

Client Alert

June 2019

New York and DC Changes to Real Estate Transfer Tax (RETT)

Hunton Andrews Kurth LLP has been monitoring recent legislation in both New York State and Washington D.C. that will increase the applicable transfer taxes imposed on conveyances of commercial property over \$2 million. New York State's increased Real Estate Transfer Tax will go into effect on July 1, 2019. Washington D.C. has proposed legislation which, if passed, will increase the Deed Recordation Tax and Deed Transfer Tax Rates effective October 1, 2019.

New York State Increases Real Estate Transfer Tax

On July 1, 2019, New York State will increase its Real Estate Transfer Tax (RETT) by 0.25% on conveyances of commercial property located in New York City, for conveyances when the consideration exceeds \$2 million dollars. Currently, the RETT rate is 0.4%. Following this rate increase, the New York State rate will be 0.65% for transfers of commercial real property located in New York City, where the consideration is over \$2 million. There is no change in the New York City Real Property Transfer Tax (RPTT) rate. Although the rate change is only to the New York State transfer tax rate, the change in the State rate applies only to conveyances of real property located in New York City.

The new RETT rate applies to all such transfers of commercial property made on or after July 1, 2019. This creates an incentive to complete New York City conveyances by June 30th if the consideration for the conveyance exceeds \$2 million.

On June 11, 2019, the New York State Department of Taxation and Finance issued guidance explaining the binding contract transition rule for the new supplemental tax rate. [TSB-M-19\(1\)R, Summary of Amendments to New York's Real Estate Transfer Taxes](#). The transition rule applies to conveyances made under a binding written contract entered into on or before April 1, 2019. Such conveyances will not be subject to the new supplemental tax rate, even if the transfer of the commercial property occurs after July 1st.

To qualify as a binding written contract, the date of execution of the contract must be on or before April 1, 2019 and the contract must be confirmed by independent evidence. This guidance clarified that the recording of a contract and the payment of a deposit would constitute independent evidence to support that a contract was entered into on or before April 1, 2019.

Here is a summary of the new tax rates, beginning July 1st:

Property Type / Consideration Thresholds	Current New York State Tax Rate	New York State Supplemental Tax Rate	New York City Tax Rate	Combined NYS & NYC Tax Rate after 7/1/19
Commercial real property transfers between \$500,000 - \$2,000,000 in New York City	0.40%	N/A	2.625%	3.025%
Commercial real property transfers with consideration of \$2 million or more in New York City	0.40%	0.25%	2.625%	3.275%
Commercial real property transfers outside of New York City	0.40%	N/A	N/A	0.40%

For example, suppose a conveyance of commercial property in New York City occurred on July 2, 2019 for \$100,000,000 pursuant to a contract entered into on May 1, 2019. Prior to this rate increase, the conveyance would have been subject to the 0.40% New York State RETT tax rate (\$400,000) and the 2.625% New York City RPTT (\$2,625,000), for total New York State and City transfer taxes of \$3,025,000. Because the transfer occurred on July 2, 2019 and did not occur pursuant to a contract entered into prior to April 1, 2019, the 0.25% tax increase would result in additional New York State transfer taxes of \$250,000, for total New York State and City transfer taxes of \$3,275,000.

As explained above, if the contract had instead been entered into March 31, 2019, the transfer would not be subject to the additional 0.25% surcharge, *even though the transfer occurred after July 1st*. Similarly, the new rates would not apply, even to a contract entered into after April 1, 2019, if conveyance occurred on June 30, 2019.

Washington D.C. Proposed Legislation to Increase Deed Recordation Tax and the Deed Transfer Tax Rates

On June 18, 2019, the Council of the District of Columbia passed the Fiscal Year 2020 Budget Support Act, which must now be signed by both the Mayor of Washington D.C. and the U.S. Congress, before becoming law. If finalized, the Act would temporarily increase the rate at which both the Washington D.C. Deed Recordation Tax and the Washington D.C. Deed Transfer Tax are imposed, effective October 1, 2019. Currently, each is imposed at a rate of 1.45%, for a combined rate of 2.9%.

The new legislation would increase each of these rates by 1.05 percentage points, to a total of 2.5% each, and a combined total of 5% on transfers of commercial or mixed use property when the consideration is over \$2 million. For transfers where the consideration is at least \$400,000 but less than \$2 million, the transfer would be subject to the current rates of Deed Recording and Deed Transfer Tax (1.45% each, for a total of 2.9%). The new rates would be temporary. They would become effective on October 1, 2019, but would sunset on September 30, 2023.

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