



**Date:** June 2, 2005  
**To:** All Clients and Closers  
**From:** David Gorenstein  
**Re:** ACRIS/Mortgage Recording Tax

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On or about April 29, changes were made to the Cover Page module of ACRIS, the “Automated City Register Information Center”. Certain changes account for recent amendments to the Tax Law effective January 17, 2005 requiring the imposition of mortgage recording tax on the recording of spreader agreements, additional collateral mortgages, and instruments refinancing wraparound mortgages. A change has also been made to the Cover Page requirements for the “aggregation” of mortgages for application of the mortgage recording tax.

**AGGREGATION**

Pending the increase in the mortgage recording tax rate that takes effect on June 1, 2005, a mortgage securing less than \$500,000 is subject to mortgage recording tax at the rate of \$2.00 for each \$100.00; a mortgage on a one-to-three family dwellings securing \$500,000 or more is taxed at the rate of \$2.125 for each \$100.00; and all other mortgages securing \$500,000 or more are taxed at the rate of \$2.75 per \$100. Mortgages recorded in the City of New York which are part of the same or related transactions made by the same or “related” mortgagors are aggregated to determine the mortgage tax rate to be applied to each of the aggregated mortgages.

When a mortgage is to be recorded, the ACRIS Cover Page “Fees & Taxes” screen requires the user to indicate if a mortgage has been recorded against the same property within the prior twelve months. If a mortgage was recorded and the aggregated mortgage amounts secured \$500,000 or more, ACRIS will compute mortgage tax at the higher applicable rate. However, the mortgages will not be aggregated if the previously recorded mortgage has been paid off, recording of a satisfaction of mortgage is pending, and an affidavit to that effect is provided the recording office. The “Fees & Taxes” screen sets forth the following text:

“Has the mortgagor recorded one or more other mortgages that remain open against this property in the last 12 months that together with this mortgage cumulatively total \$500,000 or more? Note: *if one or more of the mortgages has been satisfied, but not recorded reducing the total below \$500,000 please select “NO” and attach the appropriate affidavit*”.

If the answer is “YES” ACRIS will compute mortgage recording tax at the higher rate for the mortgage being submitted. If the answer is “NO” because an open mortgage has been

paid but not yet satisfied of recorded, Aggregate Mortgage Affidavit” needs to be checked on the “Supporting Docs” screen so that the higher rate will not be applied.

When a mortgage being insured secures less than \$500,000 and a previously recorded mortgage being paid off together with the new mortgage would in the aggregate secure \$500,000 or more, we must obtain an affidavit than the previous mortgage has been paid and a satisfaction of mortgage will be recorded.

A form of a affidavit is being prepared by the City’s Department of Finance; until that officially approved form is made available an affidavit substantially in the form annexed to this Bulletin is to be obtained at closing.

Of course, if the previously recorded mortgage is not being paid off and either the principal amount of the new mortgage, or the total of the principal amounts secured by the previous and new mortgages, is \$500,000 or more, the higher rate of mortgage tax is to be collected to record the new mortgage.

Additionally, when the answer to the prompt on the “Fees & Taxes” screen is “YES”, the affidavit that the previously recorded mortgage has been paid does not apply, and mortgages are therefore to be aggregated, a prompt “Taxes Due on Existing Mortgage” appears in the “Fees & Taxes” screen for the difference between the mortgage tax that was paid on recording and higher rate of mortgage tax to be paid. You must compute and collect that additional mortgage recording tax; the tax is not calculated by ACRIS. Interest and penalties will be billed directly by the State Department of Taxation and Finance.

#### SPREADER AGREEMENTS/ADDITIONAL COLLATERAL MORTGAGES

As discussed in the Bulletin issued December 7, 2004, mortgage recording tax is required to be paid when a “spreader agreement” or an “additional mortgage” (collectively a “spreader agreement”) is recorded in the City of New York if the lien of a mortgage is imposed on property not originally encumbered, unless certain exception apply, including if the additional property is owned by the mortgagor of the real property subject to the original mortgage or a person “related to” the original mortgagor. Where the spread of a mortgage to additional property is permitted, the property originally mortgaged cannot be released and the original mortgagor must continue to be the obligor. “Related parties” included the following:

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 where more than 25% of the value of the outstanding stock of such corporation is owned or controlled directly or indirectly by such shareholder;
3. A partner and a partnership where more than 25% of the capital or profits in such partnership is owned or controlled directly or indirectly by such partner;

4. A beneficiary and a trust where more than 25% of the beneficial interest in such trust 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, or interests; and
6. A grantor of a trust and the trust.

ACRIS deals with the imposition of mortgage recording tax on spreader agreements in two ways. First, the Cover Page “Fees & Taxes” screen directs the user to click on a box next to text which reads: “if this is a Spreader or a Collateral Mortgage, click [here](#)”. An affirmative response to that prompt takes the user to a pop-up screen identified as “Spreader or Additional Collateral Mortgage Information”, on which the following question is presented:

“A. Is/are the property(ies) from which the mortgage is to be spread to be released from the original mortgage as part of this transaction and the mortgagor released from any obligation under the indebtedness secured by the original recorded mortgage?”

If the answer is “YES”, the following question must be answered:

“B. Is/are one or more of the property(ies) to be covered by the spread mortgage(s) owned by a person NOT related to the mortgagor?”

ACRIS thus anticipates that when the answer to both questions is “YES”, and additional mortgage tax is required to be paid under the recent changes in the law, the user will (after checking the box on the “Fee & Taxes” screen to indicate that the user has Section 255 affidavits and noting the number of affidavit pages) manually enter the amount of mortgage recording tax being paid. When paying additional mortgage tax, the pop-up screen setting forth the above questions is to be printed and attached to the filing submitted as a “Supporting Document”. No other screen appears.

It is believed that “YES” responses may trigger an audit if additional mortgage tax is not paid.

Second, a new “Release/Partial Release Information” pop-up screen is displayed when the “Document Type is identified as a “Partial Release of Mortgage”. On this screen three preliminary questions are asked, the answer to which will not result in the payment of additional mortgage tax:

“Is this release being recorded:

- i. Pursuant to an initial condominium offering?
- ii. In connection with the sale of a lot in a subdivision?

iii. A transfer of the released property in a transaction exempt from federal income tax under Internal Revenue Code Section 1031?"

However, this screen then sets for the following questions:

"If NO to the above, was additional property added to the lien of the mortgage from which the property is to be released as the result of a spreader or additional collateral mortgage recorded against the property being released as the result of a spreader of (sic) additional collateral mortgage recorded against the property being released, with (sic) the last twelve months (but no earlier than January 17, 2005)?"

ACRIS anticipated that when the answer to the last question is "YES", and additional mortgage tax is required to be paid under the recent changes in the law, the user will (after checking the box on the "Fees & Taxes" screen to indicate that the user has Section 255 affidavits and noting the number of affidavits pages) manually enter the amount of mortgage recording tax being paid. When playing additional mortgage tax, the pop-up screen setting forth the above question is to be printed and attached to the filing submitted as a "Supporting Document". No other screen appears.

It is believed that a "YES" response to the last question may trigger an audit if additional mortgage tax is not paid.

### WRAPAROUND MORTGAGE REFINANCING

As a discussion in the Bulletin issued October 19, 2004, mortgage recording tax is required to be paid when a wraparound mortgage is refinanced in the City of New York, notwithstanding that there is no increased in the overall amount of indebtedness secured. For this purpose, the following question is required to be answered on the "Fees & Taxes" Cover Page screen:

"Is the principal amount of this mortgage to be included in a wraparound mortgage?"

If "YES" is the response, a pop-up screen identified as "Wraparound Mortgage Information" appears, with the following text:

"If this document is being presented to reflect a refinancing of an existing mortgage included in the wraparound mortgage, the amount of indebtedness subject to the mortgage recording tax is the difference between the amount of the new principal amount secured and the outstanding principal balance of the prior."