

(1) *In the case of a lease for a term of years, not perpetually renewable, the tax shall be based upon the capitalization at 10% of the average annual rental over the entire term of the lease, including any renewable term, plus the actual consideration, other than rent, paid or to be paid. Where the average annual rental cannot be determined, the tax shall be based upon either (i) the minimum average annual rental ascertainable from the terms of the lease plus 5% thereof, the whole to be capitalized at 10%, plus the actual consideration, other than rent, paid or to be paid, or (ii) the assessed value of the property covered by the lease multiplied by one and one half, whichever is the greater. The provisions of this section shall not apply to leases of personal property.*

(2) *No attornment agreement, memorandum of lease, assignment of lease or other instrument (referred to collectively herein as "other instrument") intended to publicize or giving or intended to give constructive notice of the existence of a lease which has not been recorded but which, if recorded, would be taxable hereunder, whether or not such other instrument gives such constructive notice in point of law, shall be received for recording until the original lease shall have been exhibited to the clerk and the tax paid thereon, in addition to whatever tax may be payable on such other instrument.*

*The tax on any such lease shall be chargeable to the lessee thereof and, in the event it shall be required to be advanced by the party offering for record such other instrument due to the failure or refusal of such lessee to pay the amount due to the clerk on demand by such party, then the amount thereof, plus interest from the date of payment, shall be recoverable by such party from the lessee by action at law.*

*Nothing in this subsection (2) shall be taken to apply to any lease not required by law to be recorded.*

(e) *Payment of the tax imposed by this section shall be evidenced by the affixing to or stamping on the instrument of writing offered for recordation a legend stating that such tax has been paid and the amount of payment [and containing the signature of the clerk or an authorized facsimile thereof]. Any instrument so executed shall be prima facie evidence that the tax imposed by this section has been paid.*

(f) *The proceeds of the tax imposed by this section shall be paid to the State Comptroller. The Comptroller shall place all such monies in a special fund and shall use the same for payment of interest and principal on the certificates of indebtedness issued under the "Outdoor Recreation Land Loan Act of 1969." If at any time the Comptroller has in this fund more money than needed to meet payments of interest and principal, the excess amount shall be made available for the funding of projects for the acquisition and development of recreation land and open space, as provided under "Program Open Space."*

SEC. 2. *And be it further enacted, That this Act shall take effect June 1, 1970.*

Approved May 5, 1970