Tax Bulletin
Mortgage Recording Tax
TB-MR-570
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Mortgage of a Guarantee Given as Security for a Credit Line Debt

Introduction

This bulletin explains how the mortgage recording tax applies to a mortgage of a guarantee given as security for a credit line debt of another party.

Summary of tax provisions

A *credit line mortgage* is a mortgage or deed of trust that secures indebtedness under a note, credit, or other financing agreement that reflects the fact that the parties reasonably contemplate entering into a series of advances, or of advances, payments, and re-advances. The aggregate amount outstanding at any time is limited to a maximum principal amount specified in the mortgage or deed of trust. A credit line mortgage does not include a mortgage or deed of trust made pursuant to a building loan contract as defined in section 2.13 of the Lien Law, or to a reverse mortgage created pursuant to Real Property Law sections 280 and 280-a.

In the case of a credit line mortgage, the mortgage recording tax is based on the maximum principal amount that may be secured by the mortgage on or after the date of execution. If the maximum principal amount used to compute the tax is increased, additional tax is payable at the time an instrument evidencing the increase is recorded. If the aggregate amounts advanced or re-advanced exceed the maximum principal amount used to compute the tax, additional mortgage recording tax must be paid when any instrument evidencing the additional amounts advanced or re-advanced is recorded. (However, see *Exemption for certain credit line mortgages*, below.)

Generally, a mortgage is not enforceable unless the proper mortgage recording tax is paid. Accordingly:

- The mortgage may not be released, discharged of record, or received into evidence in any action or proceeding.
- An assignment or extension agreement may not be recorded.
- No judgment or final order in any action or proceeding will be made for the foreclosure or the enforcement of the mortgage.

Guarantee

A *guarantee* is an instrument that is pledged as security for another party's debt. The terms of a guarantee usually limit the amount secured by the guarantee to a fixed amount, which can be less than the total outstanding balance of the guaranteed debt. If the balance of the debt is advanced up to or exceeding the fixed amount, the guarantee secures the advances up to the guarantee amount. If the balance of the debt subsequently falls below the guarantee amount, the guarantee secures only the outstanding balance. If this happens and additional funds are advanced or re-advanced, the guarantee secures the additional funds up to the fixed amount.

When a mortgage secures a guarantee, it secures the guarantor's obligation to repay the funds advanced related to the other party's debt, up to the guarantee amount. Mortgage recording tax must be paid on the maximum amount secured, as expressed in the guarantee, when the mortgage is recorded. If the principal of the debt is advanced up to or exceeding the guarantee amount, and then subsequently falls below the amount initially secured by the guarantee and mortgage, mortgage recording tax is imposed upon the recording of any instrument evidencing advances and re-advances, up to the guarantee amount.

Exemption for certain credit line mortgages not applicable to guarantees

Tax Law section 253-b exempts certain advances connected with credit line mortgages on:

- real property that is principally improved or to be improved by a one- to six-family, owner-occupied residence or dwelling, or
- other real property where the credit line mortgage secures a debt of less than $3 million.

As long as the proper mortgage recording tax has been paid on the maximum principal amount when the credit line mortgage is recorded, no further tax is payable when advances or re-advances are made pursuant to the credit line agreement, provided the advances or re-advances are made to one or more of the original obligors (borrowers) named in the recorded primary credit line mortgage.

A mortgage of a guarantee pledged as security for a credit line debt does not qualify for the exemption for advances and re-advances provided by Tax Law section 253-b. Since a guarantee is a separate obligation pledged as security for another party's debt, the mortgagor is the guarantor, not one of the original obligors entitled to receive advances and re-advances under the credit line debt agreement. Accordingly, tax is computed upon the aggregate amounts advanced or re-advanced under the credit line agreement that are secured by a guarantee that is secured by a mortgage.

See Tax Bulletin *Mortgages Partially Securing Multiple Debts or Obligations* (TB-MR-580), for information pertaining to a mortgage of a guarantee.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. They are accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin.

References and other useful information

Tax Law: Sections 252, 253-b, and 258

Regulations: Sections 641.10 and 647.1 through 647.4

Memoranda:

TSB-M-95(4)R, *Credit Line Mortgage*
TSB-M-95(4.1)R, *1996 Amendments to Credit Line Mortgages*
TSB-M-96(6)R, *1996 Amendments to the Mortgage Recording Tax Credit Line Mortgages*

Bulletin:

Mortgages Partially Securing Multiple Debts or Obligations (TB-MR-580)