

1996 Amendments to the Mortgage Recording Tax Credit Line Mortgages

On August 8, 1996, the mortgage recording tax was amended by Chapters 489 and 490 of the Laws of 1996. These amendments relate to the taxability of credit line mortgages of non-residential real property, such as credit line mortgages of commercial real property. The amendments apply to credit line mortgages recorded on or after November 6, 1996.

(A) Summary of Prior Law and Applicable Regulations

Under prior law and the applicable regulations (see 20 NYCRR Part 647), when a credit line mortgage of real property principally improved or to be improved by a one- to six-family owner-occupied residence or dwelling ("residential credit line mortgage") is recorded, the mortgage recording tax is computed and paid based on the maximum principal amount secured by the mortgage. No further tax is payable on the recording or the filing of instruments evidencing advances or readvances by the lender to the borrower under a residential credit line mortgage. Once the tax is paid based on the maximum principal amount, no further tax is payable for such a mortgage until (1) an instrument is recorded indicating that the maximum principal amount secured has been increased or (2) the residential real property is sold or transferred to an unrelated person or entity, subject to an outstanding credit line mortgage. There are certain exceptions to the imposition of tax on the transfer of the residential real property to an unrelated person or entity. For example, transfers to a trustee in bankruptcy, a receiver, assignee or other officer of the court, subject to an outstanding credit line mortgage, are not subject to the mortgage recording tax. (See sections 647.4 and 647.5 of the Mortgage Recording Tax Regulations.)

(B) Chapters 489 and 490 Changes-Extension of Favorable Tax Treatment

Chapters 489 and 490 amended section 253-b of the Tax Law to extend the favorable tax treatment afforded residential credit line mortgages to **all other** credit line mortgages (non-residential credit line mortgages), such as commercial credit line mortgages, that secure a maximum principal indebtedness of **less than \$3 million**. However, for purposes of determining if the maximum principal indebtedness secured by a non-residential credit line mortgage is less than \$3 million, the maximum principal indebtedness secured by separate non-residential credit line mortgages must be aggregated under certain circumstances. In those cases where separate non-residential credit line mortgages form part of the same or related transactions and have the same or related mortgagors, the maximum principal indebtedness secured by all such separate credit line mortgages must be added together to determine if the maximum principal indebtedness secured is less than \$3 million and therefore eligible to receive the favorable tax treatment afforded by Chapters 489 and 490. For the purpose of determining whether this aggregation rule applies, there shall be a presumption that all mortgages offered for recording within a period of twelve consecutive months having the same or related mortgagors are part of a

related transaction, and this presumption may be rebutted only with clear and convincing evidence to the contrary. Such clear and convincing evidence must show that the mortgages were created solely for independent business or financial reasons and were not separately created for the purpose of receiving the favorable tax treatment afforded by Chapters 489 and 490. The phrase "related mortgagors" within the context of the aforementioned aggregation rules, shall include but not be limited to the following relationships:

- 1) members of a family, including spouses, ancestors, lineal descendants, and brothers and sisters (whether by the whole or half blood);
- 2) a shareholder and a corporation in which more than fifty percent of the value of the outstanding stock is owned or controlled directly or indirectly by such shareholder;
- 3) a partner and a partnership in which more than fifty percent of the interest in the capital or profits is owned or controlled directly or indirectly by such partner;
- 4) a beneficiary and a trust in which more than fifty percent of the beneficial interest is owned or controlled directly or indirectly by such beneficiary;
- 5) two or more corporations, partnerships, associations, or trusts, or any combination thereof, which are owned or controlled, either directly or indirectly, by the same person, corporation or other entity; and
- 6) a grantor of a trust and such trust.

As a result of the Chapters 489 and 490 amendments, the rules under prior law for the sale or transfer of real property subject to a residential credit line mortgage as described in section (A) of this memorandum, apply to the sale or transfer of real property subject to a non-residential credit line mortgage of less than \$3 million.

(C) Non-residential Credit Line Mortgages Securing \$3 Million or More

The amendments made by Chapters 489 and 490 did not affect the treatment of non-residential credit line mortgages securing a maximum principal debt of \$3 million or more. Therefore, in addition to imposing mortgage recording tax on the maximum amount secured by these credit line mortgages, the recording or the filing of instruments evidencing advances and readvances continue to be subject to the mortgage recording tax. (See section 647.3 of the Mortgage Recording Tax Regulations.)

Part 647 of the Mortgage Recording Tax Regulations will be amended to reflect the changes made by Chapters 489 and 490.

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Mortgage Recording Tax
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The Credit Line Mortgage Certificate section of Form TP-584 is being revised to reflect the statutory changes. When available, the revised Form TP-584 may be ordered by calling 1 800 462-8100. In addition, forms, instructions or publications may be ordered through the Tax Department's Fax-on-Demand system. The system is available 24 hours a day, seven days a week. The toll free number for the system is 1 800 748-3676. For information, call toll free 1 800 225-5829. Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.