Sherman Atlas Sylvester & Stamelman

JULY 2026

TAX, TRUSTS & ESTATES ALERT

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NEW YORK PIED-À-TERRE TAX

On July 1, 2026, a new pied-à-terre surcharge went into effect in New York. The surcharge applies to "covered properties" in New York City, including residential homes ("Class One" properties) and residential condominium and cooperative units ("Class Two" properties). The surcharge applies to high-value properties that are not a "primary residence."

Primary Residency

To qualify as a "primary residence," the property must be used as a primary residence by the covered owners, their immediate family members, or lessees (or sub-lessees) where the term of the lease is no less than a year. For the purposes of the surcharge, an "immediate family member" is a spouse, child, sibling, parent, grandparent, or grandchild.

Primary residency will be determined by the New York City Department of Finance (DOF) on an annual basis using available data, including—but not limited to—whether the property was occupied for a majority of days in the calendar year. Upon making an initial determination that a property is subject to the surcharge, the DOF will notify the owner. The owner will have an opportunity to submit proof of primary residence, which the DOF will use to make a final determination.

Rate & Valuation Structure

The surcharge will be administered in two phases. The first phase includes different rate and valuation thresholds for Class One versus Class Two properties, while the second phase applies the same rate and valuation thresholds to both property types. The transition reflects a planned change in New York City assessment methodologies, which currently undervalue Class Two properties. Starting in 2028, property values will be calculated based on comparable sales.

Phase One: FY 2026-2027

Class One (homes)		Class Two (condos & co-ops)	
Market Value	**Surcharge Rate**	**Market Value**	**Surcharge Rate**
$5-15 million	0.8%	$1-3 million	4.0%
$15-25 million	1.05%	$3-5 million	5.25%
Over $25 million	1.3%	Over $5 million	6.5%

Phase Two: FY 2028-2031

Class One (homes)		Class Two (condos & co-ops)	
Market Value	**Surcharge Rate**	**Market Value**	**Surcharge Rate**
$5-15 million	0.8%	$5-15 million	0.8%
$15-25 million	1.05%	$15-25 million	1.05%
Over $25 million	1.3%	Over $25 million	1.3%

Excluded Properties

Properties not subject to the surcharge include rental apartment buildings, commercial properties, hotels, vacant land, new properties without certificates of occupancy, unsold sponsor units, and condominiums that include more than three units under the same ownership.

If you own a high-value second home in New York City, then you may be subject to the new surcharge, even if the home is held in trust or under a partnership, corporation, or LLC. If you have questions about the foregoing or would like our assistance in complying with the surcharge, please reach out to one of your Sherman Atlas contacts and we can discuss what's involved and how we can assist.

SIGNIFICANT EXPANSION OF THE QUALIFIED SMALL BUSINESS STOCK GAIN EXCLUSION

There has been significant expansion of the Qualified Small Business Stock Gain Exclusion under both federal and New Jersey tax laws.

The Qualified Small Business Stock Gain Exclusion, under Section 1202 of the Internal Revenue Code of 1986, as amended (Section 1202), is a tax benefit intended to stimulate investment in small businesses and start-up companies by allowing noncorporate taxpayers to exclude from federal gross income all or a portion of any gain recognized on the sale of qualified small business stock (QSB Stock) held for the requisite holding period.

Generally, QSB Stock is stock of a C corporation which engages in certain statutorily permitted trades or businesses and has aggregate gross assets that do not exceed a specified threshold value. To qualify for the Qualified Small Business Stock Gain Exclusion, a noncorporate taxpayer must have acquired the QSB Stock directly from a qualifying corporation at original issuance, in exchange for money, property other than stock, or services provided to the issuing corporation, and hold the stock for a specified period of time.

Federal tax legislation, enacted on July 4, 2025 (the 2025 Federal Legislation), extended the range of corporations qualified to issue QSB Stock by raising the gross asset value threshold from $50 million to $75 million. The new gross asset threshold of $75 million applies to stock acquired after July 4, 2025. For stock acquired on or prior to July 4, 2025, the prior threshold of $50 million continues to apply.

Prior to enactment of the 2025 Federal Legislation, QSB Stock was required to be held for more than five years to benefit from gain exclusion ranging from 50% to 100%, depending upon when the stock was acquired, subject to a cap, as described below. The 2025 Federal Legislation retains the maximum 100% gain exclusion for QSB Stock held for at least five years, but adds new partial exclusions for portions of any gain recognized upon the sale of QSB Stock held between three and five years. Under this tiered system, which is applicable to QSB Stock acquired after July 4, 2025, the gain exclusion is 50% for sales of QSB Stock held at least three years, 75% for sales of QSB Stock held at least four years, and 100% for sales of QSB Stock held for five years or more.

To summarize, the QSB Stock gain exclusion percentages are as follows:

- QSB Stock acquired after July 4, 2025 and held for at least five years: 100%;
- QSB Stock acquired after July 4, 2025 and held for at least four years (and less than five years): 75%;
- QSB Stock acquired after July 4, 2025 and held for at least three years (and less than four years): 50%;
- QSB Stock acquired after September 27, 2010, and on or before July 4, 2025 and held for more than five years: 100%;
- QSB Stock acquired after February 17, 2009, and on or before September 27, 2010 and held for more than five years: 75%; and
- QSB Stock acquired after August 10, 1993 and on or before February 17, 2009 and held for more than five years: 50%.

The amount of gain which may be excluded from income under the Qualified Small Business Stock Exclusion after application of the gain exclusion percentage is capped at an amount which is generally equal to the greater of a specified dollar amount or ten times the basis in the stock sold. The 2025 Federal Legislation increased the specified dollar amount of the cap from $10 million to $15 million. The new $15 million limit applies to stock acquired after July 4, 2025.

In addition to the expansion of the Qualified Small Business Stock Gain Exclusion at the federal level, beginning in 2026, QSB Stock will also receive favorable treatment under New Jersey tax law. On June 30, 2025, former New Jersey Governor Phil Murphy signed tax legislation (the NJ 1202 Legislation) which brought New Jersey tax law into conformity with the federal tax treatment of QSB Stock, effective for tax years beginning on or after January 1, 2026.

Under the NJ 1202 Legislation, beginning in 2026, capital gains derived from the sale of QSB Stock are exempt from New Jersey gross income to the extent that such gains are exempt from federal taxation under Section 1202.

The expansion of the taxpayer-friendly Qualified Small Business Stock Gain Exclusion under both federal and New Jersey tax laws significantly increases the after-tax value of investments in small, growth-focused businesses and should be considered by entrepreneurs when deciding whether to form a new business entity using a C corporation, S corporation or LLC structure.

FINCEN RESIDENTIAL REAL ESTATE REPORTING RULE

On August 28, 2024, the Financial Crimes Enforcement Network (FinCEN) issued the Residential Real Estate Rule (the "RRE Rule"), which is codified at 31 C.F.R. § 1031.320. The RRE Rule requires designated real estate professionals to file a Real Estate Report with FinCEN for every non-financed transfer of residential real property to a legal entity or trust. The RRE Rule applies to various types of residential real estate, including single-family houses, townhouses, condominiums, cooperatives, and other buildings designed for occupancy by one to four families, and a transaction is considered "non-financed" if it does not involve an extension of credit issued by a financial institution required to maintain an anti-money laundering (AML) program and file Suspicious Activity Reports. The RRE Rule uses a "reporting cascade" that identifies which real estate professional bears the reporting obligation for any given transaction. The reporting person must electronically file a Real Estate Report with FinCEN that specifies certain information about themselves, the transferor of the property, the transferee of the property, and the payment and consideration information. Failure to do so may result in significant consequences, including civil and criminal fines and imprisonment.

From an estate planning perspective, the RRE Rule, at first glance, appears to impose an additional administrative task for clients transferring residential real estate into a trust to avoid probate, for example. However, there is a specific exception for transfers made for no consideration by an individual (either alone or with a spouse) to a trust of which that individual (and/or that individual's spouse) is the settlor/grantor, such as a revocable trust or a qualified personal residence trust. Therefore, if clients wish to retitle homes in the name of their revocable trusts (and they are the trustee), the RRE Rule does not apply and there is no reporting requirement. Additionally, an exception exists for transfers resulting from the death of an individual, whether pursuant to the terms of a will, the terms of a trust, the operation of law (such as transfers resulting from intestate succession, surviving joint owners, and transfer-on-death deeds) or by contractual provision. Such transfers will also not trigger the application of the RRE Rule.

The RRE Rule went into effect on March 1, 2026. On March 19, a federal district court in Texas (the "Court") vacated the RRE Rule, holding that it exceeds FinCEN's authority. The Financial Crimes Enforcement Network (FinCEN), in conjunction with the Department of Justice, has appealed this decision. Even if the RRE Rule is subsequently reinstated on appeal, clients may take comfort in the fact that the RRE Rule should have little impact on the utilization of certain common estate planning techniques such as real estate transfers to revocable trusts which are generally done to reduce the involvement of a probate clerk. With that said, clients are encouraged to reach out to the Firm with any specific questions or concerns.

NEW YORK ALLOWS ELECTRONIC WILLS

On June 10, 2027, the New York Electronic Wills Act ("NYEWA") went into effect in New York.

Under the NYEWA, an electronic will can be executed via digital signature. The electronic will must be signed by the testator in the electronic or physical presence of two witnesses, each of whom is domiciled in a state. The witnesses must then sign the affidavits, electronically or physically, within thirty (30) days of their witnessing the testator's signing. To make the will self-proving, the acknowledgement of the testator and the affidavits of the witnesses must be made before a notary, which can also be done electronically or in person.

There are certain other requirements, including (1) the will must be "a record that is readable as text at the time of signing…"; (2) the will must contain a disclosure statement (with a sample provided in the statute which is specific not only as to the required language but also as to the font size and spacing); and (3) the will must have "audit trail data," which means "data about the activities of data, including, but not limited to, the electronic will's creation and execution."

Importantly, an electronic will must be filed electronically with the New York State Unified Court system within thirty (30) days of its being signed. Failure to timely comply with the filing requirement will render the will invalid. Unclear from the statute is whether the thirty (30) day period for filing runs from the date of the testator's signing or the date of the witnesses' signing.

Some aspects of implementation of the NYEWA are still unclear and concerns have been raised by practitioners and bar associations relating to lack of adequate safeguards to prevent fraud, undue influence and forgery. As with all new legislation, we will proceed with caution.

If you have questions about the NYEWA, please reach out to one of your Sherman Atlas contacts for guidance.

IF YOU HAVE ANY QUESTIONS ABOUT THIS ALERT:

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