

Understanding
Real Property Tax
Assessment Review
Proceedings
in New York State
A Primer for Municipal Officials

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1999 – 2000

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NEW YORK STATE
REAL PROPERTY TAX SYSTEM ALLIANCE

UNDERSTANDING

REAL PROPERTY TAX

ASSESSMENT REVIEW

PROCEEDINGS

IN NEW YORK STATE

This booklet has been prepared by the law firm of Hancock & Estabrook, LLP under the sponsorship of the Alliance in an effort to present a simplified explanation of the procedures associated with tax assessment review challenges for local municipal and school district officials.

The Real Property tax system Alliance is a committee composed of state, county, city, town and school district officials organized by the new York State Office of Real Property Services to investigate the current system for the administration of the real property tax and to make recommendations for improvements, where needed, within the existing constitutional framework and to promote an efficient and equitable future system.

The Alliance wishes to thank the following individuals (and particularly Debra Sullivan of the **Real Property Valuation Group** of the law firm of **Hancock & Estabrook, LLP** for their efforts as authors of this booklet and for the donation of their time and expertise:

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The Alliance also wishes to recognize the **Association of Towns of the State of New York**, which provided the design and layout for this booklet.

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Please note that the information presented in this booklet is intended for general information only and does not constitute legal advice. The information is believed to be accurate as of the date of its writing. However, because relevant statutes are continuously being amended, the reader is urged to consult the Real Property Tax Law and/or an attorney before taking any action in reliance upon the statements contained in this booklet.

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UNDERSTANDING REAL PROPERTY TAX ASSESSMENT REVIEW PROCEEDINGS IN NEW YORK STATE

“Taxes are what we pay for civilized society”
Compania de Tabacos v. Collector, 275 U.S. 87, 100 (1904).

I. INTRODUCTION

The purpose of this booklet is to provide a guide to understanding the procedures and major issues related to Real Property Tax Law (“RPTL”) Article 7 tax assessment review proceedings. A proceeding brought under Article 7 of the RPTL is often referred to as a “certiorari” proceeding even though the Tax Law was amended over forty years ago to repeal the former procedure known as “a writ of certiorari to review.” It is highly desirable that every taxing jurisdiction keep itself informed of the following with regard to real property tax assessment review proceedings which may affect it:

- a. New proceedings brought;
- b. Potential liability for refunds;
- c. Current status of real property tax assessment review proceedings that have been filed; and
- d. Settlements or judgments.

To that end, this booklet discusses administrative and judicial review of assessments as well as issues related to settlement and trial.

II. ADMINISTRATIVE REVIEW

Administrative review of an assessment is a necessary prerequisite to judicial review. It is made by filing a grievance complaint with the assessing jurisdiction (i.e., in most cases a city, town or village, but occasionally a county). The grievance complaint is then reviewed by a Board of Assessment Review (“BAR”). If the BAR does not reduce the assessment or if the reduction is not to the satisfaction of the taxpayer, then the taxpayer **may** choose to resort to the courts for judicial review of the BAR’s decision.

A. Grounds for challenging an assessment:

A taxpayer has four grounds on which to challenge a tax assessment:

1. Excessive assessment - the property’s assessment exceeds its full market value or is excessive because of the denial of all or a portion of a partial exemption;
2. Unequal assessment - the property is assessed at a higher percentage of its full market value than all other properties (or properties of the same class) on the assessment roll - by far the most common complaint;
3. Unlawful assessment - e.g. property is wholly exempt, is located entirely outside the boundaries of the taxing unit in which it is designated as being located, property has been assessed and entered on the assessment roll by a person or entity without authority to make the entry, and various other

technical grounds; and

4. Misclassified assessment - the real property is misclassified - e.g. classified as non-homestead when in fact it qualifies for the homestead class.

The amount of taxes being paid by a property owner is not a ground for complaint. The total tax burden depends on budgetary requirements over which the assessor has no control. If an assessment is equitable, then a property owner will pay his or her fair *share* of the taxes.

It is important to note that there is a presumption under the law that the assessment made by the assessor(s) is correct. As will be discussed more fully below, the burden of proof to overcome this presumption is on the property owner.

B. Persons who are entitled to challenge an assessment:

In order to challenge an assessment, one must be an “aggrieved” party. An aggrieved party is one who has a financial or some other specified interest in a property. A grievance complaint may be filed by all owners (whether a person or corporation), most tenants who are required to pay the property taxes pursuant to a written agreement or lease, certain mortgagees, contract vendees (who can show an injury which is direct and not remote), a board of managers acting as an agent of one or more unit owners of a condominium, or any person the aggrieved party designates as his or her representative.

C. Filing deadline:

The grievance complaint and any supporting papers must be mailed or delivered to the municipality so that the BAR receives them on or before Grievance Day. Grievance Day for most towns in New York State is the fourth Tuesday in May and for most villages the third Tuesday in February - but there are **many exceptions**. Cities may have different statutory dates depending on their charters. All interested parties must be aware of the appropriate dates applying to an individual municipality. A grievance complaint, even if it is postmarked on or before Grievance Day, is deemed to be late if it does not arrive by Grievance Day.

Failure to file a grievance complaint by the deadline is a fatal defect precluding further review of the assessment.

D. Filing papers:

The grievance complaint and any supporting papers **must** be mailed or delivered to the department of assessment, or assessor’s office of the municipality.

E. Legal representation:

Legal representation is not required at the administrative level. A property owner may represent himself or herself or designate a representative. The representative need not be an attorney.

III. JUDICIAL REVIEW

A. Definition:

A judicial review of an assessment is a proceeding brought under Article 7 of the RPTL. The proceeding is commenced by the filing of a Notice of Petition and Petition in the County Clerk's office in a county located in the judicial district where the property is located. Note again that failure to file a grievance complaint precludes the opportunity for judicial review under Article 7. A petitioner is limited to obtaining the amount of relief (usually the requested amount of assessment reduction) set forth in the Article 7 petition.

B. Grounds for filing:

The grounds (legitimate reasons to make a complaint against an assessment) for filing an Article 7 tax assessment review proceeding and the people entitled to file are the same as those set forth above for administrative review. If a property owner fails to raise a ground at the administrative level (*i.e.*, in the grievance complaint), then that ground cannot be raised for the first time at the judicial or court level (*i.e.*, in the petition).

C. Filing deadline:

For purpose of statute of limitations, the Notice of Petition and verified Petition must be filed in the County Clerk's office in a county located in the judicial district where the property is located within 30 days of the last date allowed by law for the filing of the final assessment roll for the municipality, or the published notice of such filing, whichever is later. Many towns and cities have different statutory filing dates for their assessment rolls, and failure to file the Article 7 proceeding on time is a fatal defect.

D. Filing papers and service:

The Notice of Petition and Petition are filed in the County Clerk's Office in a county located in the judicial district where the property is located. Three copies of the Notice of Petition and Petition must be personally served upon: (a) the clerk or deputy clerk of the municipality or assessing unit; or (b) the assessor or the chairman of the board of assessors or the chief clerk or deputy clerk of the assessor or board of assessors. Service must be effected not later than 15 days after the date on which the applicable statute of limitations expires.

A copy of the Notice of Petition and Petition must be mailed (within 10 days of service on the municipality) to (a) the Superintendent of schools of any school district within which any part of the property is located (occasionally a property may be located in two or more school districts), (b) the treasurer of any county in which the property is located, and (c) the clerk of the village, if the property is also located in a village which has enacted a local law providing that the village shall cease to be an assessing unit and that village taxes shall be levied based on the town assessment roll. Proof of mailing one copy of the petition and notice to the superintendent of schools, the treasurer of the county and the clerk of the village must be filed with the county clerk within 10 days of the mailing. Failure to comply with the foregoing provisions incurs the risk of possible dismissal of the petition.

E. Legal representation:

A taxpayer is ordinarily represented by an attorney because of the legal complexity of this supreme court proceeding. However, the petitioner may represent himself or herself. A taxpayer may not designate a non-attorney to represent him or her in an Article 7 proceeding, which is in contrast to the representation rules governing administrative review where a non-attorney may be designated. The overwhelming majority of Article 7 tax assessment review proceedings involve non-residential (usually commercial) property. Homeowners have access to small claims assessment review (where an attorney is not needed), which may be a preferable way of proceeding since the taxes likely to be recovered on a residential property ordinarily do not justify the cost of an Article 7 proceeding. Small claims review is denied to owners of other property types.

F. Financial exposure of taxing units:

To calculate the potential exposure of the taxing jurisdictions (or the potential refund to the petitioner), one first computes the difference between the actual assessment and the assessment claimed in the grievance complaint or petition. One then multiplies the various tax rates from the most current tax bills by the difference in assessment to arrive at the potential exposure of the taxing unit or refund to the petitioner.

As an example, the assessment reduction sought by a property owner is \$25,000 and the applicable tax rates per \$1,000 of assessed value are: county-\$25, town-\$15, school-\$45, special district-\$5. (In practice, most tax rates are calculated to three or more decimal positions.) The exposure to the county is \$625 (25x25), to the town \$375 (15x25), to the school \$1,125 (45x25) and to the special district \$125 (5x25) for a total potential refund of \$2,250. In most jurisdictions, school taxes account for 50-60% of the total tax burden.

G. Accumulation of proceedings and abandonment of proceedings:

Article 7 proceedings can be settled at any time, including up to and during trial and/or after completion of a trial while waiting for the court's decision. Often, proceedings from several years are settled together.

As for adjudication of a proceeding, the 1995 and 1996 amendments to the RPTL sought to address what had been perceived as a problem in tax assessment litigation — the practice of having several years of proceedings “stacked-up” before exchanging appraisals and proceeding to trial.

The following types of property are subject to the provisions outlined in the next paragraph for proceedings commenced after January 1, 1996:

- (1) one, two or three family dwelling residential real property;
- (2) farm dwellings;
- (3) a parcel of real property which contains residential real property consisting of more than three dwelling units held in condominium form of ownership;
- (4) a parcel of real property which contains land used in agricultural production which is eligible for an agricultural assessment (and farm buildings and structures thereon); or

(5) any parcel of real property located in a city with a population of one million or more.

For these five property types only, the proceeding will be deemed abandoned unless a trial “note of issue” is filed and the proceeding is placed on the court calendar within four years from the date of commencement of the proceeding. A trial note of issue and the accompanying certificate of readiness signify that the case is ready for trial in that all pretrial discovery, if any, has occurred, and if applicable, a certified statement of income and expenses attributable to the property has been filed and served. After the four years have elapsed, the respondent can obtain an *ex parte* order (an *ex parte* application is one which is made without notice to the other party) dismissing the petition, which constitutes a final adjudication of all the issues raised in the proceeding. The exception is where the parties stipulate to, or a court or judge orders on good cause shown, an extension of the four-year period.

With respect to **all other types of property**, the amendments provide new abandonment provisions. When a real property assessment challenge has been pending for at least two years from the date of commencement of the proceeding, either party may demand, by serving a written demand, that the parties file a written appraisal of the property which is the subject of the proceeding and serve the appraisal within 120 days of service of such demand. The demand must be served in writing and served by personal delivery or certified mail, return receipt requested. Both parties must file an appraisal or show good cause as to why such demand cannot be complied with within the time period. Either party may move to dismiss the proceeding by reason of the other party’s failure to prosecute the proceeding and file the appraisal pursuant to the demand. Unless the defaulting party shows good cause for failing to file the appraisal, the court has discretion to either dismiss or grant (depending on whether it is the petitioner or respondent who fails to show good cause) the petition. The order shall constitute a final adjudication of all issues in the proceeding.

Upon serving and filing the appraisals, the court must schedule a conference with the parties to be held within 90 days to discuss settlement, resolve disclosure and decide other pretrial issues.

After completion of the pretrial conference, the respondent may serve and file a written demand that petitioner file a note of issue within 30 days of service of the demand. The demand must be in writing and served by personal delivery or certified mail, return receipt requested. If the petitioner fails to file a note of issue within 30 days of service of the demand, the proceeding is deemed to have been abandoned. An order dismissing the petition will be entered without notice and the order will constitute a final adjudication of all issues raised in the proceeding, unless the court or judge otherwise orders on good cause shown.

A municipality may want to take the pro-active stance described above for the following reasons: First, if the municipality’s preliminary appraisal shows that the property is overassessed, then it is in the municipality’s best interest to resolve the matter either through a negotiated settlement or trial, so as to avoid the accumulation of interest on the refund. Second, if the municipality’s preliminary appraisal shows that the subject property is fairly assessed or underassessed, then the municipality may want to move the proceedings forward aggressively in order to keep pressure on the petitioner either to settle the case or face the expense of obtaining a trial-ready appraisal.

If the respondent fails to demand that the petitioner file a note of issue (after the pretrial conference) within four years from the date of the commencement of the proceeding, and a note of issue has not been filed, then the proceeding is deemed to have been abandoned and an order dismissing the petition will be entered without notice and such order will constitute a final adjudication of all issues raised in the proceeding, except where the parties otherwise stipulate or a court or judge orders on good cause shown within the four-year period.

H. Filing a trial note of issue:

A trial note of issue and certificate of readiness is a document filed with the court which indicates that the proceeding is ready for trial. Tax assessment review proceedings are non-jury trials. The note of issue and certificate of readiness should not be filed **unless** all disclosure (the information needed by one party which is in the possession of the other party) has been completed and the statement of income and expenses has been served and filed.

The filing of the note of issue puts the proceeding on the court's trial calendar. One may file notes of issue for several tax years at one time; however, a separate note of issue must be filed for each tax year unless multiple proceedings have been consolidated under one index number. As stated above, the note of issue must be filed within four years from the date of the commencement of the proceeding or after a written demand that petitioner file the note of issue.

After the note of issue is filed, the court normally directs a pretrial conference to expedite final disposition of the proceeding.

I. Necessity of having an appraisal:

The only time an appraisal is not required in tax assessment review proceedings is when the matter has been settled. Settlement between the parties may occur prior to the preparation and exchange of appraisals. If settlement cannot be achieved, then appraisals are required of both parties before trial. In New York State, appraisal reports must contain a statement of the method of appraisal relied on and the conclusions as to value reached by the expert, together with the facts, figures and calculations by which the conclusions were reached. If sales, leases or other transactions involving comparable properties are relied on, then they must be set forth with sufficient particularity so as to permit the transaction to be readily identified, and the report must contain a clear and concise statement of every fact that a party will seek to prove in relation to those comparable properties. The appraisal report should contain photographs of the properties under review and of any comparable property that is relied on by the appraiser, unless the court directs otherwise. The importance of the appraisal cannot be overemphasized. The appraisal reports set the parameters for expert testimony at trial. An inadequate appraisal report may be excluded and, along with it, any trial testimony by the expert who prepared it.

The cost of an appraisal can vary substantially. Factors that influence the cost include:

- (1) the number of properties being appraised;
- (2) whether the property to be valued is a "specialty" (a unique prop-

erty that must be appraised using the cost approach because there is no market for properties of that type);

(3) valuation methodology involved in the appraisal (income approach, cost approach or sales comparison approach (also known as the market approach));and

(4) the number of experts needed to value the property (i.e., multiple experts such as a land appraiser, an engineer, an environmental expert and/or an accountant, etc.).

J. Settlement:

Settlement can occur when both parties agree to resolve their differences as to the assessment or fair market value of the property. However, the parties may not “artificially” reduce assessments (i.e. reduce, in order to avoid paying a refund, an assessment in future years by more than is necessary to make it reflect its fair market value).

A Stipulation of Settlement and Order is a document which embodies the terms of settlement. The stipulation generally will set forth:

- (1) the tax years involved in the settlement;
- (2) the tax map numbers of each parcel involved in the settlement;
- (3) the actual assessment and/or equalized fair market value, the settlement assessment and/or settlement fair market value;
- (4) the tax years that are to be discontinued, if any;
- (5) the terms and conditions of any refunds as to each taxing jurisdiction, and whether the refund is to include interest; and
- (6) direction regarding to whom the refund should be forwarded.

The Stipulation of Settlement and Order is signed by the attorneys for the parties and then by the assigned judge. Typically the petitioner’s attorney forwards it to the county clerk’s office for filing and provides the respondent’s attorney with a date-stamped copy. Then a document called a Demand for Refund is prepared by the petitioner, if applicable, and served on the taxing jurisdictions to obtain the refunds.

The same Stipulation of Settlement and Order may be used whether the case is settled prior to trial or after trial.

K. Trial:

The length of a tax assessment trial varies substantially depending on the nature of the case. A trial that concerns a residential property may only take one day. A trial that concerns a commercial property may require many weeks if the property is a complicated specialty property. At trial, the expert witnesses for the petitioner and the respondent are

limited in their proof of appraised value to details set forth in their respective appraisal reports.

A tax assessment review trial usually proceeds in the following sequence: First come the petitioner's opening statement, respondent's opening statement and then petitioner's presentation of proof including expert witnesses such as appraisers and fact witnesses such as a plant manager. Respondent's cross-examination of petitioner's witnesses follows and then petitioner's re-direct of any of its witnesses and respondent's re-cross-examination of these witnesses. The respondent then presents its case by introducing its appraisers and other expert or fact witnesses. The proceeding generally concludes with petitioner's cross-examination of respondent's witnesses, respondent's re-direct of any of its witnesses, petitioner's re-cross of those witnesses, respondent's motions and, finally, petitioner's motions.

After trial, both parties typically submit Proposed Findings of Fact and Conclusions of Law and Post-Trial Briefs to aid the court in understanding the proof at trial and in arriving at its decision.

L. Burden of proof:

Bear in mind that there is a presumption under the law that the assessment made by the assessor(s) is correct or valid. The burden of proof to overcome this presumption is on the petitioner and petitioner's expert witnesses.

Recent cases decided by the New York State Court of Appeals provide good insight as to the burden of proof in tax assessment cases. In general, the Court has held that a petitioner need only present "substantial evidence" to rebut the presumption of the validity of the assessments by establishing the existence of a valid and credible dispute regarding valuation. This is a minimal burden and is usually satisfied by a competent appraisal based on "sound theory and objective data." This standard of evidence is far lower than the "preponderance of evidence" standard actually required to prove value at trial after the initial presumption has been overcome.

M. Indicators of ratio of assessed value to full market value:

There are two issues in a tax assessment dispute: (1) the fair market value of the property, which is proved by appraisal testimony as set forth above; and (2) the ratio of assessed to full market value. The RPTL sets forth several different methods for proving ratio:

(1) by the selected parcels method, which is also known as the stratified random sample method. This is generally a relatively expensive method for proving ratio because it requires separate appraisal reports for each of an agreed upon (or if agreement cannot be reached, a court-determined) number of parcels for each of four different classes of property on the assessment roll. The parcels are selected based upon a stratified random sample of all locally assessed parcels on the assessment roll containing the assessment under review (the requirements for special assessing units are slightly different as referenced in RPTL §720). Proof by this method usually involves appraisal testimony regarding the fair market value of the randomly selected parcels and testimony from a statistician on the validity of the statistical method involved;

(2) by actual sales of real property within the assessing units that occurred during the year in which the assessment under review was made; and

(3) by other methods including the state equalization rate established for the roll containing the assessment under review (non-special assessing units); or the latest applicable class ratio established for the roll containing the assessment under review (for special assessing units); or the uniform percentage of value stated on the tax bill for the roll containing the assessment under review.

The residential assessment ratio is intended only for use in small claims assessment review for one, two and three-family, owner-occupied residences. It may not be used in an Article 7 proceeding even if the assessment of one of the foregoing property types is at issue.

N. Costs related to trial:

In addition to the cost of the appraisal, the following expenses can be anticipated: legal fees (hourly or contingent fee arrangement and disbursements), expert witness fees (usually a *per diem* fee, travel expenses of expert, hotel expenses, *etc.*), and stenographer's fees for recording and typing the trial transcript (needed for preparation of the Proposed Findings of Fact and Conclusions of Law and the Post-Trial Brief).

The assessing jurisdiction typically bears the entire cost associated with defending an Article 7 tax assessment review proceeding. However, the assessing jurisdiction can attempt to seek financial assistance from other taxing units (*e.g.* school district, county, village) which may have intervened (become a party) in the proceeding.

Some taxing units work cooperatively by retaining the same law firm and appraiser to represent them in the Article 7 proceedings. However, one risk of this approach is that each of the taxing units may have different thresholds for settlement depending upon their respective potential exposures. If an acceptable arrangement cannot be worked out in advance for addressing this potential conflict, there is one recent lower court case which holds that the assessing jurisdiction has the ability to bind all other taxing units to a settlement, even if they have intervened in the proceedings and even if they do not favor the settlement. This case suggests that a school district intervenor has no right to reject a settlement imposed by the petitioner and the Town (a highly questionable result since the New York State legislature has given school districts the right to intervene and such right would appear to be meaningless if the intervening school district has no say regarding settlement). This holding may be tested in another case, and could lead to a decision by the appellate courts.

O. Payment of refunds and waiver of interest:

In order to obtain a refund of taxes, a petitioner must serve each of the affected taxing units with a demand for refund. If a stipulation of settlement has been entered into, the parties can stipulate to a waiver of interest on the refund, or a waiver of interest if payment is made within a specified period of time. If no such agreement is reached, then interest accrues at the statutory rate. The statutory rate of interest can vary from year to year. The annual statutory interest rate is that set by the Commissioner of Taxation and Finance, and it cannot exceed 9% per year.

P. Three-year assessment freeze:

In cases in which there is a final court order or judgment, finding the assessment being reviewed under RPTL Article 7 to be unlawful, unequal, excessive or the property to be misclassified, the assessed valuation (assessment) so determined shall not be changed for the next three succeeding assessment rolls prepared on the basis of the three taxable status dates next occurring on or after the taxable status date of the most recent assessment under review. Where the assessor or other local official having custody and control of the assessment roll receives notice of the order or judgment subsequent to the filing of the next assessment roll, he or she is authorized and directed to correct the appropriate entry on the roll. This provision does not apply to property located within a special assessing unit.

The foregoing notwithstanding, an assessment may be changed under the following conditions set forth in RPTL §727:

- (a) There is a revaluation or update of all real property on the assessment roll;
- (b) There is a revaluation or update in a special assessing unit of all real property of the same class;
- (c) There has been a physical change (improvement) to the property;
- (d) The zoning of the property has changed;
- (e) Such property has been altered by fire, demolition, destruction or similar catastrophe;
- (f) An action has been taken by any office of the federal, state or local government which caused a discernible change in the general area where the property is located which directly impacts on property values;
- (g) There has been a change in the occupancy rate of 25% or greater in a building located on a property which is not eligible for an assessment review under title one-A of the article [small claims assessment review];
- (h) The owner of the property becomes eligible or ineligible to receive an exemption; or
- (i) The use or classification of the property has changed.

RPTL §727 also prohibits the petitioner from filing an Article 7 proceeding during the three years in which the moratorium is in effect.