STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HARRY MACKLOWE	:	DETERMINATION DTA NO. 850862
for Revision of a Determination or for Refund of Real Estate Transfer Tax under Article 31 of the Tax Law for the Period December 13, 2018.	:	

Petitioner, Harry Macklowe, filed a petition for revision of a determination or for refund of real estate transfer tax under article 31 of the Tax Law for the period December 13, 2018.

Petitioner, by his representative, Roberts & Holland LLP (Joseph Lipari, Esq., of counsel), brought a motion, on February 24, 2026, seeking summary determination in the above-referenced matter pursuant to section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. The Division of Taxation, by its representative, Amanda Hiller, Esq. (Patrick F. Giordano, Esq., of counsel) submitted an affirmation, dated March 20, 2026, and accompanying documents in response to petitioner's motion. Petitioner requested and was granted permission to file a reply and, timely did so, by April 10, 2026, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner conveyed an interest in real property that is subject to real estate transfer tax under article 31 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Harry Macklowe, and his former spouse, Linda Macklowe, were married on January 4, 1959.

2. On April 16, 2007, Plaza 7 Apartment LLC (Plaza 7) was formed under Delaware's Limited Liability Company Act. Plaza 7's operating agreement, effective as of April 16, 2007, as amended by the first amendment to the operating agreement, executed as of June 19, 2019, provides that Ms. Macklowe is the sole member of Plaza 7 and holds a 100% interest in the same.

3. By condominium unit deed, dated June 15, 2007, Plaza Residential Owner LP transferred 768 5th Ave., Unit 709, New York, New York, to Plaza 7 (Plaza Apartment).

4. On December 13, 2018, a decision and order in ***Macklowe v Macklowe*** (61 Misc 3d 1226[A], 2018 NY Slip Op 51834[U] [Sup Ct, NY County 2018]) (***Macklowe*** decision), was issued. The ***Macklowe*** decision addressed the financial issues in the divorce action, brought by Ms. Macklowe against petitioner in the New York County Supreme Court. To resolve the financial issues in the divorce action, the court identified the assets and liabilities that constituted marital property, determined the values of those assets (***see*** Domestic Relations Law [DRL] § 236B [1] [c]; [4] [b]) and distributed the marital assets (***see*** DRL § 236B [5]).

5. The court determined that the Plaza Apartment was marital property and described the attributes of the apartment as follows:

> "[i]n 2007, the parties purchased seven apartments in the world-famous Plaza Hotel. They combined these apartments into one almost 14,000 square foot

> apartment. . . . The Plaza Apartment is on the seventh floor. The entire length of the north side of the Plaza Apartment provides an expansive, above the tree line, view of the entirety of Central Park. On the east side, the apartment overlooks Grand Army Plaza with its fountain and the GM building across Fifth Avenue.
>
> The Plaza Apartment was designed by the parties to meet their unique specifications. It consists of one large master bedroom suite with two bathrooms, two dressing rooms, and an office. There are two additional bedrooms, intended for staff and a guest room. Those rooms each face south, having no special city view. In addition, there is a living room/ den area, music room, large dining room, library, eat-in kitchen, three additional full bathrooms, and two lavatories. The apartment has massive walls designed to display art from the parties' collection, some of which require space typically found in museums. The Plaza Apartment encompasses what had originally been the public hallway. The seventh apartment was turned into a gym with a kitchenette" (***see Macklowe v Macklowe***, 2018 NY Slip Op 51834[U], *12-13).

6. The court found the value of the Plaza Apartment to be $72,000,000.00 (***see id.*** at *14), and awarded "the Plaza Apartment, valued at $72,000,000 to the Wife. The Husband has an alternative residence. The Husband is entitled to a $36,000,000 credit" (***see id.*** at *24). The decision "ORDERED, that the Wife shall retain the Plaza Apartment. The Husband shall cooperate in transferring his ownership interest, if any, in this asset to the Wife" (***see id.*** at *26). In its decision, the court also ordered that the other assets and liabilities of Ms. Macklowe and petitioner be distributed to or assumed by Ms. Macklowe or petitioner or divided between them.

7. Ms. Macklowe used the Plaza Apartment as her residence. Petitioner resided at the Plaza Apartment with the consent of Ms. Macklowe but established an alternative residence prior to the date of the decision.

8. Petitioner never owned the Plaza Apartment or had any ownership interest in the Plaza Apartment.

9. Petitioner never executed a deed or other instrument of transfer with respect to the Plaza Apartment or with respect to an ownership interest in Plaza 7.

10. In April 2022, the Division of Taxation (Division) assigned David Krupanich, a Tax Technician 1 in the Real Estate Transfer Unit in its Transaction Tax Desk Audit Bureau, to conduct an audit of petitioner. On April 12, 2022, the auditor sent a letter to petitioner advising him that a review of the Division's records indicated that there was a transfer of an interest in property located at 768 5th Ave., Unit 709, New York, New York, on or around December 13, 2018. The letter also indicated that petitioner had not filed a real estate transfer tax return. The letter requested petitioner to provide a copy of the real estate transfer tax return, if one was filed, or to complete either form TP-584, combined real estate transfer tax return, credit line mortgage certificate, and certification of exemption from the payment of estimated personal income tax (form TP-584), or form TP-584-NYC, combined real estate transfer tax return, credit line mortgage certificate, and certification of exemption from the payment of estimated personal income tax for the conveyance of real property located in New York City (form TP-584-NYC). The letter further requested that petitioner submit the appropriate form and the tax due by May 13, 2022.

11. After petitioner failed to respond to the April 12, 2022, letter, the auditor sent a second letter, dated May 19, 2022, that sought the previously requested information by June 3, 2022. When petitioner failed to respond to the May 19, 2022, letter, the auditor created a substitute for return (SFR) to issue an assessment to petitioner. A SFR is a substitute form TP-584 or form TP-584-NYC, marked as such on page one, reporting zero tax due. The assessment is created by adjusting the substitute return to the tax amount determined to be due. The auditor created a SFR form TP-584-NYC to determine the tax due on the transfer of the Plaza Apartment, on December 13, 2018.

12. On July 8, 2022, the auditor issued a statement of proposed audit changes, assessment ID: L-056493838, to petitioner asserting real estate transfer tax in the amount of $504,000.00, plus interest in the amount of $171,782.38 and penalties in the amount of $176,400.00, for a current balance due of $852,182.38, for the tax period December 13, 2018. The statement of proposed audit changes provided, in part, the following:

> "Our records indicate that a TP-584 was not filed in connection with [the] transfer of [the Plaza Apartment].
>
> The real estate transfer tax is imposed on each conveyance of real property or interest therein when the consideration exceeds $500. The tax is computed at a rate of two dollars for each $500 of consideration of [sic] fractional part thereof. [Tax Law section 1402 (a) (1)]
>
> An additional tax is imposed on each conveyance of residential real property or interest when the consideration for the entire conveyance is $1 million or more. Residential real property means the following premises that are or may be used in whole or in part as a personal residence at the time of the conveyance:
>
> - a one, two, or three-family home
> - an individual condominium unit
> - a residential cooperative apartment
>
> The tax is 1% of the consideration or part thereof attributable to the residential real property. [Tax Law section 1402-a (a)]
>
> The grantor and grantee must file a joint return for each conveyance whether or not tax is due. The return must be made on a form prescribed by the department. The return is due and the tax must be paid no later than the 15th day after the date on which the instrument effecting the conveyance is delivered by the grantor to the grantee. [Tax Law section 1409 and section 1410]
>
> A conveyance from one spouse to the other pursuant to the terms of a divorce or separation agreement is subject to tax. (There is a rebuttable presumption in such case that the consideration for the conveyance, which includes the relinquishment of marital rights, is equal to the fair market value of the interest in the real property conveyed.) [20 NYCRR 575.11 (a) (10)]
>
> Consideration is the price actually paid or required to be paid for the real property or interest therein, including:

> - payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. . . . [Tax Law section 1401 (d)].

> As stated in the letter to your office dated May 19, 2022, if the requested information was not received within 15 days, a Statement of Proposed Audit Changes would be sent for the additional tax determined to be due. To date, we have yet to receive the requested information.
>
> Based upon the best information made available to the department, the consideration for the subject conveyance was valued at $36,000,000.00.
>
> * * *
>
> Based on the above, you owe real estate transfer tax of $144,000.00 and additional tax of $360,000.00."

13. On October 3, 2022, petitioner's representative, Mitchell Novitsky, sent correspondence disagreeing with the proposed assessment. In his letter, Mr. Novitsky disputed the taxability of the Plaza Apartment and claimed that Ms. Macklowe had always been the single owner of the Plaza Apartment in title through Plaza 7. Mr. Novitsky indicated that since there was no change in title, petitioner had no interest in the property to transfer to Ms. Macklowe because of the ***Macklowe*** decision. Mr. Novitsky also claimed that "[o]nly in community property states does a spouse acquire a 50% interest in a spouse's titled property by virtue of marriage. New York is not a community property state." Mr. Novitsky asserted that "New York provides for equitable distributions for spouses' assets commingled during their marriage. However, there is nothing in the equitable distribution statues that creates an ownership interest in a spouse that he/she did not have previously." Mr. Novitsky further asserted that the real estate transfer tax does not apply because "there was no conveyance of real property."

14. By correspondence, dated October 11, 2022, the auditor indicated the decision deemed the Plaza Apartment marital property and petitioner was entitled to a $36,000,000.00

credit towards the equitable distribution breakdown because of his beneficial interest in the property. The auditor also indicated that consideration existed by way of the exchange of assets via the equitable distribution of the marital assets and that the taxable consideration was $36,000,000.00. The auditor further indicated that petitioner was subject to the basic tax due of $144,000.00, not the additional tax due pursuant to Tax Law § 1402-a (a), and the asserted tax due would be adjusted accordingly.

15. The Division issued to petitioner a notice of determination, assessment ID: L-056493838, dated November 17, 2022, asserting real estate transfer tax in the amount of $144,000.00, plus interest.

16. Petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice of determination, which was conducted by videoconference on January 10, 2024. By conciliation order, CMS number 000350444, dated February 9, 2024, BCMS sustained the notice of determination.

17. On May 2, 2024, petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation order and the underlying notice of determination.

CONCLUSIONS OF LAW

A. Petitioner brings a motion for summary determination under section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules). A motion for summary determination:

> "shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. . . where it appears that a party, other than the moving party, is entitled to a summary determination, the administrative law judge may grant such determination without the necessity of a cross-motion" (20 NYCRR 3000.9 [b] [1]).

B. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Laws and Rules (CPLR) 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985], citing ***Zuckerman v City of New York***, 49 NY2d 557, 562 [1980]).

C. Tax Law § 1402 (a) imposes a transfer tax on "each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of two dollars for each five hundred dollars or fractional part thereof." Tax Law § 1401 (d) defines consideration, in relevant part, as:

> "the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value."

A conveyance is defined as "the transfer or transfers of any interest in real property by any method . . ." (Tax Law § 1401 [e]).

There is no dispute that the Plaza Apartment was marital property and that the ***Macklowe*** decision addressed the equitable distribution of that property. Specifically, the court awarded the Plaza Apartment, valued at $72,000,000.00, to Ms. Macklowe and a $36,000,000.00 credit to petitioner. The Division determined that the distribution of the Plaza Apartment by the court was a conveyance subject to the real estate transfer tax and issued a notice of determination asserting tax due on such conveyance pursuant to Tax Law § 1402 (a). Petitioner asserts that the decision did not cause petitioner to have any interest in real property with respect to the Plaza Apartment because legal title to the Plaza Apartment was held by Plaza 7, Ms. Macklowe's single member limited liability company and, therefore, petitioner could not have made any conveyance of an interest in the Plaza Apartment subject to the real estate transfer tax. Petitioner also asserts that the $36,000,000.00 credit did not establish any ownership interest in petitioner but was simply in the nature of a bookkeeping entry "to permit the court to effectuate, overall, an equal distribution between Ms. Macklowe and [p]etitioner of the portion of their marital assets that the court determined should be distributed between them in a 50/50 ratio."

D. Petitioner's assertions are without merit. Marriage is an economic partnership and upon the dissolution of the marriage, the tangible fruit of that partnership, the marital property, should be equitably distributed between the parties considering the circumstances of the case and of the respective parties (***see*** DRL § 236B [5] [c]), taking into consideration the factors listed in DRL § 236B (5) (d). Here, the court equitably distributed the marital property, i.e., the Plaza Apartment, and issued a decision that awarded a $36,000,000.00 credit to petitioner for the relinquishment of his marital rights in the Plaza Apartment. The relinquishment of petitioner's marital rights in the Plaza Apartment is a conveyance of an interest in real property (***see*** Tax Law § 1401 [e]; 20 NYCRR 575.11 [a] [10])). That credit is not merely a bookkeeping entry as petitioner asserts but is consideration for the conveyance of an interest in real property (***see*** Tax Law § 1401 [d]). As such, the conveyance from petitioner to Ms. Macklowe is subject to the real estate transfer tax (***see*** 20 NYCRR 575.11 [a] [10]).

E. Based upon conclusion of law D, petitioner's motion for summary determination is denied and summary determination is granted in favor of the Division of Taxation (***see*** 20 NYCRR 3000.9 [b] [1]).

F. The petition of Harry Macklowe is denied and the notice of determination, dated November 17, 2022, is sustained.

DATED: Albany, New York
July 9, 2026

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE