

**CITY OF PEEKSKILL COMMON COUNCIL
PEEKSKILL, NEW YORK**

AGENDA BILL

SUBJECT: ESTABLISHING REAL PROPERTY TRANSFER TAX	FOR AGENDA OF: 09/13/2010	AGENDA #
	DEPT. OF ORIGIN:	CORPORATION COUNSEL
	DATE SUBMITTED:	SEPTEMBER 9, 2010
	DEPARTMENT HEAD:	JANET M. INSARDI
	EXHIBITS:	

APPROVED AS TO FORM BY CORPORATION COUNSEL	
APPROVED BY COMPTROLLER	
APPROVED BY CITY MANAGER FOR SUBMISSION	

EXPENDITURE REQUIRED \$		AMOUNT BUDGETED \$		APPROPRIATION REQUIRED \$	
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SUMMARY STATEMENT

A PUBLIC HEARING WAS HELD ON SEPTEMBER 13, 2010 REGARDING THE ESTABLISHMENT OF A REAL ESTATE TRANSFER TAX. THE COMMON COUNCIL HAVING DULY CONSIDERED THIS LOCAL LAW AND THE COMMENTS MADE AT THE PUBLIC HEARING NOW WISH TO ADOPT THIS LOCAL LAW.

RECOMMENDED ACTION

ADOPT THE RESOLUTION TO ENACT THE LOCAL LAW.

MOVED BY:	SECONDED BY:
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ROLL CALL VOTE			
MAYOR FOSTER		COUNCILWOMAN RILEY	
DEPUTY MAYOR BENNETT		COUNCILMAN SCHUDER	
COUNCILWOMAN CLAXTON		COUNCILMAN TORRES	
COUNCILWOMAN PISANI			

**RESOLUTION ADOPTING LOCAL LAW № 11 OF 2010
A LOCAL LAW
ESTABLISHING REAL PROPERTY TRANSFER TAX**

WHEREAS, on August 19, 2010, a proposed Local Law was placed on the desks of the members of the Common Council establishing a new Article XI of the Code of the City of Peekskill providing for a real property transfer tax authorized by the New York State Legislature by Chapter 225 of the Laws of 2009, and;

WHEREAS, the monies collected pursuant to this law prior to December 31st shall go in the General Fund. Effective January 1, 2011, all funds collected shall go into the Fire House Building Fund; and

WHEREAS, on September 13, 2010, a public hearing was held on said Local Law in the Common Council meeting room, City Hall, Peekskill, NY after due publication of said notice of Public Hearing, and;

WHEREAS, said Local Law has been on the desks of the members of the Common Council in its final form for at least seven (7) days, exclusive of Sundays.

NOW, THEREFORE, BE IT

RESOLVED, that said Local Law be and the same is hereby adopted and shall be known as Local Law № 11 for the year 2010 in the City of Peekskill.

LOCAL LAW № 11 OF 2010
A LOCAL LAW
ESTABLISHING REAL PROPERTY TRANSFER TAX

BE IT ENACTED by the Common Council for the City of Peekskill as follows:

Section 1. There is hereby established a new Article XI, to be entitled “Real Property Transfer Tax”, of Chapter 521 of the Code of the City of Peekskill entitled “Taxation”, which shall read as follows:

ARTICLE XI – REAL PROPERTY TRANSFER TAX

§ 521-52. Definitions.

When used in this article, the following terms shall mean and include:

AFFIXED

Includes attached or annexed by adhesion, stapled or otherwise, or a notation by stamp, imprint or writing.

CITY

The City of Peekskill

COMPTROLLER

The Comptroller of the City of Peekskill

CONSIDERATION

The price actually paid or required to be paid for the real property or interest therein, without deduction for mortgages, liens or encumbrances, 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 an indebtedness or obligation.

DEED

Any document, instrument or writing (other than a will), regardless of where made, executed or delivered, whereby any real property or interest therein is created, vested, granted, bargained, sold, transferred, assigned or otherwise conveyed.

GRANTEE

The person accepting the deed or who obtains any of the real property which is the subject of the deed or any interest therein.

GRANTOR

The person making, executing or delivering the deed.

PERSON

An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in an 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.

REAL PROPERTY OR INTEREST THEREIN

Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments which are located in whole or in part within the City of Peekskill. It shall not include a mortgage, a release of mortgage or a leasehold for a stated term of years or part of a year. It shall not include rights to sepulture.

§521-53. Imposition of tax.

A tax is hereby imposed on each conveyance of real property or interest therein as authorized by §1206 of the New York Tax Law. The tax shall be at the rate of 1% (one percent). Where any real property is situated partly within and partly without the boundaries of the City of Peekskill, the consideration subject to tax shall be such part of the total consideration attributable to that portion of such real property situated within the City of Peekskill or to the interest in such portion.

§521-54. Presumptions and burden of proof.

For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds are taxable. Where the net consideration includes property other than money, it shall be presumed that the consideration is the value of the real property or interest therein. Such presumptions shall prevail until the contrary is established, and the burden of proving the contrary shall be on the taxpayer.

§521-55. Payment.

The tax imposed hereunder shall be paid by the grantor to the City of Peekskill within 30 days after the delivery of the deed by the grantor to the grantee, but before the recording of such deed. Evidence of the payment of the tax shall be affixed to the deed. The Comptroller may provide for the use of stamps or other suitable means as evidence of payment and that evidence of payment shall be affixed or attached to the deed before it is recorded.

§521-56. Returns.

A. A joint return shall be filed by both the grantor and the grantee for each deed whether or not a tax is due thereon. Such return shall be filed with the Comptroller at the time of payment of any tax imposed hereunder or, in the case of a deed not subject to tax, before the recording of such deed. Filing shall be accomplished by delivering the return

to the Comptroller. The Comptroller shall prescribe the form of the return and the information which it shall contain. The return shall be signed under oath by both the grantor or his agent and the grantee or his agent. Where either the grantor or grantee has failed to sign the return, it shall be accepted as a return, but the party who has failed to sign the return or file a separate return shall be subject to the penalties applicable to a person who has failed to file a return and the period of limitations for assessment of tax or of additional tax shall not apply to such party.

B. Returns shall be preserved for three years and thereafter until the Comptroller permits them to be destroyed.

C. The Comptroller may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

D. If a return required by this Article is not filed or if a return, when filed, is incorrect or insufficient on its face, the Comptroller shall take the necessary steps to enforce the filing of such a return or of a corrected return.

E. Where a deed has more than one grantor or more than one grantee, the return may be signed by any one of the grantors and by any one of the grantees; provided, however, that those not signing shall not be relieved of any liability for the tax imposed by this article.

§521-57. Exemptions.

A. The following shall be exempt from the payment of the tax imposed by this article and from filing a return:

- (1) The State of New York or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions.
- (2) The United States of America and any of its agencies and instrumentalities, insofar as they are immune from taxation; provided, however, that the exemption of such governmental bodies or persons shall not relieve a grantee from liability for the tax or from filing a return.

B. The tax imposed by this article shall not apply to any of the following deeds:

- (1) A deed by or to the United Nations or other worldwide international organizations of which the United States of America is a member.
- (2) A deed by or to any corporation or association, or trust or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder

or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; provided, however, that nothing in this subsection shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subsection.

- (3) A deed to any governmental body or person exempt from payment of the tax pursuant to Subsection A of this section.
- (4) A deed delivered pursuant to a contract made prior to the effective date of this article.
- (5) A deed delivered by any governmental body or person exempt from payment of the tax pursuant to Subsection A of this section as a result of a sale at a public auction held in accordance with the provisions of a contract made prior to the effective date of this article.
- (6) A deed from a mere agent, dummy, straw man or conduit to his principal or a deed from the principal to his agent, dummy, straw man or conduit.

§521-58. Determination of tax.

If a return required by this article is not filed or if a return, when filed, is incorrect or insufficient, the amount of tax due shall be determined by the Comptroller from such information as may be obtainable, including the assessed valuation of the real property or interest therein. Notice of such determination shall be given to the person liable for the tax. Such determination shall finally and irrevocably fix the tax, unless the person against whom it is assessed, within 30 days after the giving of notice of such determination, shall apply to the Comptroller for a hearing or unless the Comptroller of his own motion shall re-determine the same. After such hearing, the Comptroller shall give notice of his determination to the person against whom the tax is assessed. The determination of the Comptroller shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article 78 of the Civil Practice Law and Rules if application for such is made to the Supreme Court within four months after the giving of the notice of such determination. A proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- A. The amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the Comptroller and there shall be filed with the Comptroller 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 and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or

B. At the option of the applicant, such undertaking filed with the Comptroller may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§521-59. Refunds.

A. In the manner provided in this section, the Comptroller shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Comptroller for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the Comptroller, he shall state his reason for doing so in writing. Such application may be made by the grantor, grantee or other person who has actually paid the tax. The Comptroller may, in lieu of any refund required to be made, allow a credit in the same amount on other payments due to the City of Peekskill from the applicant.

B. An application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of, and the Comptroller may receive evidence with respect thereto. After making his determination, the Comptroller shall give notice thereof to the applicant, who shall be entitled to review such determination by a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is instituted within four months after the giving of notice of such determination and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the Comptroller in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

C. A person shall not be entitled to a revision, refund or credit, under this section, of a tax, interest or penalty which has been determined to be due pursuant to the provisions of §521-58 of this article where he has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Comptroller made pursuant to this §521-59 of this article, unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the Comptroller after a hearing, or on his own motion, or in a proceeding under Article 78 of the Civil Practice Law and Rules, pursuant to the provisions of said section, in which event, refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§521-60. Remedies exclusive.

The remedies provided by §§521-58 and 521-59 of this article shall be exclusive remedies available to any person for the review of tax liability imposed by this article; and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Comptroller prior to the institution of such suit and posts a bond for costs as provided in § 521-58 of this article.

§521-61. Proceedings to recover tax.

A. Whenever any grantor or grantee shall fail to pay any tax, penalty or interest imposed by this article as herein provided, the Corporation Counsel shall, upon the request of the Comptroller, bring or cause to be brought an action to enforce the payment of the same on behalf of the City of Peekskill in any court of the State of New York or of any other state or of the United States. If, however, the Comptroller, in his discretion, believes that any such grantor or grantee subject to the provisions of this article is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied and that any such tax or penalty will not be paid when due, he may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

B. As an additional or alternate remedy, the Comptroller may issue a warrant directed to the Sheriff of Westchester County commanding him to levy upon and sell the real and personal property of the grantor, grantee or other person liable for the tax which may be found within the City for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the Comptroller and to pay to him the money collected by virtue thereof within 60 days after the receipt of such warrant. The said Sheriff shall, within five days after the receipt of the warrant, file with the Clerk of Westchester County 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 and the date when such copy is filed. Thereupon, the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. 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 Comptroller, a warrant of like terms, force and effect may be issued and directed to an officer or employee of the Department of Finance, 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. If a warrant is returned not satisfied in full, the Comptroller may, from time to time, issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the City had recovered judgment for the same and execution thereon had been returned unsatisfied.

§521-62. Powers and duties of Comptroller.

In addition to the powers granted to the Comptroller in this article, he is hereby authorized and empowered to:

- A. Make, adopt and amend rules and regulations appropriate to the carrying out of this article and the purposes thereof.
- B. Extend, for cause shown, the time for filing any return for a period not exceeding 90 days and, for cause shown, to remit or waive some, or all of any penalties, but not interest, imposed under §521-64; and to compromise disputed claims in connection with the taxes hereby imposed.
- C. Request information from the Tax Commission of the State of New York or the Treasury Department of the United States relative to any person; and to afford returns, reports and other information to such Tax Commission or such Treasury Department relative to any person, any other provision of this article to the contrary notwithstanding.
- D. Delegate his functions hereunder to the City Auditor or any employee or employees of the Department of Finance.
- E. Prescribe the methods for determining the consideration attributable to that portion of real property located partly within and partly without the City of Peekskill which is located within the City of Peekskill or any interest therein.
- F. 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 article and to furnish such records to the Comptroller upon request.
- G. Assess, determine, revise and adjust the taxes imposed under this article.

§521-63. Administration of oaths; subpoena power.

A. The Comptroller or his employees or agents duly designated and authorized by him shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this article. The Comptroller shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this article and to examine them in relation

thereto and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him or excused from attendance.

B. A Justice of the Supreme Court, either in court or at chambers, shall have power summarily to enforce, by proper proceedings, the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the Comptroller under this article.

C. Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the Comptroller under this article shall be guilty of a misdemeanor, punishment for which shall be a fine payable to the City of Peekskill of not more than \$2,000 or imprisonment for not more than one year, or both such fine and imprisonment.

D. The officers who serve the summons or subpoena of the Comptroller and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the Sheriff of Westchester County and his duly appointed deputies or any officers or employees of the Department of Finance, designated to serve such process.

§521-64. Penalties and interest.

A. Any person failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of 8% of the amount of tax due, plus interest at the rate of 1 1/2% of such tax, for each month of delay or fraction thereof, excepting the first month, after such return was required to be filed or such tax became due, but the Comptroller, if satisfied that the delay was excusable, may remit or waive all or any part of such penalty, but not interest at the rate of 1 1/2% per month. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this article. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this article.

B. Any grantor, grantee or officer of a corporation failing to file a return required by this article or filing or causing to be filed or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this article which is willfully false, and any grantor, grantee or officer of a corporation failing to keep the records required by §521-62 F of this article, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine to the City of Peekskill of not more than \$2,000 or imprisonment for not more than one year, or both such fine and imprisonment.

C. The certificate of the Comptroller to the effect that a tax has not been paid or that information has not been supplied pursuant to the provisions of this article shall be presumptive evidence thereof.

D. Any person willfully simulating, altering, defacing, destroying or removing any evidence of the filing of a return or the payment of a tax provided for in this article shall be guilty of a misdemeanor, punishment for which shall be a fine to the City of Peekskill of not more than \$2,000 or imprisonment for not more than one year, or both such fine and imprisonment.

§521-65. Returns to be secret.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Comptroller or any officer or employee of the Department of Finance to divulge or make known, in any manner, any information contained in or relating to any return provided for by this article. Any request for such information under the Freedom of Information Law of the State of New York shall be considered, by the City of Peekskill, an unwarranted invasion of personal privacy. 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 any court, except on behalf of the Comptroller in an action or proceeding under the provisions of this article or on behalf of any party to an action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in either 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. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of a deed or to any subsequent owner of the real property conveyed by such deed or to the duly authorized representative of any of them of a certified copy of any return filed in connection with the tax on such deed; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto to the United States of America or any department thereof, the State of New York or any department thereof, the City of Peekskill or any department thereof, provided that the same is required for official business; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

§521-66. Notices and limitations of time.

A. Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this article, in any application made by him or in any deed which is the subject of the notice, or, if no return has been filed or application made or address stated in the deed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of mailing of such notice.

B. The provisions of the Civil Practice Law and Rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any

proceeding or action taken by the City to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this article. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law, the tax may be assessed at any time.

C. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

§521-67. Construction and enforcement.

This Article shall be construed and enforced in conformity with Subdivision (b) of § 1206 of the Tax Law of the State of New York, as authorized by Chapter 228 of the Laws of 2009 as it may amended from time to time.

§521-68. Severability.

If any provision or provisions of this article are held to be invalid, ineffective, unconstitutional, in whole or in part, or inapplicable to any person or situation, it is the purpose and intent of this Article that such determination shall not affect the validity, force and effect of any other provisions thereof.

§521-69. Deposit of revenues.

All revenues resulting from the imposition of the tax under this article, including any penalties or interest collected, shall be paid into the treasury of the City and shall be credited to and deposited in the general fund of the City.

§521-70. Effective date.

This Article shall take effect on December 1, 2010, and the tax hereby imposed shall be imposed on all deeds delivered by a grantor to a grantee on or after said effective date.

Section 2. This Local Law shall take effect on December 1, 2010, and the tax thereby imposed shall be imposed on all deeds delivered by a grantor to a grantee on or after said effective date.