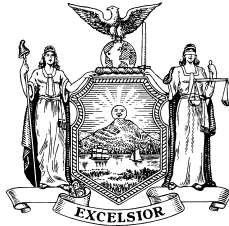


SUMMARY OF
2003
REAL PROPERTY TAX LEGISLATION



STATE BOARD OF REAL PROPERTY SERVICES

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STATE OF NEW YORK
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SUMMARY OF 2003 REAL PROPERTY TAX LEGISLATION

NEW YORK STATE BOARD OF REAL PROPERTY SERVICES

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December, 2003

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SUMMARY OF 2003
REAL PROPERTY TAX LEGISLATION

This document provides a summary of legislation enacted to date in 2003 relating to real property tax administration. The descriptions it contains are intended only as a source of general information about the major features of these new laws. For a more detailed and authoritative account of what these new laws do, the best resource is, of course, the laws themselves. The following items may be of particular interest:

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All statutory citations herein are to the Real Property Tax Law (RPTL), unless otherwise noted. The terms “State Board” and “ORPS” as used herein refer to the New York State Board of Real Property Services and Office of Real Property Services, respectively.

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SUMMARY OF 2003 REAL PROPERTY TAX LEGISLATION

A. OVERVIEW

This matrix presents an overview of the laws enacted in 2003 which may have an impact upon real property tax administration. A closer look at the items of particular interest appears in the next section of this publication.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
ASSESSMENT ADMINISTRATION							
548	Financial disclosure statements	A.3803-A	9/17	1/1/04	RPTL, §336	Requires assessors and certain other personnel with assessment/appraisal duties to annually file financial disclosure statements; for more information, see <i>Highlighted Items</i> , below.	Adm
386	Notice of removal of partial exemption	A.7504	8/19	Applies to TSD's ³ on or after 1/2/04.	RPTL, §510-a	Requires the assessor to notify a property owner when discontinuing a partial exemption granted to a parcel that was owned by that same person on the preceding year's assessment roll; for more information, see <i>Highlighted Items</i> , below.	Adm

¹ Statutory abbreviations: RPTL = Real Property Tax Law. Also, AML = Agriculture and Markets Law; GML = General Municipal Law; ECL = Environmental Conservation Law; PAL = Public Authorities Law; PHL = Public Housing Law; PHFL = Private Housing Finance Law; POL = Public Officers Law; SAPA = State Administrative Procedure Act; SFL = State Finance Law; TSFCA = Tobacco Settlement Financing Corporation Act; and Unconsol. = Unconsolidated

² Category Codes: Adm = Assessment Administration; Ex = Exemption Administration; LI = Local Interest (*applies to one or very few jurisdictions*); Misc = Miscellaneous; and TC&E = Tax Collection and Enforcement

³ TSD = Taxable status date

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
62	Oil and gas fees	A.2106-B, Part D2 (p.180)	5/15 ⁴	Retroactive to 3/31/03	L.1992, c.540	Extends by three years the provisions of RPTL §593 that authorize ORPS to impose a fee upon oil and gas producers to defray the costs of determining unit of production values	Adm
539	Recreational vehicles	S.5503-A	9/17	Immediate	RPTL, §102(12)(g)	Excludes certain recreational vehicles from the definition of “mobile homes” under the RPTL; for more information see <i>Highlighted Items</i> , below.	Adm
62	RP-5217 filing fee	A.2106-B, Part C2 (p.179)	5/15 ⁵	Immediate	RPL, §333(3), SFL, §97-II	Increases the fee for filing real property transfer reports (ORPS Form RP-5217) from \$25 to \$50; increases the county’s share from \$3 to \$9; increases ORPS share from \$22 to \$41. [The effective date of this increase was clarified by ch. 686.]	Adm
686	RP-5217 filing fee; technical amendment	S.5725, Pt. Y(p.55)	10/21	5/15/03	L.2003, c.62, Pt. C2	Clarifies the effective date of the RP-5217 filing fee increase	Adm
62	SCAR filing fees	A.2106-B, Part J, §26, (p.61)	5/15 ⁶	7/14/03 (see Pt. J, §38(d))	RPTL, §730(3)	Increases fee for filing SCAR petitions from \$25 to \$30	Adm
62	Tax certiorari refunds; interest rates	A.2106-B, Part M3 (p.598)	5/15 ⁷	Affects tax certiorari refunds as of 1/1/2004	Tax Law, §697(j)(1)	Allows the “overpayment” interest rate under Tax Law §697(j) to be less than six percent. This rate governs the interest rate on tax certiorari refunds under RPTL §726(2); for more information, see <i>Highlighted Items</i> , below.	Adm.
355	Technical RPTL amendments	S.3873	8/19	Immediate	RPTL, §§ 425, 553, 924-a, 925	Makes technical corrections to various RPTL provisions that were enacted in 2002; for more information, see <i>Highlighted Items</i> , below.	Adm

⁴ Disapproved by Governor 5/14 (Veto # 2); veto overridden 5/15.

⁵ See Note 4.

⁶ See Note 4.

⁷ See Note 4.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
363	Trust beneficiaries and SCAR	S.4926	8/19	Immediate	RPTL, §730(9)	Extends small claims assessment review (SCAR) to eligible homes occupied by trust beneficiaries; for more information, see <i>Highlighted Items</i> , below.	Adm
EXEMPTION ADMINISTRATION							
479	Ag Assessment; land used in agricultural production	S.3599	9/9	Immediate	AML, §301(4)(h)	Allows a “newly established farm operation in the first year of operation” to receive an ag assessment after only one year of ag production if gross sales value is \$10,000 or more; for more information, see <i>Highlighted Items</i> , below.	Ex
565	Ag assessment; wind power	S.3597	9/22	Immediate	AML, §§301(5), 305(1)(d), 306(2)(c)	Provides that the installation of wind power generating equipment (e.g., turbines) on land used in agricultural production does not constitute a conversion; for more information, see <i>Highlighted Items</i> , below ⁸	Ex
523	Ag districts; viable agricultural land	S.2836-A	9/17	Immediate	AML, §§ 303-b, 303	Allows landowners to petition county to include viable agricultural land within an ag district.	Ex
527	Ag property tax credit program	S.3612-A	9/17	Applies to taxable years as of 1/1/04	Tax Law, §§ 210(22)(b), 606(n)(2)	Allows farmers to use income averaging to satisfy minimum farm income requirement of the ag property tax credit (circuit breaker) program.	Ex
496	First-time home buyers exemption	A.1849	9/9	Immediate	RPTL, §457(2) Subs.(a),(c)	Links eligibility determination to SONYMA income and purchase price limits in effect on the sales contract date (rather than on 1/1/01) ⁹ ; for more information, see <i>Highlighted Items</i> , below.	Ex

⁸ The Governor’s Office issued a press release announcing the signing of this bill.

⁹ The Governor’s Office issued a press release announcing the signing of this bill.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
389	Mitchell-Lama exemption	A.8028-A	8/19	Immediate	PHFL, §§33, 36-a, 93, 556; PHL, §58	Allows municipalities to extend the term of the Mitchell-Lama exemption to continue for another 50 years or until the project is removed from the Mitchell-Lama program, whichever is sooner.	Ex
449	Municipal housing authority projects	A.8030	8/26	Immediate	PHL, §52(6)	Allows the exemption for certain municipal housing authority projects to be extended from 50 to 100 years, at local option.	Ex
534	Nonprofit ex.; leases to municipal corps.	S.4977	9/17	Immediate	RPTL, §§420-a(2), 420-b(2)	Provides that property of a nonprofit org leased to a municipal corp. for a public use may receive the nonprofit exemption, but rent may not exceed carrying, maintenance and depreciation charges.	Ex
462	Persons with disabilities; income limit	S.992-A	9/9	Immediate	RPTL, §459-c subd. (5)(a)	Increases income limit from \$21,500 to \$24,000 ¹⁰ ; for more information, see <i>Highlighted Items</i> , below.	Ex
512	Senior citizens; income limit	A.8930-A	9/9	Immediate	RPTL, §467(3)(a)	Increases income limit from \$21,500 to \$24,000; ¹¹ for more information, see <i>Highlighted Items</i> , below.	Ex
443	STAR exemption; farm dwellings	A.1410	8/26	Immediate	RPTL, §425(3)(d)	Allows a farm dwelling owned by a corporation or a partnership, rather than the resident, to qualify for STAR if it serves as the primary residence of a shareholder or partner; for more information, see <i>Highlighted Items</i> , below. ¹²	Ex
LOCAL INTEREST							
122	Buffalo Fiscal Stability Authority	S.5695	7/3	Immediate	PAL, §3869	Exempts from taxation property of the Buffalo Fiscal Stability Authority. ¹³	LI

¹⁰ The Governor's Office issued a press release announcing the signing of this bill.

¹¹ The Governor's Office issued a press release announcing the signing of this bill.

¹² The Governor's Office issued a press release announcing the signing of this bill.

¹³ The Governor's Office issued a press release announcing the signing of this bill.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
567	Dutchess County; waiver of interest and penalties	S.4045	9/22	Immediate	Unconsol.	Directs Dutchess County legislative body to waive interest and penalties on unpaid 2002-03 school taxes on 11 specified parcels.	LI
143	Erie Co. Med Center Pub Benefit Corp.	S.4409	7/22	Immediate	PAL, §3640	Exempts from taxation property of the Erie Co. Medical Center Public Benefit Corp. ¹⁴	LI
131	Fire/ambulance volunteers in Columbia County	S.2964	7/22	Applies to TSDs on or after 1/1/04	RPTL, §466-d	Authorizes exemption for fire/ambulance volunteers in Columbia County; for more information, see <i>Highlighted Items</i> , below.	LI
177	Fire/ambulance volunteers in Nassau County	A.8307	7/22	Immediate	RPTL, §466-c(1); L.2002, c.440	Clarifies that this exemption does not apply to any county in NYC that falls within the specified population bracket (i.e., the Bronx)	LI
168	Fire/ambulance volunteers in Niagara County	A.5961	7/22	Applies to TSDs on or after 1/1/04	RPTL, §466-d	Authorizes exemption for fire/ambulance volunteers in Niagara County; for more information, see <i>Highlighted Items</i> , below.	LI
133	Fire/ambulance volunteers in Orleans County	S.3341	7/22	Applies to TSD's on or after 1/1/04	RPTL, §466-d	Authorizes exemption for fire/ambulance volunteers in Orleans County; for more information, see <i>Highlighted Items</i> , below.	LI
142	Fire/ambulance volunteers in Westchester County	S.4141-B	7/22	Applies to TSD's on or after 7/22/03	RPTL, §466-d	Authorizes exemption for fire/ambulance volunteers in Westchester County; for more information, see <i>Highlighted Items</i> , below.	LI
76	Hempstead (Town); PILOTs on certain properties	A.5787	6/18	Immediate	Town Law, §64-c	Extends until June 30, 2008, the authorization of the Town of Hempstead to make PILOTs on the Lido golf club and Lido cabana club	LI
333	Huntington; senior citizens exemption	S.767		Immediate	Unconsol.	Grants Gladys Raso a retroactive senior citizens exemption due to an "unintentional omission."	LI

¹⁴ The Governor's Office issued a press release announcing the signing of this bill.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference¹	Description	Ctg.²
150	Islip; class tax rates	S.5323-A	7/22	Applies to levies on 2003 roll	RPTL, §1903-a subd. 3(a)(iv)(3)	Provides that for purposes of taxes levied upon the 2003 assessment roll, the current base proportion of any class may not exceed its 2002 adjusted base proportion by more than 2%	LI
406	Jamestown; residential investm't exemption	S.911	8/26	Retroactive to 1/1/03	RPTL, §485-h	Allows exemption to be granted to construction commenced on or after 1/1/03 and completed on or after 7/1/03.	LI
502	Lockport, Peekskill; conversions of multiple dwellings	A.7148-A	9/9	1/1/04	RPTL, §421-h	Allows these two cities to provide a partial exemption for capital improvements that convert multiple dwellings to one or two-family homes.	LI
43	Nassau County; class tax rates	S.3938-A	4/25	Applies to levies on 2003 roll	RPTL, §1803-a(1), subd. (m)	Provides that for purposes of taxes levied upon the 2003 assessment roll of Nassau County, the current base proportion of any class may not exceed the 2002 adjusted base proportion of that class by more than two percent. ¹⁵	LI
12	Nassau County; classification of vacant lots	S.493	3/18	Retroactive to 12/31/02	RPTL, §1802(1)	Provides that vacant lots in Nassau County which adjoin certain Class 1 residential parcels and are owned by the same owners are in Class 1 rather than Class 4. [Note: Technical revisions were made by a chapter amendment, c.60]	LI
60	Nassau County; Classification of vacant lots	S.2975	5/28	Same as c.12	RPTL, §1802(1)	Chapter amendment making technical revisions to ch.12	LI
518	Nassau County; PILOTs on certain parklands	S.1993	9/17	Immediate	County Law §233-b	Extends by five years the authorization for Nassau County to make PILOTs on certain parkland in the Lido Beach-Point Lookout areas.	LI

¹⁵ The Governor's Office issued a press release announcing the signing of this bill.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
685	Nassau County; sewer and storm water services; tax cert. bonding	S.5720	10/21	Immediate	Unconsol.; also PAL, §3656	Authorizes Nassau County to merge the existing sewer districts into a single county-wide district; also expands the authority of NIFA ¹⁶ to issue bonds to cover tax certiorari costs	LI
63	NYC absentee landlord tax	A.8388, Part G	5/19 ¹⁷	Immediate	RPTL, §307-a	Authorizes NYC to impose a 25% surcharge on Class One property, not including vacant land, which generates rental income and is not the primary residence of the owner or the owner's parent or child.	LI
103	NYC ICIP extender	S.5214	7/1	7/1/03	RPTL, §489-aaaa <i>et seq.</i>	Allows NYC to extend application period for ICIP exemption by four years; also makes a program boundary revision	LI
400	NYC; class tax rates	A.9000	8/19	Immediate	RPTL, §1803-a subd. (1)(n)	Provides that for the NYC fiscal year ending in 2004, the current base proportion of any class may not exceed its adjusted base proportion in the prior fiscal year by more than 2%.	LI
440	NYC; commercial exemption extender	S.5415	8/26	Retroactive to 7/1/03	RPTL, Art.4, Titles 4 and 4-A	Allows NYC to extend the exemption application periods for eligible commercial properties by four years. ¹⁸	LI
450	NYC; J-51 program and cubic content	A.8179	8/26	Immediate	RPTL, §489	Allows NYC J-51 multiple dwelling exemption to be granted for increased “gross cubic content.”	LI
490	NYC; J-51 program and room counts	S.5055	9/9	Immediate	RPTL, §489(11)	Specifies the method to be used to determine the rooms counts in dwelling units under NYC’s J-51 multiple dwelling exemption program. ¹⁹	LI
447	NYC; new multiple dwelling exemption	A.6954	8/26	Immediate	RPTL, §421-a	Expands definition of “new” multiple dwellings in NYC that may qualify for the exemption.	LI

¹⁶ Nassau County Interim Financial Authority

¹⁷ Disapproved by Governor 5/15 (Veto #121); veto overridden 5/19.

¹⁸ The Governor’s Office issued a press release announcing the signing of this bill.

¹⁹ The Governor’s Office issued a press release announcing the signing of this bill.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
110	Overburden aid	A.6833	7/1	Immediate	SFL, §54-c	Extends “overburden” aid for Albany, Buffalo, Rochester, Syracuse and Yonkers for one more year; <u>see also</u> , L.2003, c.50 (p.273), which appropriates funds for this purpose	LI
26	Schenectady County; interest rates on unpaid taxes	S.1562	4/8	Immediate	RPTL, §924-a	Allows the Schenectady County legislature to prescribe an interest rate of 15 percent per year on unpaid real property taxes.	LI
382	SCRIE program; income limit	A.6348	8/19	9/1/03	RPTL, §§467-b, 467-c	Increases the income limit for the Senior Citizens Rent Increase Exemption (SCRIE) program from \$20,000 to \$24,000. ²⁰	LI
62	Tobacco Settlement Financing Corp.	A.2106-B, Part D3 (p.529)	5/15 ²¹	Immediate	TSFCA, §9	Exempts from taxation property of the Tobacco Settlement Financing Corp.	LI
445	Tonawanda; PILOTs and class tax rates	A.4344	8/26	Immediate	L.2001, c.201	Extends by three years the authority of the Town of Tonawanda to make a special PILOT-related adjustment to its adjusted base proportions pursuant to RPTL, §1903(4-a).	LI
414	Town of Newfane; Newfane Water Dist.	S.2627-A	8/26	Immediate	Unconsol.	Authorizes Town of Newfane to change the basis of Newfane Water District charges from special ad valorem levies to special assessments	LI
MISCELLANEOUS							
296	Constitutional challenges to local laws, regulations, etc.	S.2768-A	8/5	1/1/05	Various	Requires notice to be given to the State or a local government when the constitutionality of one of its enactments is challenged and it is not a party to the action or proceeding.	Misc

²⁰ The Governor’s Office issued a press release announcing the signing of this bill.

²¹ Disapproved by Governor 5/14 (Veto # 2); veto overridden 5/15.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
403	Critical infrastructure & access to records	S.667-A	8/26	Immediate	POL, §87 sub.(2)(f)	Provides that access to records may be denied where disclosure “could [as opposed to “would”] endanger the life or safety of any person.	Misc
83	Financing of tax certiorari refunds	S.3818	6/24	Immediate	L.1980 c.719	Extends by five years §11(33-a) of Local Finance Law, which establishes periods of probable usefulness for bonding of certiorari refunds	Misc
62	Inter-municipal agreements	A.2106-B, Pt. X, §33 (pp.101-102)	5/15 ²²	Immediate	GML, §119-o subd. (2)(a)	Provides that an inter-municipal agreement may allocate revenues or costs in accordance with “the increase in taxable assessed value attributable to the function, facility, service, activity or project which is the subject of an agreement.”	Misc
327	Rulemaking; review of existing rules	A.8477-A	8/5	1/1/04	SAPA, §207	Requires agencies to give public at least 45 days to comment on whether rules should be continued or modified.	Misc
429	Rulemaking; comment period	S.4075	8/26	1/1/04	SAPA, §202	Increases the public comment period on proposed rules from 45 to 60 days where text has not been published in <u>State Register</u> or posted online.	Misc
53	State Budget; ORPS-related appropriations	A.2103-B	5/14 ²³	4/1/03	n/a	Education, Labor and Family Assistance Budget; includes appropriations to ORPS for the 2003-2004 State fiscal year (pp. 616-618) and to SED to pay STAR aid to school districts (pp.46-47).	Misc
50	State Budget; RPT-related appropriations	A.2100-B	5/14 ²⁴	4/1/03	n/a	Public Protection and General Gov’t Budget; includes real property tax-related appropriations, for payment of taxes on certain State lands (p.263), emergency financial (“overburden”) aid to certain cities (p.273, <u>see also</u> , L.2003, c.110), and payments to certain school districts to offset real property taxes (pp.277-278).	Misc

²² Disapproved by Governor 5/14 (Veto # 2); veto overridden 5/15.

²³ Approved 5/14 (Approval Memo #1) with certain lines vetoed (Veto # 13-60); line item vetoes overridden 5/15.

²⁴ Approved 5/14, with certain lines vetoed (Veto # 3-12); line item vetoes were overridden 5/15.

Ch.	Subject	Bill No.	App Date	Effective Date	Statutory Reference ¹	Description	Ctg. ²
TAX COLLECTION AND ENFORCEMENT							
1	Brownfield and Superfund programs	A.9120	10/7	Immediate; tax credit applies to taxable years as of 4/1/05	ECL, §§ 56-0508, 27-1323; Tax Law, §22; others.	Allows pre-foreclosure brownfield investigations. Provides a post-foreclosure Superfund municipal liability exemption. Authorizes a State tax credit (not a property tax exemption) for percentage of “eligible real property taxes” paid by developers on remediated brownfields. ²⁵ For more information, see <i>Highlighted Items</i> , below.	TC&E
62	Payment of taxes via Internet	A.2106-B, Part X, §§10-11 (p. 89)	5/15 ²⁶	Immediate	GML, §5-b, RPTL, §925c	Authorizes the payment of real property taxes and other municipal charges via the Internet, subject to local option; for more information, see <i>Highlighted Items</i> , below.	TC&E
106	Persons deployed by military	S.5679, §41 (p.25)	7/1	Immediate	RPTL, §925-d	Authorizes a tax payment extension, at local option, for persons deployed by the military and their spouses or domestic partners. ²⁷ ; for more information, see <i>Highlighted Items</i> , below.	TC&E
149	Tax lien sales to MBBA	S.5071-A	7/22	Immediate	RPTL, §§1190-1194	Makes technical amendments to tax lien securitization program administered by the Municipal Bond Bank Agency	TC&E
431	Village delinquent tax enforcement opt-out extender	S.4161	8/26	Retroactive to 7/26/1994	L.1993, c.602, §6	Extends by three years the effectiveness of local laws which various eligible villages adopted to continue enforcing delinquent taxes pursuant to former RPTL Art. 14, Title 3, rather than Art. 11.	TC&E

²⁵ The Governor’s Office issued a press release announcing the signing of this bill.

²⁶ Disapproved by Governor 5/14 (Veto # 2); veto overridden 5/15.

²⁷ The Governor’s Office issued a press release announcing the signing of this bill. .

B. HIGHLIGHTED ITEMS

This section offers a closer look at some of the most noteworthy of the items that were presented in the Overview, namely:

Assessment Administration

- Financial Disclosure Statements
- Interest Rate on Tax Certiorari Refunds
- Trust Beneficiaries and SCAR
- Recreational Vehicles
- Technical Amendments

Exemption Administration (Including Certain Exemptions Of Local Interest)

- Notices of Removal of Partial Exemptions
- STAR and Farms Dwellings
- Senior Citizens Exemption; Income Limits
- Exemption for Persons with Disabilities; Income Limits
- Agricultural Assessments; First-year Farm Operations
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ASSESSMENT ADMINISTRATION

Financial Disclosure Statements

Chapter 548 requires each assessor to file an Annual Statement of Financial Disclosure, as provided for in Article 18 of the General Municipal Law, whether or not the assessor is otherwise required to file such a statement pursuant to that Article or any local law, ordinance, or resolution adopted pursuant thereto (RPTL, §336). For this purpose, the term “assessor” includes not only the individual occupying the office of assessor, but also “any other municipal officer or employee engaged in the assessment of real property for purposes of taxation,” and also “a municipal officer or employee assigned professional appraisal duties which relate to the assessment of real property for purposes of taxation” (§336, subd. (1)(b)). The statements must be filed with the Board of Ethics or the Conflicts of Interest Board of the municipality, or if no such Board is in existence in a municipality at the time a statement is due, with the clerk of the municipality. The provisions of this statute apply to every assessing unit in the State (§334.

subd. (3)). No local law, ordinance or resolution may be adopted which is inconsistent with this statute.

The chief executive officer of each municipality must cause a copy of the applicable statute – namely, section 336 of the Real Property Tax Law – to be posted in each public building under the municipality’s jurisdiction in which assessors work, in a place conspicuous to such assessors. However, the failure to post any such copy shall have no effect on the duty to comply therewith, or upon the enforcement thereof.

This law takes effect January 1, 2004.

Interest Rate on Tax Certiorari Refunds

Chapter 62, Part M3, amends the provision of the Tax Law which governs the interest that must be paid when a refund is ordered in a tax certiorari proceeding pursuant to Article 7 of the RPTL. Generally, the interest rate on tax certiorari refunds equals the “overpayment” interest rate established by the Commissioner of Taxation and Finance pursuant to section 697(j) of the Tax Law (see RPTL, §726(2), as amended by L.2002, Ch. 85, Part R, §30). The overpayment interest rate may change from time to time based on market conditions, but it had been subject to a “floor” of six percent until recently. This floor was removed by Chapter 62, Part M3, and so the overpayment rate – and by extension, the interest rate on tax certiorari refunds – may now fall below six percent.

The Department of Taxation and Finance has advised that the interest rate on tax certiorari refunds during calendar year 2004 (the first calendar year affected by the new law) will be three percent.

Trust Beneficiaries and SCAR

Chapter 363 extends the small claims assessment review (SCAR) program authorized by RPTL, Article 7, Title 1-A to properties held in trust that are otherwise eligible for such review (i.e., properties which are 1, 2 or 3-family homes and are occupied by the trust beneficiaries). Traditionally, one of the statutory requirements for SCAR has been that the property be “owner-occupied” (§730(1)(b)). However, when property is held in trust, the trustee is the legal owner of trust property (Estates, Powers and Trusts Law, §7-2.1(a)). Thus, unless the trustee happens to reside with the trust beneficiary, strictly speaking, the property is no longer “owner-occupied.” In some cases, trust beneficiaries, though still the occupants of their homes, have been denied access to SCAR, thereby obliging them to institute a formal tax certiorari proceeding (RPTL, Art. 7, Title 1) if they are dissatisfied with their assessments.

This enactment overcomes this prohibition by deeming trust beneficiaries to be the home owners for SCAR purposes. This is akin to what has previously been legislated for purposes of several real property tax exemptions that require residency by owners (e.g., RPTL, §§458(7)

[veterans exemption], 458-a(5) [alternative veterans exemption], 467(10) [senior citizens exemption]).

Recreational Vehicles

Chapter 539 revises the definition of “mobile homes” for purposes of the RPTL (they are often referred to as “manufactured homes” in other contexts) so as to exclude recreational vehicles (RV’s) that are (1) 400 square feet or less in size, (2) either self-propelled or towable by automobile or light duty truck, and (3) designed as temporary living quarters for recreational, camping, travel, or seasonal use (RPTL, §102(12)(g)). The objective is to recognize a distinction between RV’s in campgrounds and mobile homes in mobile home parks, the theory being that RV’s are more mobile, smaller and generally uninhabitable for much (if not most) of the year. The new law ensures that RV’s meeting the specified criteria are not subjected to taxation the way mobile homes are.

An Opinion of Counsel issued some time ago by ORPS (then known as the SBEA) suggested that “campers” may be taxed **if** they are “located in one spot on a year-round basis and are used as permanent residences or for business purposes,” but that merely being parked within an assessing unit would not suffice since “[o]bviously, they must be parked somewhere” (2 Op.Counsel SBEA No. 30). Accordingly, even before Chapter 539 was enacted, RV’s should not have been subjected to taxation under most circumstances. If there were isolated cases in which RV’s were being inappropriately taxed, this new law should put an end to that practice.

Technical Amendments

Chapter 355 addresses a number of technical shortcomings in various 2002 enactments. In particular, it: (1) Amends RPTL, §553 (as amended by L.2002, c.616) to clarify that the way to correct an incorrectly granted exemption on the prior year’s roll is by entering the canceled exemption on the current year’s roll, applying the prior year’s tax rate, and deducting that amount from the current levy; (2) Clarifies new language in §924-a (added by L.2002, c.85, Pt. R, §31) concerning variable interest rates; and (3) Renumbers two new provisions, one in §425 (regarding STAR and Mitchell-Lama co-ops, added by L.2002, c.83, Pt. E) and the other in §925 (regarding tax payments via private delivery services, added by L.2002, c.513).

EXEMPTION ADMINISTRATION (INCLUDING CERTAIN EXEMPTIONS OF LOCAL INTEREST)

Notices of Removal of Partial Exemptions

Chapter 386 requires assessors to notify taxpayers when their partial exemptions are to be discontinued and there has been no change in ownership (RPTL, §510-a). The notice must be mailed not later than 10 days before grievance day (or in New York City, not later than 30 days prior to the grievance filing deadline). This will give the taxpayer an opportunity to grieve that

removal to the board of assessment review, and give the taxpayer and assessor an opportunity to correct erroneous removals through the stipulation procedure if appropriate (RPTL, §524(3)).

Of course, the law has required for some time that a notice be given to the owner when wholly exempt property is made taxable in whole or in part (§510-a). It has also required that owners be given notices of removals of total or partial exemptions after changes in ownership (§520). However, owners on the verge of losing partial exemptions had not been statutorily entitled to notices when there had not been a change of ownership. As a result of this new law, this has now changed; notice is now required upon the removal of a partial exemption even when there has not been an ownership change. It should be noted, however, that if a partial exemption is merely reduced but not removed, notice is permitted but not required under the new law.

STAR and Farm Dwellings

Chapter 443 provides that a farm dwelling which is owned by a business corporation or a partnership may nonetheless qualify for the STAR exemption if it serves as the primary residence of a shareholder of the corporation or of a partner of the partnership. Thus, in these cases, the exemption may be granted even though the property is owned by an entity rather than an individual. Any information submitted with the STAR application to establish an individual's status as a shareholder or partner must be considered confidential, and is not subject to disclosure under the Freedom of Information Law.

Senior Citizens Exemption; Income Limits

Chapter 512 amends the senior citizens exemption (RPTL, §467) to increase the maximum income ceiling for the basic (i.e., 50% of assessed value) exemption from \$21,500 to \$24,000. This adjustment also affects the sliding scale portion of the exemption (subd. (1)(b)), for example, permitting municipalities to grant the minimal (5%) exemption to seniors whose incomes are less than \$32,400.

Exemption for Persons with Disabilities; Income Limits

Chapter 462 amends the exemption for persons with disabilities and limited incomes (RPTL, §459-c), to increase the maximum income ceiling permitted under that statute from \$21,500 to \$24,000. This adjustment also results in a corresponding increase in the sliding scale portion of the exemption (subd. (1)(b)), for example, permitting municipalities to grant the minimal (5%) percent exemption to persons whose incomes are less than \$32,400.

Agricultural Assessments; First-year Farm Operations

Chapter 479 permits and of not less than seven acres "owned or rented by a newly established farm operation in the first year of operation" to qualify for an agricultural assessment

when “used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of [\$10,000] or more” (Agriculture and Markets Law, §301(4)(h), emphasis added). Previously, land had to be in agricultural production for a minimum of two years, generally with an average gross sales value of \$10,000, to qualify for an agricultural assessment. The purpose of this change is to allow first-year farmers to receive an agricultural assessment if they meet the gross sales value requirement during their first year of operation. Accordingly, under this law, the initial agricultural assessment application may be filed after the first year of agricultural production, provided the newly established farm operation can substantiate a “gross sales value” of at least \$10,000 in that year.

Agricultural Assessments; Wind Energy

Chapter 565 provides that land receiving an agricultural assessment is not liable for a penalty if converted to a use involving the development of wind energy generation (AML, §§301(5), 305(1)(d), 306(2)(c)). Thus, for example, the installation of wind turbines on farmland will not give rise to a conversion penalty. Previously, the only energy-related exception to conversion penalty was for “oil or gas exploration, development or extraction activities.”

First-Time Homebuyers

Chapter 496 revises the First-Time Homebuyers exemption to provide more current household income and purchase price limits than previously allowed (RPTL, §457). Under this local option exemption, as originally enacted (L.2001, c.529), the household income of the purchasers and the purchase price of the home generally could not exceed the applicable limits established by the State of New York Mortgage Agency (SONYMA) as of January 1, 2001. Any subsequent updating of the limits by SONYMA for its own purposes was effectively excluded from consideration for purposes of this exemption. The new law changes this requirement, so that eligibility for the exemption will depend instead upon the SONYMA limits that are in effect on the contract date for the purchase and sale of the property in question. Updated limits may be found on SONYMA’s website .

It should be noted that this exemption, where locally authorized, only applies to newly-constructed homes that are purchased or contracted for before December 31, 2005.

Nonprofit Exemption; Property Leased to Municipal Corporations

Chapter 534 permits the nonprofit exemption to be granted to property owned by a nonprofit organization (both in the mandatory class and permissive class) when the property is leased to a municipality and used for public purposes, provided the rents paid to the nonprofit organization do not exceed the carrying, maintenance, and depreciation charges of that rented property (RPTL, §§420-a(2), 420-b(2)). Under prior law, a nonprofit organization could lease its property to school districts (and certain other entities) without losing its exemption (see, 10 Op.Counsel SBRPS No. 88), but a lease to another type of municipal corporation would require

the removal of the exemption. This new law essentially puts counties, cities, towns and villages on the same footing as school districts for this purpose.

Fire/Ambulance Volunteers in Certain Counties

A series of new enactments collectively provide that in four counties – Columbia, Niagara, Orleans and Westchester (chapters 131, 168, 133 and 142, respectively), the county and any city, village, or town therein may adopt a local law, ordinance or resolution providing a partial real property tax exemption for members of incorporated volunteer fire companies, fire departments and incorporated volunteer ambulance services [hereinafter “volunteer companies”]. In Columbia and Orleans counties, the exemption may also be offered by school districts, but not in Niagara or Westchester counties. The exemption, available only to enrolled members and their spouses, would equal 10 percent of assessed value, but not to exceed \$3,000 times the latest State equalization rate, and would apply to taxes and special ad valorem levies, but not special assessments. In addition:

1. the applicant must reside in the city, town or village served by the volunteer company,
2. the exemption is limited to the applicant’s primary residence,
3. only the residential portion of the property may receive the exemption, and
4. the applicant must be certified by the authority having jurisdiction over the volunteer company as having been a company member for at least five years.

At further local option, the municipality could grant a lifetime exemption to members who have provided over 20 years of volunteer company service. In addition, for Westchester only, the legislation has the following additional features: (1) it disqualifies areas that are served by a fire or ambulance county that employs five or more professional firefighters or ambulance workers; and (2) it grants annual certification to members who are permanently disabled and thereby prevented from being annually certified.

For each county, ORPS must promulgate the exemption applications. The exemptions first apply to 2004 assessment rolls.

Note that similar legislation had already been on the books for 10 counties, namely, Chautauqua, Dutchess, Erie, Nassau, Oswego, Rockland, Putnam, Steuben, Suffolk and Wyoming counties (RPTL, §§466-a *et seq.*). Thus, these new enactments bring to 14 the total number of counties in which this type of exemption may be offered.

Retroactive Exemptions for Specific Properties

In a number of assessing units, the assessor has been authorized to accept an exemption application after taxable status date for a parcel owned by a named nonprofit or governmental entity. In most cases, the entity acquired the property after taxable status date, though in some cases, the entity had title but simply failed to file the exemption application by taxable status date. The prospective applicants, and the assessing units involved, are as follows:

<u>Chap.</u>	<u>Owner</u>	<u>Location</u>
265	His Tabernacle Family Church	Horseheads
266	Cong. Eitz Chayim of Dogwood Park	Nassau
272	Salvation & Deliverance Church*	Babylon
273	Ascension Evangelical Lutheran Church	Babylon
277	St. Paul's Evangelical Lutheran Church	Babylon
279	First Methodist Church	Babylon
280	Church of Jesus Christ (Apostolic)	Poughkeepsie
281	Town of Brookhaven*	Brookhaven
289	Bethlehem Assembly of God	Nassau
292	Yeshiva Ketana of Long Island	Nassau
293	Oceanside American Legion Post #1246	Nassau
294	Village of Rockville Center	Nassau
297	Sephardic Congregation of Five Towns*	Nassau
317	L.I. Progressive Baptist Assn.	Babylon
323	Ohr Moshe Torah Institute, Inc.	Nassau
325	North Lindenhurst Vol. Fire Dept.	Babylon
326	Congregation Avnei Pinchos	NYC
330	Shaarei Tikvah Scarsdale Cons. Cong.	Scarsdale
345	Shor Yoshuv	Nassau
347	Rockland Korean Presbyterian Church	Clarkstown
352	Base Medrash Marph Lenefesh	NYC
354	Village of Port Washington North	Nassau
364	Northport Fire Dept.	Huntington
365	Bais Yaakov D'Chassidei Gur	NYC
365	Masjid At- Taqwa, Inc.	NYC
369	Iranian Jewish Center/Beth Hadassah Syn.	Nassau
374	Holy Spirit Assn. for Unification of World Christianity	Nassau & Vlg of Hempstead

* Amends legislation enacted in a prior year.

TAX COLLECTION AND ENFORCEMENT

Persons Deployed by the Military; Tax Payment Extensions

Chapter 106, officially entitled the "Patriot Plan," enacts into law a wide variety of new benefits and enhanced protections for New York's military personnel and their families. Its purpose is to assist troops and their families who face potential added expenses and disruptions caused by being called to active duty in the nation's ongoing war against terrorism.

One of the new statutes included in the Patriot Plan authorizes a property tax payment extension, at local option, for persons deployed by the military. More specifically, it provides

that any deadline with respect to the payment of a real property tax owed by a person who has been deployed by the military, or by the spouse or domestic partner of such person for real property of a person so deployed, shall be extended for a period of 90 days after the end of such deployment if the municipal corporation has passed a “local resolution” authorizing such extension (RPTL, §925-d, as added by Ch.106, §41). For purposes of this statute, a “person deployed by the military” is a person who has been ordered to active military duty, other than training, for the period beginning with a declaration of war by Congress and ending with a date prescribed by Presidential proclamation or concurrent resolution of Congress or during any periods of combat designated by presidential executive order or hazardous duty. This statute supercedes any other provision of law which relates to the collection of real property taxes owed to a municipal corporation or to the imposition of penalties or interest therefor for a late payment.

This statute further provides that where a municipal corporation has granted such an extension to such persons, any payment on behalf of such deployed person, spouse or domestic partner from a real property tax escrow account shall likewise be so extended consistent with the provisions of this statute.

Payment of Taxes over the Internet

Chapter 62, a multi-faceted budget-related enactment, includes a provision which gives municipal corporations the ability, at local option, to allow payments of property taxes (and other municipal charges) to be made over the Internet (RPTL, §925-c and General Municipal Law, §5-b, as added by Ch.62, Part X, §§10-11). In such cases, the payment will be deemed timely if the taxpayer completes the transaction during the interest-free period, even if the payment is not actually received by the collecting officer until after the close of that period. The payment will be deemed conditional, however, until the local government receives “final and unconditional payment of the full amount due.”

The municipality’s Internet application must be designed so that after the taxpayer has completed the transaction, a confirmation page will be displayed showing at least (a) the date the transaction was completed and sent by the taxpayer; and (b) a notice to the taxpayer to print out and retain the confirmation page as his or her receipt. In addition, the application must comply with Article One of the State Technology Law and any rules, regulations and guidelines adopted thereunder, and must also authenticate the identity of the sender and ensure the security of the information transmitted.

Participation in this program is entirely optional on the part of the municipality. A tax collecting officer will not be obligated to accept Internet tax payments unless the municipality’s governing board has adopted a local law, ordinance or resolution so providing. And where a municipality has opted in to this program, participation is optional on the taxpayer’s part as well; taxpayers who do not wish to use the Internet to pay their real property taxes will not be compelled to do so.

Brownfield and Superfund Programs

Chapter 1 establishes a multifaceted program to clean up seriously polluted sites while protecting and enhancing the State's economy and public health. While this legislation is primarily concerned with environmental issues, it does contain a number of provisions that bear upon real property tax administration in general, and tax enforcement in particular.

Pre-foreclosure brownfield investigations: One of the major goals of the legislation is to provide more effective incentives (including greater State financial assistance) for municipalities to conduct environmental restoration investigation projects and environmental restoration remediation projects upon suspected or known brownfields in accordance with applicable law (see generally, Environmental Conservation Law, §§56-0501 through 56-0515, as amended by Part D of the act). While the details of the enhanced program are largely beyond the scope of this publication, one of its new provisions directly affects the tax enforcement process.

Specifically, the law now provides that a "taxing district" which is foreclosing a tax lien may make a motion for "temporary incidents of ownership" of the parcel "for the sole purpose of entering the parcel and conducting an environmental restoration investigation project upon such parcel" (Environmental Conservation Law, §56-0508, as added by Part D, §7, at pp.35-36). Such a motion must be made at a special term in the court in which the foreclosure proceeding was brought. Upon the granting of the motion (which is essentially assured unless the property is redeemed before the return date), the taxing district obtains the temporary incidents of ownership and proceeds with the investigation. The terms of the court order must generally allow the investigation to go on unhindered while protecting the rights of other parties with an interest in the parcel. The taxing district may apply for funding of the investigation project as if it were the owner of the parcel, but this does not render it the owner for liability purposes, as long as it does not cause any hazardous releases itself.

While the investigation project is in progress, the foreclosure proceeding is stayed, although the stay may be lifted if the court finds that it is not being carried out "in an expeditious manner." Within 30 days after completing the investigation project, the taxing district files the final report with the court, the foreclosure stay is lifted, and the temporary incidents of ownership cease to exist. The taxing district may then choose to foreclose the lien and undertake an environmental restoration project pursuant to the Environmental Conservation Law (it is not compelled to do so), or the parcel may then be withdrawn from foreclosure pursuant to section 1138 of the RPTL. All costs associated with the investigation project may be added to the amount due on the tax lien.

It should be also noted that independently of this tax lien-based inspection provision, the act also grants the Commissioner of the Department of Environmental Conservation (DEC) the administrative authority to direct that certain persons be granted access to a known or suspected brownfield site for inspection or remediation purposes (ECL, §56-0515, as added by Part D, §10, on pp.38-39). The parties to whom such access may be granted include a duly designated officer or employee of either DEC or a municipal corporation, and an agent, consultant or contractor of either DEC or a municipal corporation.

Post-foreclosure Superfund liability exemption: The bill provides that a “public corporation” which acquires a Superfund site “involuntarily,” and which retains the site without participating in its development, is not liable for State statutory claims (e.g., clean-up costs) as an owner or operator (ECL §27-1323(2), Public Health Law, §1389-e(2), as added by Part E, §§9,10, on pp.52-54, 59-61). A public corporation for this purpose includes a county, a city, a town and a village (subd.2(c)(1); General Construction Law, §§65 and 66), and an involuntary acquisition includes an acquisition through the foreclosure of a tax lien. This municipal liability exemption does not apply to a public corporation which had a role in releasing the hazardous waste or in bringing the waste to the site.

Note that this liability exemption applies specifically to Superfund sites. Municipalities which have foreclosed tax liens on sites where petroleum has been discharged have not been similarly exempted from the strict liability provisions of the Oil Spill Program (Navigation Law, §181), though some new protection has been given to certain owners in cases of third-party discharges (see, Navigation Law, §181(4), as added by Part G, §1, on pp.72-73).

Remediated Brownfield Real Property Tax Credit: The bill creates several new State tax credits to encourage the remediation and redevelopment of brownfields. These credits all serve to reduce the taxes due to the State – they are not real property tax exemptions and do not affect the property taxes due to local governments – but at least one of these credits may nevertheless be of interest to those involved in real property tax administration.

More specifically, the bill provides that a developer who acquires and remediates an eligible site may receive a State tax credit for a percentage of the “eligible real property taxes” it pays on the site (Tax Law, §§22, 187-h, 210, 606(i), 606(ee), 1456, and 1511, as added by Part H, §§12-18, on pp.83-90). In effect, then, the State will reimburse these developers for a percentage of the real property taxes they pay on these sites. The applicable percentage will vary, depending on the number of full-time employees on a given site and on whether it is in an Environmental Zone or not. The term “eligible real property taxes” includes not only the real property taxes paid on the site, but also payments in lieu of taxes (PILOTs), provided that the PILOT agreement is approved by ORPS as satisfying “generally accepted norms and standards of real property tax appraisals.” If the site is in an Empire Zone and the taxpayer is otherwise eligible for both this remediated brownfield tax credit and the QEZE tax credit (Tax Law, §15(e)), the taxpayer may elect to receive one credit or the other, but may not receive both. The tax credit applies to taxable years beginning on and after April 1, 2005.

Real property instruments; GIS: A few other provisions in the Superfund/Brownfields act may be worth noting for their real property implications, though they do not directly affect real property tax administration. One provision authorizes the recording of certain instruments for environmental protection purposes (Real Property Law, §316-b, as amended by Part D, §§11 and 12); another authorizes the creation of environmental easements to be held by the State (ECL, Article 71, Title 36, as added by Part A, §2); still another directs DEC to maintain a Geographical Information System for various purposes (ECL, §3-0315, as added by Part C).

D. LEGISLATIVE STATUS CHART

See the Legislative Status Chart published online.

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