STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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Issue #1 **October 31, 2013**

RECENTLY ASKED QUESTIONS ABOUT THE REAL PROPERTY TAX LAW

The following is a set of Recently Asked Questions (RAQs) from local officials about the Real Property Tax Law. It is essentially a distillation of selected e-mail exchanges, with each answer representing an informal expression of our reading of the law that was then in effect. We believe our views on these issues may be of general interest to the assessment community, and we plan to issue additional RAQs from time to time. However, we must emphasize that the answers they contain are purely advisory, may not be equated to formal Opinions of Counsel, and should not be construed to be binding in any way. Assessors and other local officials seeking definitive legal advice should consult their municipal attorneys.

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Severely Disabled Veterans; Necessary Land

On 9/16/2013, we received a question involving a veteran with a severe disability who is purchasing a house and will be receiving a grant to adapt the house for the veterans severe disability. The property contains a ranch house with attached garage, pool, a detached 4000 square foot pole building (not near the house) used by the current owner for his crane operation business and 28.75 acres. The question is whether the pole building and all of the acreage is eligible for this exemption. We answered the question as follows:

Under RPTL § 458(3), severely disabled veterans are generally eligible for a total exemption on their primary residence and the "necessary land." It is quite reasonable to interpret the "necessary" as a restriction, and also to limit the scope to the portion of the parcel being used for residential purposes. There is nothing we find in the legislative history that leads to a different conclusion. The use of the term "housing unit" in RPTL § 458(3), in permitting an unremarried spouse to retain the exemption on their residence is further indication that the exemption is intended to apply to the portion of the property being used as a residence.

We do not have an opinion on point for the veterans exemption in RPTL § 458(3) but in the context of RPTL §§ 467 and 458-a, we have opinions that discuss the limitations of an exemption of this genre. See 10 Opinion of Counsel SBRPTS 09.

It would be up to the individual assessor to evaluate the facts and circumstances and make a determination as to how much of the land is part of the residential parcel.

Alternative Veterans Exemption (RPTL § 458-a)

Period of War

> On 9/19/2013, we were asked whether a recent veteran of the war in Iraq may be granted an alternative veteran's exemption on the basis that he served during the "Persian Gulf Conflict (on or after August 2, 1990)" or whether he must have received an expeditionary medal to qualify. We answered the question as follows:

Assuming this individual was discharged under honorable conditions, service during a period of war OR receipt of one of the named expeditionary medals would qualify the veteran for the RPTL § 458-a exemption.

To qualify as a veteran for purposes of RPTL § 458-a, the person must have served on active duty during a period of war or have met one of the other qualifications. One of the other qualifications is receipt of one of the medals listed in RPTL § 458-a(1)(e)(i). Qualification by way of receipt of a medal used to be further limited by specific times/areas the medal was earned. That was changed by the New York State Legislature in 1999 (L. 1999, c. 566).

If a veteran has received an armed forces expeditionary medal, navy expeditionary medal, marine corps expeditionary medal, or global war on terrorism expeditionary medal and was discharged or released under honorable conditions, he or she is a veteran for purposes of the exemptions available under RPTL § 458-a.

With respect to your question regarding the Persian Gulf conflict and whether the Iraq war qualifies, RPTL § 458-a(1)(a) defines the Persian Gulf Conflict as having a start date of August 2, 1990 but no end date. 38 USC 101(33) defines that Persian Gulf War as commencing on August 2, 1990 and ending on the date thereafter prescribed by Presidential proclamation or by law.

The Congressional Research Service reports the Persian Gulf War as being August 2, 1990, through April 6, 1991, when Iraq officially accepted cease-fire terms. Congress passed H.J.Res. 77, Authorizing the Use of Military Force Against Iraq, the same day it was introduced (January 12, 1991), and it was signed by the President on January 14, 1991 (P.L. 102-1). Operation Desert Storm and the air war phase began at 3 a.m. January 17, 1991 (January 16, 7p.m. Eastern Standard Time). Allied ground assault began at 4 a.m. February 24 (February 23, 8p.m. EST). Cease-fire was declared at 8:01 a.m. February 28, 1991 (12:01 a.m. EST). Cease-fire terms were negotiated at Safwan, Iraq, March 1, 1991. Iraq officially accepted cease-fire terms on April 6, 1991. The cease-fire took effect on April 11, 1991. Currently, the *Code of Federal Regulations*, 3.2 (i) does not list an official end date.

Though there was a cease fire, there has been neither a presidential proclamation or a law setting an end date, and both the USC and the CFR have left the date open. If the state legislature wants to formally and finally close the period out, they certainly can do so. One additional distinction we can point to is that RPTL § 458-a uses the term Persian Gulf "conflict", not "war". That may be a distinction without a difference, or maybe an attempt for the period to be flexible. In any case, we find no compelling evidence that the time period has been closed.

Expeditionary Medals

> On 9/17/2013, we received a question involving a veteran who served in the Navy from 1976-82 and received an expeditionary medal for his service in Iran. The question is whether he is eligible for the alternative veterans exemption even though he didn't serve during a "period of war" as defined by the statute. We answered the question as follows:

To qualify as a veteran for purposes of RPTL § 458-a, the person must have served on active duty during a period of war or have met one of the other qualifications. One of the other qualifications is receipt of one of the medals listed in 458-a(1)(e)(i). Qualification by way of receipt of a medal used to be further limited by specific times/areas the medal was earned. That was changed by the legislature in 1999 (L. 1999, c. 566).

If a veteran has received a armed forces expeditionary medal, navy expeditionary medal, marine corps expeditionary medal, or global war on terrorism expeditionary medal and was discharged or released under honorable conditions, he or she is a veteran for purposes of the exemptions available under RPTL § 458-a.

Disability Ratings

> On 9/6/2013, we received a question involving a veteran who has a service connected disability rating of 70%. His letter from Veteran Affairs also includes a sentence that states that he is being "paid at 100% rate because you are unemployable due to your service-connected disabilities". The question is whether he is entitled to a 100% rating on the exemption, or just the 70% based on the service connection? We answered the question as follows:

RPTL § 458-a(2)(c) provides that a veteran with a service connected disability rating may receive an additional exemption based upon his or her disability rating (also referred to as a compensation rating). Under the circumstances described, we believe the 100% rating controls for purposes of RPTL § 458-a. According to the General Counsel at the New York State Division of Veterans' Affairs, the disability ratings are calculated based on a rating system for specific types of injuries. When a veteran has multiple injuries, the percentages are not just added together. Instead, the next disability rating is applied to the remaining efficiency and the numbers are rounded. The bottom line is that under the formula and with the rounding (which is always rounded down), it is very difficult to get to a 100% disability rating, per se. However, with veterans with multiple injuries and disabilities, though they may have only reached a 70% or 80% rating under the formula, they may actually be so disabled that they are unemployable. In such case, the veterans may apply for a 100% compensation rating from DVA. If, after examination, it is determined that the veteran really is so disabled that they should be at 100%, DVA overrides the formula and grants compensation at 100%.

In the view of the Division of Veteran's Affairs, and in our view, in a case where a veteran has a letter from the Department of Veteran's Affairs that indicates a disability rating of less than 100% but also indicates that the veteran is being paid at 100% because they are unemployable due to service connected disabilities, that is intended to mean that the veteran has been granted a rating of 100%. That's the rating that should be used for purposes of RPTL § 458-a.

Corrections of Errors RPTL (§§ 550-559)

Unlawful entry

> On 6/10/13 and 6/24/13, we were asked in general terms whether certain applications for refunds of taxes warranted approval. The applications sought refunds of taxes paid since 2010 on fiber optic cable located on private property, on the basis that the assessment of such property constituted an unlawful entry under RPTL § 550(7)(c). We answered the question as follows:

Though it would have been helpful if we had been given more specifics, we have given the matter careful consideration and have researched it at length. What we have found is that the case law in this area is mixed, and the determinations are highly fact-specific, so unfortunately, we are unable to provide a definitive answer.

As you know, RPTL § 550(7)(c) defines an "unlawful entry" to include "an entry of assessed valuation on an assessment roll or on a tax roll, or both, which has been made by a person or body without the authority to make such entry." The question is thus how this definition should be applied to the unique facts that are presented here.

We agree that by virtue of the decision in Matter of RCN N.Y. Communications, LLC v NYC Tax Com'n, 1st Dept. 2012; leave to appeal denied by the Court of Appeals on Dec 18 2012, privately-sited fiber optic cable must be considered to be personal property under the law as it now stands. We also agree that an assessor has no authority to assess personal property, and that under normal circumstances, an assessment of personal property would constitute an unlawful entry under RPTL § 550(7)(c) (*see*, 10 Op. Counsel SBRPS No. 108; *see also* 8 Op. Counsel SBEA No. 107). However, *RCN* did not become settled law until the Court of Appeals denied leave to appeal in December of 2012. When the 2010, 2011 and 2012 rolls were prepared, it was still an open question whether privately-sited fiber optic property was taxable real property under the RPTL. In fact the question had not even been raised outside of New York City. Thus, given the state of the law *at the time these rolls were prepared*, we believe the assessors were clearly acting *within* their authority -- and consistently with long-established practice -- when they entered this property as taxable real property on those rolls.

On the other hand, we believe that the outcome of the *RCN* litigation does make clear that this property can no longer be considered taxable real property under the RPTL. It is also clear that the period for seeking correction of unlawful entries on 2010, 2011 and 2012 rolls is still open (RPTL § 556(1)(a) allows refund applications to be filed up to three years from the annexation of the warrant). Accordingly, the answer to your question ultimately depends upon whether the *RCN* decision should be given retroactive effect. This seems to be a question of first impression in the context of real property tax administration, but similar questions have arisen in other contexts, with respect to both judicial rulings and legislative action, and a balancing test is used based on all of the facts and circumstances. Regrettably, that case law is of limited precedential value because the courts have come down on both sides of the issue (*see, e.g., People v. Pepper et al.,* 53 N.Y.2d 213, 423 N.E.2d 355, 440 N.Y.S.2d 889 (1981); *People v. Favor,* 82 N.Y.2d 254, 624 N.E.2d 631, 604 N.Y.S.2d 494 (1993); *Roberts v. Tishman Speyer Properties, L.P.,* 89 A.D.3d 444, 932 N.Y.S.2d 45 (1st Dept. 2011)*; Dugan v. London Terrace Gardens,* 34 Misc.3d 1240(A), 950 N.Y.S.2d 608 (Sup Ct New York County 2011); *Matter of Petition of Principal Mutual Life Insurance Company,* 1998 WL 459387 (Division of Tax Appeals July 30, 1998); *James Square Assoc. LP v. Mullen,* 21 N.Y.3d 233 (June 4, 2013)). Accordingly, all we can say at this time is that we consider the relevant law to be inconclusive and we cannot predict how a court would view the equities of a retroactive application.

In any event, the legal responsibility to act on these applications lies with the County Directors. As this is ultimately a local matter in which the State has no formal role, and since litigation seems likely in the event that the applications are denied, we strongly suggest that the Directors seek input from their County Attorneys prior to making their final decisions.

Use of erroneous tax rate

On 10/18/2013, we were told that an error had been made in the preparation of the tax bills of a school district. Due to a transcription error, the tax rate that was used was lower than the tax rate that had actually been approved, and that as a result, the school district was facing a significant shortfall in its tax collections. We were asked what could be done to rectify this problem. We answered the question as follows:

This type of error may be classified as a "clerical error" under section 550(2)(d) of the Real Property Tax Law. Unfortunately, the statutes that allow for the correction of tax bills (namely, sections 556 and 556-b of the RPTL) are designed to allow the issuance of refunds of credits when tax bills are too high due to a clerical error. There is no comparable provision that would allow the immediate correction of tax bills when they are too low due to a clerical error.

While we understand that some County Directors may have used 556-b in the past to make corrections that involved tax increases, we've never agreed that that's an appropriate use of section 556-b. The wording is not as precise as it could be, but in our view section 556-b is clearly designed to enable tax bills to be lowered, not increased. Consider:

- The text of section 556-b speaks repeatedly of refunds or credits going to the affected taxpayers once the correction has been made; nowhere does it suggest that affected taxpayers might have to pay more.

- Consistent with that observation, section 556-b(2) requires the application to be made "*on behalf of* all owners of property affected by the clerical error." That wording confirms that the statutory expectation is that the application will work to the *benefit* of the affected property owners. An application to *increase* a person's tax liability clearly is not made on that person's "behalf".

- If it were permissible to use 556-b to increase tax bills, then as a matter of due process, the owner would have to be given notice of the increase and an opportunity to challenge it. Section 556-b does neither. Rather, it simply provides that when an application has been filed, the County Director conducts an investigation and reports his or her findings to the tax levying body, which makes the final determination. Compare that to section 553, which *does* allow corrections on the final roll that result in tax increases, but *only* after explicitly requiring that (1) notice be given to the taxpayer in advance, and that (2) the BAR be reconvened to hear any complaints. The absence of such language from section 556-b is compelling evidence that it was not intended to be used in a similar manner.

- Historically, section 556-b was added to the RPTL in 1978 to supplement the original COE statutes (RPTL §§ 550-559) that were enacted in 1974. Early experience with sections 554 and 556 -- which allow individual taxpayers to seek reductions of their tax bills (§ 554) or refunds of tax payments (§ 556) when an error has occurred -- had shown that when a multi-parcel error has occurred, it is often difficult to obtain applications for correction from all affected taxpayers. Section 556-b was drafted to enable the taxing authorities to remedy such multi-parcel errors by submitting a single application *on behalf of* all adversely affected taxpayers, rather than requiring each of them to apply individually. Since section 554 is designed to be used to generate tax bill reductions, and section 556 is designed to generate tax refunds (or credits, thanks to a 2002 amendment), then by extension the same would be true for section 556-b.

Though we understand the school district's dilemma, all we can suggest is that the corrections be made on *next year's* final assessment roll per RPTL § 553. Subdivision 1(a) of section 553 specifically allows the correction of a clerical error on the assessment roll for the "current or *preceding* year" that resulted in an assessed value that was too low. As noted above, a correction under section 553 must be made upon notice to the property owner, and is appealable to the BAR. Note that section 553 doesn't enable corrections to be made *en masse*, so each would have to be made individually.

Since this suggestion would not offer immediate relief, the school district may wish to explore whether effective remedies might exist *outside* the Real Property Tax Law, such as a short-term borrowing to close the funding gap. However, such issues are beyond our expertise, and we can offer no advice thereon.

Parcels rendered ineligible for STAR due to past-due State tax liabilities

> On 8/19/2013, we were asked whether the Correction of Errors procedures must be used to remove a STAR exemption from a parcel which the Tax Department has determined to be ineligible for STAR due to a past-due State tax liability. On 9/4/2013, we were further asked what procedure should be followed to remove the exemption once school tax bills have been issued. (Although all assessors were notified by the June 30th deadline of the parcels whose STAR exemptions had to be removed under the so-called "offset" program, this assessor had failed to remove the exemption promptly.) We answered the question as follows:

We do not believe that STAR offsets must be removed via the Correction of Errors procedures. In fact, we believe the drafting of the law intentionally made clear that the process was independent of COE, and does not require the additional notice and opportunity to be heard that goes with it.

RPTL § 425(3)(f)(i) clearly states that the removal is to be done immediately. The language provides that the assessor or other person having custody of the roll is "*authorized and directed* to immediately remove that STAR exemption from the roll" (emphasis added). Correction of errors process is not needed to take the exemption off.

Under the STAR offset program, taxpayers whose STAR exemptions have been suspended under Tax Law § 171-y have received notice of the impending suspension and opportunity to be heard and to prevent the suspension. That notice and cure is built into the Tax Law § 171-y process.

The exemptions should simply be removed from the assessment rolls, as has been *directed* by DTF. Assessors and county directors are not required to use COE to remove exemptions that are suspended due to state tax liability.

If the suspended STAR exemption was not removed before the school tax bills were issued, then corrected bills should go out immediately (perhaps with a letter explaining why they are receiving the corrected bill). Again, no COE is needed as this removal was a directive from the Tax Department as per the statute. If the taxpayer attempts to pay the amount shown on the uncorrected original bill, the payment should not be accepted since it would constitute an impermissible partial payment. If the corrected bill is not paid, it would be enforced using the regular methods.

Judicial Review of Assessments (RPTL Article 7)

Standing of new owner

> On 9/18/2013, we were asked whether a property owner who acquired property after Grievance Day has standing to challenge an assessment pursuant to RPTL Article 7. A grievance was filed by the former owner, and was denied. We answered the question as follows:

On the basis of the submitted facts, we believe that the new owner as a successor in interest has the same right as the former owner has, to challenge the assessment. The new owner is an aggrieved person "whose pecuniary interests are or may be adversely affected." See, (*People ex rel. Bingham Operating Corp. v. Eyrich*, 265 App.Div. 562, 40 N.Y.S.2d 33, at 35 (3d Dept., 1943)). See also the case notes under RPTL § 704.

Apportionment of Assessments (RPTL § 932)

Split occurring after Taxable Status Date

> On 9/19/2013, we received a question involving a parcel that was split and sold on May 3, 2013. There is a building on the property that will be demolished this fall. One third of the property was split off as a "highway taking." That portion runs through the building, which was standing on taxable status still and remains intact. The remainder of the lot and building are still owned privately. The private owner suggests she should only pay taxes on the land as this building is going to be torn down and NYS DOT owns the other one third of it. The question is whether the value of the building should be disregarded when the apportionment is done. We answered the question as follows:

Under RPTL § 932, a person who owns a portion of a parcel may pay the tax on that portion, provided an apportionment of the assessment has been obtained from the assessor after due notice to the parties. In general, any change in the condition of property following taxable status date would not affect the taxable status of the real property parcel for the ensuing fiscal year. See 3 Op Counsel SBEA No. 108.

Non-assessing villages (RPTL § 1402)

Local option exemptions

> On 9/19/2013, we received a question involving the application of a local option exemption by a village which is not an assessing unit. In this case, the exemption at issue is the RPTL § 459-c exemption for persons with disabilities and low incomes. The Town has adopted the RPTL § 459-c exemption. There are two villages which currently adopt the Town's tax roll. The question is whether or not these villages need to pass a resolution or local law in order to enact RPTL § 459-c exemption or if the exemptions apply to the villages' tax bills simply as a result of their adoption of the Town tax rolls. We answered the question as follows:

A non-assessing unit village is still a municipal corporation and the village board of trustees is authorized to grant (or decline to grant) a local option exemption for village tax purposes. The town assessor will administer the exemption on the village's behalf.

See 8 Op Counsel SBEA No. 16 which provides additional information, albeit in the context of a different local option exemption.

Local option exemptions

> On 9/24/2013, we received another question involving the application of a local option exemption by a village which is not an assessing unit. In this case, the exemption at issue is the one authorized by § 577 of the Private Housing Finance Law for projects of housing development fund companies. Unlike most other local option exemptions, this statute provides essentially that when an assessing unit opts in, the exemption applies not just to the assessing unit but also to any other municipality or school district that uses the assessing unit's roll. The question is whether a village that is not an assessing unit has the power to authorize this exemption on its own, or whether it must first secure the approval of the town that prepares the assessment roll that the village uses. We answered the question as follows:

Assuming the project will meet the statutory requirements, we believe the village would be empowered to exempt it from real property taxes under PHFL § 577(1)(a), which empowers the local legislative body of "any municipality" to grant such an exemption. A village is clearly a "municipality" for purposes of this provision (PHFL § 2(16)).

We read PHFL § 557(1)(b) as setting forth *additional* consequences where a municipality that has opted to grant the exemption happens to be an assessing unit: In those cases, the exemption will apply not just

to the taxes of that municipality/assessing unit, but also to the taxes of all other municipalities that use its assessment roll. For example, a town typically serves as the assessing unit for the county, school district(s) and any non-assessing unit village(s) which it shares territory with, so if such a town opts to grant the exemption authorized by PHFL § 557(1)(a), then the county, school district(s) and non-assessing unit village(s) will be obliged to recognize the exemption as well, whether or not they opt-in for themselves under PHFL § 557(1)(a).

In any event, this particular village does not assess property on behalf of any other municipality (or even for itself). That being so, if and when it opts into the PHFL § 577 exemption, its action will render qualifying projects exempt from village taxes, and only from village taxes.