



**There has been much confusion regarding the calculation of the New York State Transfer Tax and Mansion Tax as a result of the amendment to Subdivision (a) of Section 1404 of the tax law (effective July 1, 2021). The most significant change in the law affecting our industry is that New York STATE no longer requires “grossing up” the purchase price for the NY STATE TRANSFER TAX when paid by the purchaser on a residential transaction (see italicized language below).**

The amendment to TAX LAW SECTION 1402 states:

The real estate transfer tax imposed pursuant to section fourteen hundred two of this article shall be paid by the grantor and such tax shall not be payable, directly or indirectly, by the grantee except as provided in a contract between grantor and grantee or as otherwise provided in this section. If the grantor has failed to pay the tax imposed by this article at the time required by section fourteen hundred ten of this article 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 that in the event of such failure, the grantee shall have a cause of action against the grantor for recovery of payment of such tax, interest and penalties by the grantee In the case of a conveyance of residential real property as defined in subdivision (a) of section fourteen hundred two-a of this article, *if the tax imposed by this article is paid by the grantee pursuant to a contract between the grantor and the grantee, the amount of such tax shall be excluded from the calculation of consideration subject to tax under this article. Please add (emphasis added)*

**According to the New York State Department of Taxation and Finance: “A clear reading of the amended statute provides ONLY the New York State Transfer Tax is not to be included in consideration where paid by the grantee on residential real property. So, in the case where a grantee is required to pay the New York CITY Real Property Transfer Tax (RPT) or anything else of that matter on behalf of the grantor, such amount is to added to the consideration for purposes of calculating the New York State transfer tax and mansion tax.”**

Stated differently, the purchase price still must be grossed up by the amount of RPT transfer tax paid no italicized by the purchaser when calculating the New York STATE transfer tax and the Mansion Tax.

**NOTE: There are NO changes in the law regarding the calculation of RPT transfer tax.** The RPT transfer tax paid by the purchaser will still be grossed up by the amount of NY State transfer tax AND the amount of the NY City RPT transfer tax paid by the purchaser.

**For example,** assume a purchase price of 1 million dollars with the purchaser paying the NYS and NYC transfer taxes. The Gross up would be calculated as follows:

**EXAMPLE: Property Type is NYC Condo**

	Purchase Price:	Tax Due:
New York State TT	\$ 1,000,000.00	\$ 4,000.00
NYC RPT	\$ 1,000,000.00	\$ 14,250.00
Mansion Tax	\$ 1,000,000.00	\$ 10,000.00

**If the purchaser pays the New York State Transfer Tax and the NYC RPT then the purchase price must be "grossed up" and calculated as follows:**

**With Gross Up:**

	Adjusted Purchase Price:	Tax Due:	Note:
New York State	\$ 1,014,500.00	\$ 4,058.00	Rounded up the nearest 500th, therefore calculating NYS transfer tax on an adjusted price of \$1,014,500 (Includes NYC RPT ONLY for gross up purposes)
NYC	\$ 1,018,250.00	\$ 14,510.06	(Includes NYC RPT and NY State TT for gross up purposes)
Mansion Tax	\$ 1,000,000.00	\$ 10,142.50	(Includes NYC RPT ONLY for gross up purposes)