or the internal revenue code.

6. "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.

7. "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.

8. "Grantee" means the person who obtains the real property or interest therein as a result of a conveyance.

9. "Clerk" means the county clerk of the county of Erie.

10. "Commissioner" means the commissioner of finance of the county of Erie.

§3. Imposition of tax.

There is hereby imposed in Erie county a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of two

dollars and fifty cents for each five hundred dollars or fractional part thereof; provided, however, that with respect to (A) a conveyance of a one, two or three-family house and an individual residential condominium unit, or interests therein; and (B) conveyances where the consideration is less than five hundred thousand dollars, the consideration for the interest conveyed shall exclude the value of any lien or encumbrance remaining thereon at the time of conveyance. This local law shall apply to any conveyance occurring on or after June first, nineteen hundred ninety, 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 commissioner or the clerk as his authorized agent.

§4. Payment of tax.

1. The real estate transfer tax imposed by this local law shall be paid to the commissioner or the clerk acting as the agent of the commissioner upon designation as such agent by the commissioner. Such tax shall be paid at the same time as the real estate transfer tax imposed by article thirty-one of the tax law is required to be paid. The commissioner or clerk shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

2. A return shall be filed with the commissioner or clerk 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 thirty-one 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 section fourteen hundred nine of this tax law. However, when an apportionment is required to be made pursuant to section fourteen of this local law, a supplemental form shall also be required to be filed in such form as may be prescribed by the commissioner. 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 the commissioner orders them to be destroyed.

3. The clerk 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 local law shall have been paid as provided in this section.

§5. Liability for tax.

1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed by 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, provided, however, neither the grantor nor the grantee shall pay such tax if the grantor is exempt from such tax pursuant to paragraph (i) of subdivision two of section six of this local law.

2. 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.

§ 6. Exemptions.

1. The following shall be exempt from payment of the real estate transfer tax:

(a) 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).

(b) 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.

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

(a) 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);

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

(c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(d) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(e) Conveyances given in connection with a tax sale;

(f) Conveyances to effectuate a mere change of identity or 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;

(g) Conveyances which consist of a deed of partition;

(h) Conveyances given pursuant to the federal bankruptcy act.

(i) Conveyances of real property owned and occupied as a principal residence by one or more persons, at least one of whom is sixty-two years of age or over, provided that such property was both owned and occupied by at least one of such persons for a period of at least one year prior to the date of transfer, and further provided that such exemption shall be limited to transfers of residential properties consisting of one or two dwelling units.

(j) 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

(k) Conveyance 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, and 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.

§7. 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 or on the granting of an option or contract to purchase 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.

§8. Cooperative housing corporation transfers.

1. Notwithstanding the definition of "controlling interest" contained in subdivision two of section two of this local law or anything to the contrary contained in subdivision five of section two of this local law , the tax imposed pursuant to this article shall apply to (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 of such stock in a cooperative housing corporation in connection with the grant or 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 evidence 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 (a) 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 or 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 (a) 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 (a) 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 of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the commissioner by July fifteenth of each year.

§9. Designation of agents.

The commissioner is authorized to designate the clerk to act as his agent for purposes of collecting the tax imposed by this local law. The commissioner shall provide for the manner in which the clerk may be designated as his agent subject to such terms and conditions as he shall prescribe. The real estate transfer tax shall be paid to such agent as provided in section four of this local law.

§10. Liability of clerk.

1. The clerk shall not be liable for any inaccuracy in the amount of tax he shall collect under this local law 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 by the person paying the tax.

2. The clerk shall not be liable for any failure to collect the amount of tax due under this local law so long as he shall rely upon information provided to him by the person

responsible for paying the tax claiming an exemption pursuant to paragraph (i) of subdivision 2 of Section 6 of this Local law.

§11. Refunds.

1. Whenever the commissioner shall determine that any monies received under the provisions of this local law were paid in error, he may cause such monies to be refunded, without interest, pursuant to such rules and regulations he may prescribe provided any application for such refund is filed with the commissioner within two years from the date the erroneous payment was made.

2. The commissioner may grant or deny such application in whole or in part and shall notify the applicant by mail accordingly. Such determination shall be final and irrevocable unless the applicant shall, within ninety days after the mailing of notice of such determination, petition the commissioner for a hearing. After such hearing the commissioner shall mail notice of his determination to the applicant. The decision of the commissioner may be reviewed as provided in section thirteen of this local law. A proceeding for judicial review shall not be instituted unless an undertaking is filed with the commissioner 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.

3. A person shall not be entitled to a refund under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section fifteen of this article where he has had a hearing or an opportunity for a hearing, as provided in said section, or had failed to avail himself of the remedies therein provided. However, a person filing with the commissioner a signed statement in writing, as provided in subdivision two of section fifteen of this local law, before a determination assessing tax, pursuant to subdivision one of section fifteen, is issued, shall, nevertheless, be entitled to apply for a refund pursuant to subdivisions one and two of this section, as long as such application is made within the time limitation set forth in such subdivision one. No refund shall be made of a tax, interest or penalty paid after a determination by the commissioner made pursuant to section fifteen unless it is found that such determination was erroneous, illegal or unconstitutional or otherwise improper after review of the commissioner's own motion, or in a proceeding under article seventy-eight of the civil practice law and rules, in which event refund shall be made of the tax, interest or penalty found to have been overpaid.

§ 12. Deposit and Disposition of Revenue.

1(a). Pursuant to rules established by the commissioner, consistent with the Erie County charter, all taxes collected or received by the commissioner or his duly authorized agent under this local law shall be deposited daily in one account



with such responsible banks, banking houses or trust companies as may be designated. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and a part from all other moneys. Adequate security shall be required from all such depositories. Of the total revenue collected or received under this local law such amounts shall be retained as the commissioner may determine to be necessary for refunds or reimbursements to which taxpayers shall be entitled under the provisions of this local law. A system of accounts shall be maintained showing the amount of revenue collected or received from the tax imposed by this local law. After reserving the amount to pay such refunds or reimbursements, the Niagara Frontier transportation authority shall be paid all revenue deposited under this section. Such payment shall be made on the tenth day of each month for the preceding month.

(b) Distributions made to the Niagara Frontier transportation authority shall be used only for operations of mass transportation services provided by the Niagara Frontier transportation authority within the county of Erie. All such distributions shall be made in accordance with the provisions of a contract between the county of Erie and the Niagara Frontier transportation authority. Such contract shall be adopted and amended only by a two-thirds majority vote of the Erie county legislature.

2. Notwithstanding the provisions of subdivision one of this section, on and after the first day of April nineteen

hundred ninety-three, distributions, after reserving the aforesaid amount to pay such refunds and reimbursements, shall be paid into a repair reserve fund established by the county pursuant to section six-d of the general municipal law for the purpose of repair of county roads and bridges within such county.

§ 13. Judicial Review.

1. 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 (a) 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 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 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 (b) 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.

2. 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 proper fiscal officer or officers, and such officer or officers 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, (i) that such proceeding is instituted within four months after the giving of the notice of such denial, (ii) that a final determination of tax due was not previously made, and (iii) that an undertaking is filed with the proper fiscal officer or officers 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.

§14. Apportionment.

1. When the real property covered by a conveyance is situated within and without Erie county the commissioner shall apportion the tax paid on such conveyance upon the basis of the relative assessments of such real property as the same appear on the last assessment-rolls. If, however, the whole or any part of

the property covered by such a conveyance is not assessed upon the last assessment-roll or rolls of the tax district or districts in which it is situated, or is so assessed, as a part of a larger tract, that the assessed value cannot be determined, or if improvements have been made to such an extent as materially to change the value of the property so assessed, the commissioner may require the local assessors in the respective tax districts, or the grantor or grantee to furnish sworn appraisals of the property in each tax district, and upon such appraisals shall determine the apportionments. The commissioner shall make an order of determination and apportionment in respect to each such conveyance and file a certified copy thereof with the clerk.

2. The commissioner shall adopt rules to govern the procedure and the manner of taking evidence in all the matters provided for by this section and may require verified statements to be furnished either by boards of assessors, recording officers or other persons having knowledge in relation to such matters. Failure on the part of any person or officer to furnish a statement or other data when required so to do pursuant to the provisions of this section shall render such person or officer liable to a penalty of one hundred dollars, to be recovered by the county attorney in an action brought in the name of the county.

§15. Determination of Tax.

1. 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 commissioner 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 commissioner for a hearing, or unless the commissioner's own motion shall redetermine the same. In any hearing under this local law the burden of proof shall be on the petitioner. After such hearing, the commissioner shall give notice of the determination to the person against whom the tax is assessed. The decision may be reviewed as provided in section thirteen 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 commissioner and there shall be filed with the commissioner an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of New York 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 cost and charges which may accrue 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.

2. A person liable for the tax imposed by this local law (whether or not a determination assessing a tax pursuant to subdivision one of this section has been issued) shall be entitled to have a tax due finally and irrevocably fixed prior to the ninety-day period referred to in subdivision one of this section, by filing with the commissioner a signed statement in writing in such form as the commissioner shall prescribe, consenting thereto.

§16. Remedies Exclusive.

The remedies provided by sections eleven and fifteen 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.

§17. Proceedings To Recover Tax.

1. Whenever any person shall fail to pay any tax, penalty or interest imposed by this article, the county attorney shall, upon the request of the commissioner, bring or cause to be brought an action to enforce the payment of the same on behalf of the county in any court of the state of New York or of any other state or of the United States.

2. As an additional or alternate remedy, the commissioner may issue a warrant, directed to the sheriff of Erie 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 commissioner and to pay the commissioner 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 commissioner 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 commissioner shall have the same remedies to enforce the amount due thereunder as if the county had recovered the judgment therefor.

§18. General Powers of the Commissioner.

The commissioner shall have the power:

1. To administer and enforce the tax imposed by this local law and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provisions of this article.
2. 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 commissioner 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 power to administer oaths to such person or person.
3. To extend, for cause shown, the time of filing any return for a period not exceeding three months.
4. 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 Erie which is located within the county of Erie or any interest therein.

5. 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.

6. The commissioner of the commissioners'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 commissioner determines under rules prescribed by the commissioner that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of the commissioner'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.

§19. Interest and Penalties.

1. Any person who shall fail to pay when due all or part of the tax authorized by this local law by reason of understatement of the consideration paid for such real property or interest therein shall be subject to a penalty equal to the amount of the tax not paid in addition to payment of the amount of tax not paid plus interest at the rate of ten percent. If the

commissioner determines that such failure or delay was due to reasonable cause and not due to willfully neglect, the commissioner shall remit, abate or waive all of such penalty and such interest penalty.

2. Any person who shall willfully fail to pay all or part of the tax imposed by this local law, or who shall present claim for exemption under this local law shall be guilty of an unclassified misdemeanor, punishable by a fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or both such fine and imprisonment.

§20. Returns to be Secret.

1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the county, any person engaged or retained by the county on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or a portion of any return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner the particulars set forth or disclosed in any return required under this article. Provided, however, that nothing in this section shall prohibit a 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.

2. 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 nay court, except on behalf of the commissioner of taxation and finance in any action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the county or the commissioner is a 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.

3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of any 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 county attorney or other legal representatives of the county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this local law has been recommended by the commissioner or the county attorney or has been instituted, or the inspection of the returns

required under this article by the comptroller or duly designated officer or employee of the comptroller, for purposes of the audit of a refund of any tax paid by a taxpayer under this article.

4. Any officer or employee of the 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.

§21. Separability.

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.

§22. This local law shall take effect immediately.