LAW ALERT
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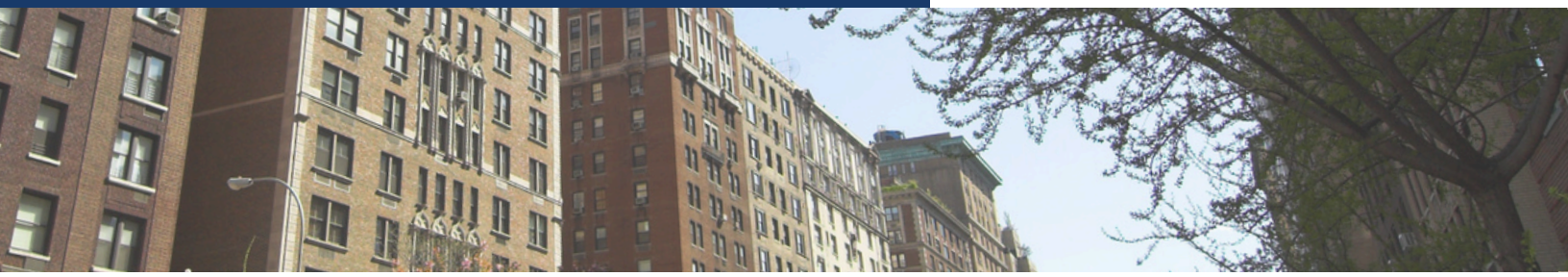

# New York's Pied-a-Terre Tax
## A Challenge for NYC's Co-op Community
## Part I

As part of New York's Fiscal Year 2026 budget, a new tax surcharge was created, commonly known as a "pied-a-terre tax," targeting wealthy nonprimary resident owners in New York City, that is, secondary residence homeowners in the City. Less known is that co-op apartment corporations (each a "Co-op") where pieds-a-terre are located have been involuntarily drafted as collection agents for this tax.

The new surcharge, and its collection method, has serious consequences not only for those who have to pay the surcharge, but also for those ensnared in the tax collection process.

This is a three (3) part Alert in which we will highlight concerns raised by this new tax/surcharge and its paradigm-shifting enforcement method. Part I describes the pied-a-terre tax surcharge and the enforcement scheme imposed on Co-ops. Part II will discuss concerns raised by this new collection method. Part III will discuss steps Co-op Boards should be taking to prepare for this new obligation.

So, we start with…….

### The Pied-A-Terre Tax Surcharge

The pied-a-terre tax is an annual tax surcharge, added to the taxpayer's real estate tax bill, on high-value pieds-a-terre (i.e., secondary residences) located in the City. The surcharge is scheduled to take effect on July 1, 2026.

For those former City residents who have gone to lengths to establish out-of-City residencies, but retain their City apartments, this surcharge may well erode a good part of the anticipated tax savings from such relocation strategies.

The surcharge will be based on the market value of the pied-a-terre. The surcharge will be assessed in two (2) distinct phases:

**Phase I** (tax years 2026/27 and 2027/28)

City apartments are generally underassessed and the City needs time to develop accurate comparable apartment sales valuations. So, for the first two (2) fiscal years starting with July 1, 2026, the surcharge for co-operative and condominium apartments will be calculated using the City's current real estate tax assessment regimen. The surcharge will be assessed on each pied-a-terre as follows:

- $1 million to $3 million @ 4%;
- Greater than $3 million to $5 million @ 5.25%;
- Greater than $5 million @ 6.50%.

Co-op apartments will be valued commensurate with the percentage of the Co-op shares allocated to the apartment. Because 1-3 family pied-a-terre homeowners are more accurately assessed on a comparable sales basis, 1-3 family homes will be taxed at the Phase II rates described below.

**Phase II** (tax years 2028/2029 and later)

For the second phase, and presumably after a comparable sales valuation model is adopted by the City, the surcharge will apply as follows:

- $5 million to $15 million @ 0.8%;
- Greater than $15 million to $25 million @ 1.05%; and
- Greater than $25 million @ 1.30%.

Applying the above in either Phase, if the surcharge applies then it starts at a significant sum of $40,000/annum. These surcharge brackets are not inflation adjusted.

The surcharge does not apply to an apartment owned by a City non-primary resident who leases his residence *for at least one (1) year in an arm's length transaction*, to a natural person, who maintains the apartment as their primary residence. *This part is tricky*. Consultation with your real estate attorney or tax professional is recommended if you are considering taking advantage of this surcharge exemption.

Additional complications arise when a residence is owned by an entity.

New York City has not enacted regulations yet, and many aspects of this surcharge remain to be vetted by regulation and practice. With significant money in play, one can anticipate judicial challenges to this surcharge and its application.

**The Co-op Problem**

New York State imposed special burdens on the City's Co-op community in order to collect this tax surcharge.

This is because the tax surcharge is a *real estate tax surcharge*. Co-op shareholders do not own real estate, and do not pay their taxes directly. Instead, the Co-op owns the underlying real estate, and pays real estate taxes for all of its shareholders as a common expense of the building.

So, even though the surcharge is intended only for pied-a-terre shareholders, the Co-op is saddled with the obligation to pay the surcharge to the City in the first instance, and then seek reimbursement from the pied-a-terre shareholder.

This approach shifts tax collection responsibilities and risk from the City to the Co-op; a burden no Co-op wants or seeks. The approach carries special risks for the Co-op which we will explore further in Part II.

*-Stay tuned for Parts II and III about special Co-op concerns and steps which should be currently considered by Boards-*

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