October 1, 2026

Pied-à-Terre Tax Update: O'Brien v. City of New York—Appeal Pending Following Trial Court Ruling

Update as of October 6, 2026: Tax exemption deadline has been extended to October 13, 2026.

Update as of October 1, 2026: As we previously reported, a group of New York City homeowners filed an Article 78 proceeding in *O'Brien v. City of New York*, No. 85217/2026 (N.Y. Sup. Ct., Richmond County), challenging the City's implementation of the new pied-à-terre tax surcharge on non-primary residential properties.

On September 29, 2026, Justice Wayne M. Ozzi of the Supreme Court, Richmond County, issued a decision in favor of the petitioners, finding that the Department of Finance's mailed notices to approximately 17,000 homeowners were "arbitrary and capricious" and that "homeowners are being substantially harmed and penalized needlessly." The court ordered the City to redo the notice process and effectively restart the rollout.

Although a decision has been issued, **the case remains pending on appeal**. The City has filed an appeal and invoked a stay of the injunction, meaning the surcharge rollout continues in the interim while the appellate court considers the matter. The Appellate Division, Second Department, has not yet ruled on the merits of the appeal.

Key Takeaways for Property Owners

- **The surcharge is still in effect.** Despite the trial court's ruling, the City's appeal and the resulting stay mean the tax continues to be implemented.
- **Exemption deadlines should not be ignored.** Property owners who believe they qualify for the primary-residence exemption should continue to file applications by the applicable deadline, currently October 13, 2026. Relying on the pending litigation as a reason to miss deadlines is not advisable.
- **The underlying law is not at issue.** The *O'Brien* case challenges the implementation of the surcharge—specifically, the notice process and the burden placed on homeowners to prove exemption eligibility—not the constitutionality or validity of the surcharge itself.

A Second Lawsuit Challenges the Tax Itself

Separately, on September 28, 2026, Steve Wynn and former U.S. Commerce Secretary Wilbur Ross filed *Ross v. State of New York*, No. 628629/2026 (N.Y. Sup. Ct., Suffolk County), challenging the constitutionality of the surcharge itself. The plaintiffs argue the tax discriminates against nonresidents in violation of the Privileges and Immunities Clause, the Dormant Commerce Clause, Due Process and Equal Protection, and that it exceeds the New York Constitution's cap on real estate tax revenue (Art. VIII, § 10). That case also remains pending.
We will continue to monitor both cases and provide updates as they progress.

Authors



Jordana G. Schreiber

Partner

Boston, MA | (617) 345-4608
jschreiber@daypitney.com



Ryan V. Leichsenring

Partner

Hartford, CT | (860) 275-0237
rleichsenring@daypitney.com