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ASSESSMENT CEILINGS FOR PUBLIC UTILITY MASS REAL PROPERTY: AN ANALYSIS

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Introduction

Pursuant to Chapter 315 of the Laws of 2018, the Department of Taxation and Finance (hereafter referred to as the "Tax Department") has prepared this report on the economic, policy and legal objectives that would be served by establishing an assessment ceiling program for all locally-assessed public utility mass real property within the State. Public utility mass real property (hereafter referred to as "mass property") includes, but is not limited to, real property, including mains, pipes, conduits, cables, lines, wires, poles, supports and enclosures for electrical conductors located on, above and below real property, which is used in the transmission and distribution of gas, electricity, steam, water, petroleum and any other substance as well as refrigeration, heat, telephone or telegraph service, and electromagnetic voice, video, and data signals.

An assessment ceiling limits the taxable assessed value of real property that is subject to the ceiling. The local assessor is free to assess the property in the amount he or she sees fit, but if the total assessment exceeds the ceiling, the excess is exempt from taxation.

Background

Since the dawn of the 20th century, the State has been responsible for the assessment of certain mass property, namely, the mass property that is situated in the public right of way. Such property is referred to as "special franchise property" (*see,* Real Property Tax Law §102(17) and Article 6).

Under the special franchise program, tentative values are shared with the local assessing units and the property owners, and then are subject to administrative review by the Tax Department with appeals heard by the State Board of Real Property Tax Services. Such values are also subject to judicial review. In recent years, very few complaints have been filed with respect to the tentative special franchise values.

By contrast, mass property that is located **outside** the public right of way is assessed by local assessors, rather than by the State. This dichotomy serves no apparent public policy objective. A utility ceiling program would essentially allow the State to take the valuation experience it has gained under the special franchise program and apply it to the mass property that currently is locally assessed. The main difference would be that for privately-sited mass property, the State would be establishing ceilings rather than assessments, to avoid any potential impingement upon the Home Rule provisions of the State Constitution.

Beyond the utility realm, it bears mention that the Tax Department currently administers an assessment ceiling program that applies to operating railroad property. Under that program, which has been in place since 1963, the Tax Department determines a ceiling value that is derived from a statutory formula that is keyed to interstate and intrastate operating companies' profitability (see Real Property Tax Law, Article 4, Titles 2-A and 2-B). Another sort of assessment ceiling program that the Tax Department currently administers, is the Agricultural Assessment Program, which has been in existence since the enactment of the Agricultural District Law in 1971 (See Agriculture and Markets Law, Article 25-AA).

From time to time, legislative proposals have been introduced to provide for greater degrees of utility assessment centralization. However, it has been difficult for some of the broader bills[1] to gain traction due to the diversity of perspectives among the many different property owners and local officials. In 2013, one of the broader bills was narrowed to apply only to utility mass real property used for telecommunication purposes for a four-year period beginning on 2015 assessment rolls (referred to herein as the telecommunications ceiling program). This program was recently extended for an additional four years as part of the SFY 2019 Enacted Budget (see Part G of Chapter 59 of 2018).

In 2017, a different demonstration project proposal, involving energy related mass real property in Westchester County only, was signed into law as Chapter 501 of the Laws of 2017. However, pursuant to an agreement between the Governor and legislative leaders that was memorialized in Approval Message #62, that legislation was superseded by Chapter 315 of the Laws of 2018, which, instead, calls for a global study of the mass property ceiling concept.

It's also important to note that the Tax Department regularly values utility property other than mass property. The State has long offered an advisory appraisal program whereby local assessing units can request State assistance in the valuation of complex properties, including utility properties. Originally, advisory appraisals were provided to any assessing unit upon request, but legislation was enacted in 1990[2] to conserve State appraisal resources by making them available only in conjunction with a comprehensive local revaluation project. As the name implies, such State provided advisory appraisals are not required to be used, but rather are advisory for the consideration of the local assessor in preparation of the revaluation project related assessment roll. Thus, there is currently a method for local assessing units to receive the Tax Department's valuation assistance with public utility property (mass and structural) so long as a timely request is made in the context of a revaluation project.

Valuation Issues

Mass utility properties outside of power plants are considered specialty properties by law and must be valued using an appraisal technique called Reproduction Cost New Less Depreciation (RCNLD)., This technique utilizes the Original Cost (OC) and years of installation ("install years") that the companies report to the State. The OC values are trended to present values using cost indices, leading to estimates of value that are known as Reproduction Cost New (RCN). The install years are used with remaining economic life schedules to estimate physical depreciation. Functional and economic obsolescence are other forms of depreciation that may be considered as well. RCNLD is obtained by subtracting all forms of depreciation from RCN.

Most larger companies, especially electric, gas and telecommunications companies, provide OC and install years for location and account numbers that describe both where the property is and what it is. Some account numbers reflect SITUS structure (or sited) property, others reflect mass property and some reflect both without distinction.

[1] For example, see S.5302/A.8030 of 2007

[2] Chapter 844 of 1990, §2.

Assessment roll data is segmented into different roll sections with each containing a different classification of property.[3] Most taxable real property is placed in roll section one, but certain types have their own roll sections. In particular, public utility property that is located on private property is designated to go into roll section 6 Each sited property is assigned a unique tax map number to identify location and a property class code used to categorize property by use. Mass property is categorized with similar property class codes, but is typically given a generic tax map number as it may traverse a significant distance.

A private mass utility ceiling program requires matching company provided data with assessment roll data and producing assessment based ceilings using the RCNLD approach to value. This is particularly true where the ceiling values are to be phased in over several years using a formula that takes into account the pre-existing assessment. Trying to match these two different sources of data is challenging at best and impossible at worst due to the many variables and the likelihood of errors to contend with. For example, a company files with accounts in the wrong municipalities, erroneous or missing locations, and erroneous account codes. Assessment rolls are also subject to many different sources of errors, such as being placed in the wrong roll section, or having an incorrect property class code or a wrong tax map number. The inconsistencies in data are due in no small part to each of New York's nearly 1,000 assessing units preparing their own assessment rolls. To ensure the success of a new ceiling program, it would be critical to build in a delayed implementation period so that the many data discrepancies could be identified and resolved before it takes effect.

While some of these issues existed with the telecommunications ceiling program, the type of property owned by telecommunications companies minimized some of these issues. For example, the buildings and structures owned by telecommunication companies can be valued by the local assessor and do not require special valuation techniques. The equipment they own is not taxable real property under the law, therefore all that remains is mass property. Moreover, because of the way the companies maintained their accounts, the OC pertaining to their mass property was clearly differentiated from the OC pertaining to their other property. Thus, the main hurdle the Tax Department faced in implementing the telecommunications ceiling program was in matching its records of mass property to the records maintained by local assessors. This was not a simple task, but fortunately, the telecommunications legislation provided a reasonable amount of lead time – it was signed into law in November of 2013 and did not require any ceilings to be established until January of 2015 – so it was achievable.

For utility companies other than telecommunications companies, it is not always possible to split the company account codes into OC dollar amounts for structure and for mass. This means that the Tax Department cannot value mass property as defined in all cases. It can value the whole account including mass and structure but it may not be able to allocate an amount just for mass.

By extension, many of the tax map numbers for utility properties on the assessment rolls also include combinations of both mass and structure property. Even if the Tax Department could value the mass separately from the structures, it couldn't establish a ceiling or floor based on the assessment.

[3] Roll section 1: Taxable property; Section 3: Taxable State-owned land; Section 5: Special Franchise; Section 6: Locally assessed utility property, Section 7: Railroad ceilings; Section 8: Wholly exempt. (Note: Roll sections are not sequentially numbered).

Data Issues

Just as mass property is often hidden from plain view, it is not always readily discernable on local assessment rolls either. Consequently, it has been very difficult to undertake a truly comprehensive analysis of the impact of the envisioned new assessment ceiling program in the short timeframe allowed for the preparation of this report. Moreover, some mass property is associated with situs property (confined to a single site) like power plants, substations, regulating and compressing facilities, etc. It is a laborious process, often requiring the performance of field work, to separate out the mass property from non-mass property on any given mixed parcel on the local assessment roll. In theory, this disaggregation problem could be overcome by having the ceiling program apply to all utility property, not just mass property. But as a practical matter, the Tax Department simply does not have the capability at present to conduct the field reviews and perform the valuation work that would be required annually for the considerably more than 300 power plants that are currently operating in the State, much less the substations and other utility facilities in the State.

Pursuant to Chapter 315 of 2018, the Tax Department is required to analyze the impacts of a proposed new ceiling program and attempt to identify the affected mass property on the nearly one thousand different local assessment rolls. Those values must then be compared to the cost or financial data received annually from public utility companies currently required to report to the Tax Department for special franchise administration program purposes. Under present procedures, although some public utility companies report all of their mass property inventory data, whether on private or public property, most of the private mass property inventory data has not been rigorously analyzed because it has not been the subject of an advisory appraisal. While the Tax Department does generate estimated values of privately-sited utility mass property for purposes of the equalization program, the analysis involved is not sufficiently robust to support a broad-based, statewide ceiling program.

Companies that are required to report to the Tax Department, do so by reporting original costs of construction at a level which includes a municipality, a coded location number, and a coded account number that describes the type of equipment or property. These reported location codes can contain either “mass” or “structure” property original costs, or a combination of both. Further complication arises because a given location code can potentially spread across many individual parcels or only pertain to a portion of one. Adding to this complexity, nearly 1,000 assessing units independently prepare their assessment rolls and those rolls sometimes indicate the presence of mass property not reported to the Tax Department, and sometimes contain no indication of mass property that has been reported to the Tax Department. It also bears mention that many water companies, and some smaller electric companies, do not even report their inventory data to the Tax Department.

These sorts of difficulties in interpreting the reported data and matching it to particular parcel(s) on the local assessment roll may best be handled by having the State’s determination of value be defined to cover all of the company’s reported property, whether it is purely mass or also includes property that is structural in nature. An approach like that would make sense from the standpoint of not having to differentiate the reported inventory between state and locally valued categories, but it’s not clear that an even more centralized valuation model encompassing structural property is something that local officials or property owners want. It would also be inconsistent with the special franchise program, which by definition, does not apply to structures.

The simplest program for the Tax Department to administer would involve only those entities and properties that are subject to comprehensive original cost reporting requirements. Program administration involving field work to distinguish between mass and situs property inventories will be both more complicated and costly. Likewise, if smaller companies and types of properties that are not subject to reporting requirements (such as water companies) were to be included in this assessment ceiling program, the administrative complexity of the program would escalate, and the resources needed would be greater.

In the limited timeframe allotted for performance of this study, certain determinations and assumptions had to be made in order to limit the scope of the analysis. Only company mass property account codes reported to the Tax Department were used in this analysis, while any company account codes reported as structure (situs) property were not. Thus, though it is known that some of the situs property would include some degree of mass property, there was no ability to spend the time necessary to disentangle it from the reported data to be used in this analysis.

Not surprisingly, some of the mass utility property that was reported to the Tax Department was not able to be found on local assessment rolls. Similarly, it sometimes appeared that locally assessed utility property that should be recorded in assessment roll section 6 was apparently listed elsewhere on the roll. In some cases, such property was in roll section 8 (wholly exempt from taxation) and thus it was not incorporated in this analysis, nor were any payments in lieu of taxes (PILOTs) associated with such exempt properties.

It must be emphasized that, given the many caveats with the data used in this analysis, this analysis alone should not be relied upon as any sort of a comprehensive indicator of the impacts upon assessments, real property taxes, or the property tax rate effects, of any proposed new ceiling program.

Impact Analysis

While efforts were made to capture all the pertinent locally assessed mass property records from local assessment rolls throughout the State and compare those to the reported mass property records in the Tax Department's possession, as indicated above, it's not easy to achieve proper matching of State and local data with any high degree of confidence in the comparability of the data.

State and local public utility mass property records were compiled for 961 of the 993 municipalities in the State. Comparisons were made between the indicated market value of locally assessed public utility mass properties with the Tax Department's reproduction cost new less depreciation (RCNLD) value estimates, based upon data reported to the State. The graph set forth below as Appendix A shows the distribution of the 961 municipalities by the degree of difference observed between the local and State indications of public utility mass real property value in five percent increments.

The data show that the State's estimated values observed in 19% of the municipalities were within plus or minus 2.5% of the local value. The State's estimated values for 35% of the municipalities were within plus or minus 7.5% of the local value, and in 46% of the municipalities the State's estimated values were within plus or minus 12.5% of the local value. The State's estimate was within 17.5% of the local value in 55% of the municipalities.

Of course, as indicated in the graph, there are some clear outliers that have not been eliminated from the data relied upon in this analysis. At the left end of the graph are only four municipalities where there are what appear to be locally valued utility mass real properties that the Tax Department can find no record of among the data reported to it by the owning companies, and thus those places are estimated to face a reduction of 100% of the value. At the right end of the graph, however, are a far greater number of cases, involving 76 municipalities, where data in the State's possession indicate that the locally determined values are less than half the State's value estimates.

It is very important to note that it is entirely possible that there are inventory and/or other inconsistencies in the State and/or local records that are being compared in the dataset used in this analysis. Unfortunately, the timeframe allotted for this study did not provide the opportunity to engage in the thorough review and validation of all aspects of the property inventory records being valued, and thus it's simply not possible to rely on these findings with any high degree of confidence.

A second graph, showing the distribution of 2,005 distinct company and municipal combinations, was also prepared. That graph, which is set forth below as Appendix B, shows a similar pattern to that observed in the first graph. However, this distribution was slightly more diffuse. The data in this graph show that the State's estimated values observed in 19% of the company-municipal combinations were within plus or minus 2.5% of the local value. The State's estimated values for 33% of the company-municipal combinations were within plus or minus 7.5% of the local value, and in 42% of the company-municipal combinations the State's estimated values were within plus or minus 12.5% of the local value. The State's estimate was within 17.5% of the local value in 51% of the company-municipal combinations. Once again, there were outliers at both ends of the spectrum that almost certainly indicate inconsistencies in the inventory data.

In order to try and get beyond some of the lack of confidence in the accuracy of the comprehensive data provided above, some smaller sample-based approaches were also reviewed in the conduct of this impact study.

For example, in cases where there has been relatively recent revaluation activity, especially where State advisory appraisals have been requested, the State and local data are much more readily comparable. One of the primary reasons that more recent revaluation project data are more comparable is because of the increased likelihood that Utility Company Assessment Roll Standardization (UCARS) efforts have already been undertaken to clean up the records appearing in the locally assessed utility property portion of the assessment roll (identified as roll section 6).

As might be expected, the degree of difference between the State and local valuations was least in those places having done revaluations within the most recent five-year period (2013 – 2017). Forty-seven percent of the municipalities included in the data comparison done in this study had performed revaluations during that most recent five-year period, and 61% of those showed a degree of difference between the State and local value determinations of ten percent or less. The Tax Department considers value determinations that deviate by ten percent or less to be essentially on par with one another.

Conversely, the data for places without any revaluation activity in the past 20 years show that only 17% of those municipalities showed a degree of difference between State and local value determinations of ten percent or less. Places that last did revaluations between six and twenty years ago showed 25% having a degree of value difference that was ten percent or less.

Another sample-based part of this analysis has involved a focus on the estimated impact of this proposed new assessment ceiling program on those municipalities where there is a significant amount of the tax base represented by public utility mass real property. On average, the public utility mass real property that would be covered by the proposed new ceiling program represents one percent or less of the local real property tax base. In 90 percent of the municipalities reviewed, that portion of the local tax base identifiable as the sort of mass property that would be covered by a new ceiling program represents five percent or less of the base. However, there are some jurisdictions where the affected mass property makes up a more significant portion of the tax base. These places tend to be more rural.

For example, there are some relatively high value energy transmission facilities running through some very rural jurisdictions, where such property can represent a significant share of the tax base. There are 28 municipalities where mass property represents at least 10% of the current local tax base, based on the Tax Department's estimates. In 15 of those 28 municipalities, the degree of difference between the State and local value determinations is 10% or less.
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However, there are other cases among these more reliant municipalities where it is estimated that the degree of valuation difference between State and local values could result in a decrease of as much as 76%, or an increase of over 100% based on the reported data available to the Tax Department. As alluded to above in the more general analysis, it is hard to know how accurate these estimates are. Additional work is necessary to ensure that the same mass property inventory is being valued in both the State and local values.

It is important to note that in most jurisdictions, valuation differences are revenue neutral because the property tax rate will automatically adjust to compensate for any changes in the tax base to yield the desired amount of revenue (which is referred to as the tax levy). Thus, the impact of value changes is often referred to as a tax shift because taxes saved by one set of property owners with decreasing values will come at the expense of other property owners through an increase in the tax rate needed to generate the desired tax levy (all other things being equal).

Impacts upon Special Assessing Units (New York City and Nassau County)

In most of the State, property in a given assessing unit is to be assessed at the same locally determined uniform percentage of value. However, New York City and Nassau County, different rules apply. Those two jurisdictions qualify as Special Assessing Units under Article 18 of the Real Property Tax Law, and as such administer a four-class system that provides an ability for different levels of assessment among different types of property. Class three is defined to include only utility property, while classes one and two pertain to different types of residential property and class four includes everything else. Due to the structure of Article 18, the tax burden associated with each class is generally fixed from year to year, subject to adjustments that take account changes in the market values of each class as a whole. A utility ceiling program would affect the taxable assessed value but not the market value of class three property, so it

would not shift the tax burden **out of** class three, so much as it might shift the tax burden **within** class three.
As to New York City, it is difficult to estimate what the intra-class impact would be. Class three is the smallest of the classes in the City, representing only three percent of the market value of all taxable property, but despite that, it represents six percent of what the City calls its "billable" assessed value. As currently administered in the City, class three consists primarily of special franchise property, mass property, and other locally assessed equipment such as electrical generating equipment. Because the utility equipment is so valuable, the mass property actually represents a tiny percentage of the value of class three, an estimated 1.18%. Due to the small percentage of mass property, it is estimated that class 3 could change by as little as 0.04% if a mass ceiling program were put into effect. Other types of utility property, including situs property, are currently being assessed in tax class four in NYC.

In addition, the lion's share of the property in class three in the City is owned either by Consolidated Edison or Verizon. Since Verizon property is already subject to telecommunications ceilings, the institution of a broad-based ceiling program would largely work to the benefit of Con Ed and to the detriment of Verizon. The size of this potential tax shift is unknown at this time.

There is also a depreciation issue that is a known source of disagreement between State and City appraisers, whereby the State depreciates to a lower level than the City does. Mass property that has reached the end of its service life but remains in service will receive a depreciation allowance of up to 95% if it is in the public right of way and assessed by the Tax Department, but will receive a depreciation allowance of no more than 80% if it is privately-sited and assessed by the City. Thus, there would be an immediate negative fiscal impact experienced by the City on any properties still in service near or beyond the end of its expected service life, because such property would see an immediate drop in taxable value under a State-administered ceiling program. However, because the affected property in this proposed new ceiling program is confined within tax class three, the effect of that sort of value reduction would only impact the other property owners in that tax class and not the taxpayers with property in the City's other tax classes.

As for Nassau County, the issue is different, as most of the class three property in Nassau is either owned by the Long Island Power Authority (LIPA) and thus exempt from taxation, or owned by Verizon and already subject to telecommunications ceilings. The rest of the property in class three is mostly owned by small water companies. Thus, the implementation of a broad-based utility ceiling program should result in little or no change to the *status quo* in Nassau.

Experience with Telecommunications Ceiling Program

The telecommunications ceiling program was enacted in November of 2013 pursuant to Chapter 475 of the Laws of 2013. It was first implemented on assessment rolls filed in 2015. The amount of lead time that was provided to implement those provisions greatly facilitated smooth implementation of that program. Through the first three years of the telecommunications assessment ceiling program, there were no administrative complaints filed by any of the telecommunications companies, and there was only one complaint from a single municipality, which was more of a complaint in relation to the taxable status of fiber optic cable in the wake of litigation than it was with respect to the State's determination of value. The Tax Department

heard from most of the telecommunications companies covered by the ceiling program that were greatly in favor of making the program permanent. Moreover, several specifically cited the fact that the new program had greatly reduced the need for the filing of local assessment grievances. Based upon the first three years of positive experience, the newly enacted State Budget for fiscal year 2018-19 (see Part G of Ch. 59 of the Laws of 2018) has extended the telecommunications mass property assessment ceiling program for an additional four years, through assessment rolls that will be filed in 2022. The extension of this program was also accompanied by a more gradual phase-in of the State's value determinations than was provided in the original program enactment.

A broad-based utility mass property ceiling program would be much more difficult to implement than the telecommunications ceiling program was, because there would be much greater variety in the types of property involved, many more companies, and far many more data matching issues. Thus, for such a program to be workable, the enabling legislation would need to allow an even longer lead time prior to implementation (three to five years is recommended), and it would also need to impose new reporting obligations both upon companies and assessing units.

Perspective of the Department of Public Service

Staff of the Department of Public Service (DPS) were consulted to gain perspective on the concept of a new assessment ceiling program for all public utility mass real property. Staff indicated that from the DPS perspective, State assessment ceilings for all public utility mass real property would be a positive development. Staff cited the following reasons in support of their perspective:

- Uniformity of utility mass property assessment practices would be achieved through a State administered assessment ceiling program;
- Greater consistency in how such properties appear on local assessment rolls would likely result, and there would be an improved ability to monitor the tax liability of regulated entities;
- Greater efficiency by eliminating duplication of effort, and reductions in costly legal proceedings in multiple municipalities would benefit local governments and property owners; and
- Greater predictability in annual property valuations would likely result, and improved local tax base reliability and utility rate base stability would follow.

Other Advantages and Disadvantages

If all public utility mass real property were subject to taxation based upon assessment ceilings determined by the State, then there would be considerable improvement in the efficiency of the overall system. Utility mass real property owners would no longer need to review multiple different valuations from each and every municipality, but would be able to focus solely upon the Tax Department's valuations and could accordingly direct any administrative complaints to the Tax Department. Local officials would likewise be liberated from having to unilaterally defend their annual valuations of the property that would be subject to the new assessment ceilings.

During the conduct of this study, there has been a considerable amount of discussion around whether it might actually make more sense to have the State produce assessment ceilings for <u>all</u> utility property that is reported to the State, not just for mass real property. One advantage

of this approach would be that it would avoid the need for the substantial field work that would be involved in trying to disentangle mass property that is currently included on various types of situs, or structural, property, particularly for companies that do not currently report their inventory to the State. For example, there are water companies where the reservoirs, pump houses, tanks as the like would be structural while the mains, any electrical lines and such would likely be classified as mass.

A similar issue arises in connection with power plants. They invariably include power generating equipment, structures and mass property. The mass property cannot be disaggregated from the situs property for ceiling purposes without extensive field work, which given current staffing levels, the Tax Department is far from equipped to conduct. Moreover, power plants are often of very high value. Local assessors typically focus upon them very closely and likely would want to continue to have the primary role in valuing them for local tax purposes.

Another complicating factor is that the definitions of the mass real property differ between that covered by the current special franchise program and that currently locally assessed. This difference has already resulted in certain incongruities with respect to certain mass property. For example, recent litigation that is still ongoing has altered the taxable status of fiber optic cable between these two program areas. Fiber optic cable is taxable for special franchise purposes, but has been found to be exempt from taxation in the majority of the lower court rulings rendered thus far. It is anticipated that the State Court of Appeals will be deciding this matter sometime during its 2018-19 term.

In addition to issues with property classification and the entanglement of mass/structure, current owner information is also an issue at times. At various junctures Tax Department staff had to compare billing addresses and/or research a trail of transactions to determine the parent company of a subsidiary or affiliate that was listed on the roll, but not a known company. Generally, these ended up aligning with a known company that is reporting inventory, but the entanglement of parent/child companies and affiliates and their naming conventions on the roll is also an issue; especially in localities that are not compliant with UCARS (Utility Company Assessment Roll Standardization). UCARS compliant municipalities have the appropriate company code incorporated directly into their parcel identification number, so the Tax Department can determine who the true owner is regardless of the owner named on the roll.

There are also many issues identifying pipeline company property on many assessment rolls. “Missing” or misclassified pipeline roll records are one of the primary drivers of the high outliers in both charts.

Policy Issues to be Addressed

In order for the Tax Department to accurately value utility mass real property, it would need to have reliable inventory, cost and financial information. Special franchise owners, many of which are regulated utility companies, currently report this information to the Tax Department. That is not necessarily true of all other owners of utility mass real property. Therefore, in order for an assessment ceiling program for utility mass real property to be workable, those companies that are not currently obliged to file such reports would have to be statutorily compelled to do so. Moreover, some entities required to report fail to do so, and thus there would likely need to be some sort of enforcement mechanism or consequences that would flow from non-compliance

with program requirements. The current financial penalties for noncompliance -- $100 for the initial violation and $10 for each day it continues (see RPTL § 604(4) – are completely ineffective. The Tax Department has learned that some of the western States' centralized utility valuation programs include consequences for non-reporting entities that sometimes limit the ability to file administrative appeals on assessed valuations.

Smaller companies are probably best left out of this program (the enabling legislation could define them by numbers of customers, by annual revenues, or by some other appropriate measure), especially since their property is less likely to be crossing into multiple jurisdictions. In fact, some have argued that it may make sense to leave water companies out of this program altogether since in most cases those companies tend to be smaller and located in a relatively small number of jurisdictions. However, with respect to some of the largest water companies, which operate on Long Island it would seem to be desirable to ensure consistency of approach throughout the affected service area.

Not all public utility mass real property is currently taxable, with some being excluded through judicial interpretation of statutory definitions, and some being exempted pursuant to statute and/or subject to Payments in Lieu of Taxes (PILOTs) instead. Thus, it is critical that any legislation for a program of this sort should make clear that it would only apply to taxable mass property. It is important to note that such an approach would leave out some significant parts of the system, like that associated with the Long Island Power Authority (LIPA) that is subject to PILOTs pursuant to Public Authorities Law provisions.

It is believed that some of the utility mass property owning entities prefer the status quo, while others would very much prefer to deal with a single, centralized valuation system administered by the Tax Department. Currently, the very same sort of utility mass real property is being valued by different parties, with potentially different methods, depending on where the property is located. From an efficiency standpoint, the current arrangement in New York makes little sense. In many western States this type of utility property is valued system wide based upon comprehensive review of all company holdings, and then allocated among the affected states and then apportioned within the municipalities of each state.

Of course, property tax assessment administration in New York is organized very differently than it is in most of those western States with cooperative assessment arrangements. For example, New York differs from most States by allowing local assessing units (primarily, cities and towns except in Nassau and Tompkins Counties) to choose the local level of assessment, and not requiring any set revaluation cycle. Most other States have a single standard of assessment, with county government administration, and regular revaluation cycles. Thus, it's often easier to arrive at consensus about commonality of valuation approaches in other States than it is in New York.

State valuation perspective and practice may deviate from local perspective and practice. For example, there could be differences in methods for the granting of depreciation, obsolescence, taxable status of fiber optic cable, and other valuation issues, etc. It might therefore be wise to specify some of the various valuation parameters in Law. On the other hand, given the propensity for technological change to occur in the utility realm, it would likely be very difficult to specify any particular set of valuation parameters with any sort of permanence.

Recommendations

A utility mass property program as discussed in this report would require legislative changes that charge the Tax Department with establishing assessment ceilings for all mass property, not just mass property in the public right of way (special franchise property). If a utility mass property ceiling program is to be enacted, it will be essential to allow significant lead time because New York's nearly 1,000 assessing units will have to comply with uniform standards for capturing mass property on their assessment rolls. Likewise, it will be necessary to provide a very clear definition of the affected property that is to be covered by the ceiling program.

The program should be administered like the longstanding special franchise program, whereby the Tax Department would provide an overall assessment ceiling value by company for each municipality, and leave the local allocation of that assessment ceiling to the local assessing unit. Assessment ceilings could not be provided at the individual parcel level, because doing so would require assessors to undertake the extremely labor-intensive process of conforming their records to UCARS requirements.

Of course, in the ideal case, there would also be no definitional differences between a new public utility mass real property ceiling program and the existing special franchise program. However, given the current status quo, it may be difficult to align definitions in such a way that any valuation changes would not be perceived negatively by any of the affected parties.

Any new suggested assessment ceiling program will require additional Department resources. Under the status quo, additional resource needs in the Tax Department's utility related realm will be funded by an existing special revenue account that bills the affected property owners on a prorated basis in proportion to the value of their affected properties.

Finally, to simplify and expedite the establishment of the ceilings, they should limit the maximum **full values**, **not** the maximum **taxable assessed values**, of the affected property. This would allow the ceilings to be issued well before the equalization rates are finalized. The local assessors would be required to equalize the full values at the local level of assessment. Any errors would be corrected in the same manner as in the special franchise program (see RPTL §§ 550(7)(e), 553(1)(h))

With the above statements in mind, the Tax Department recommends that a utility ceiling program be enacted along the following lines:

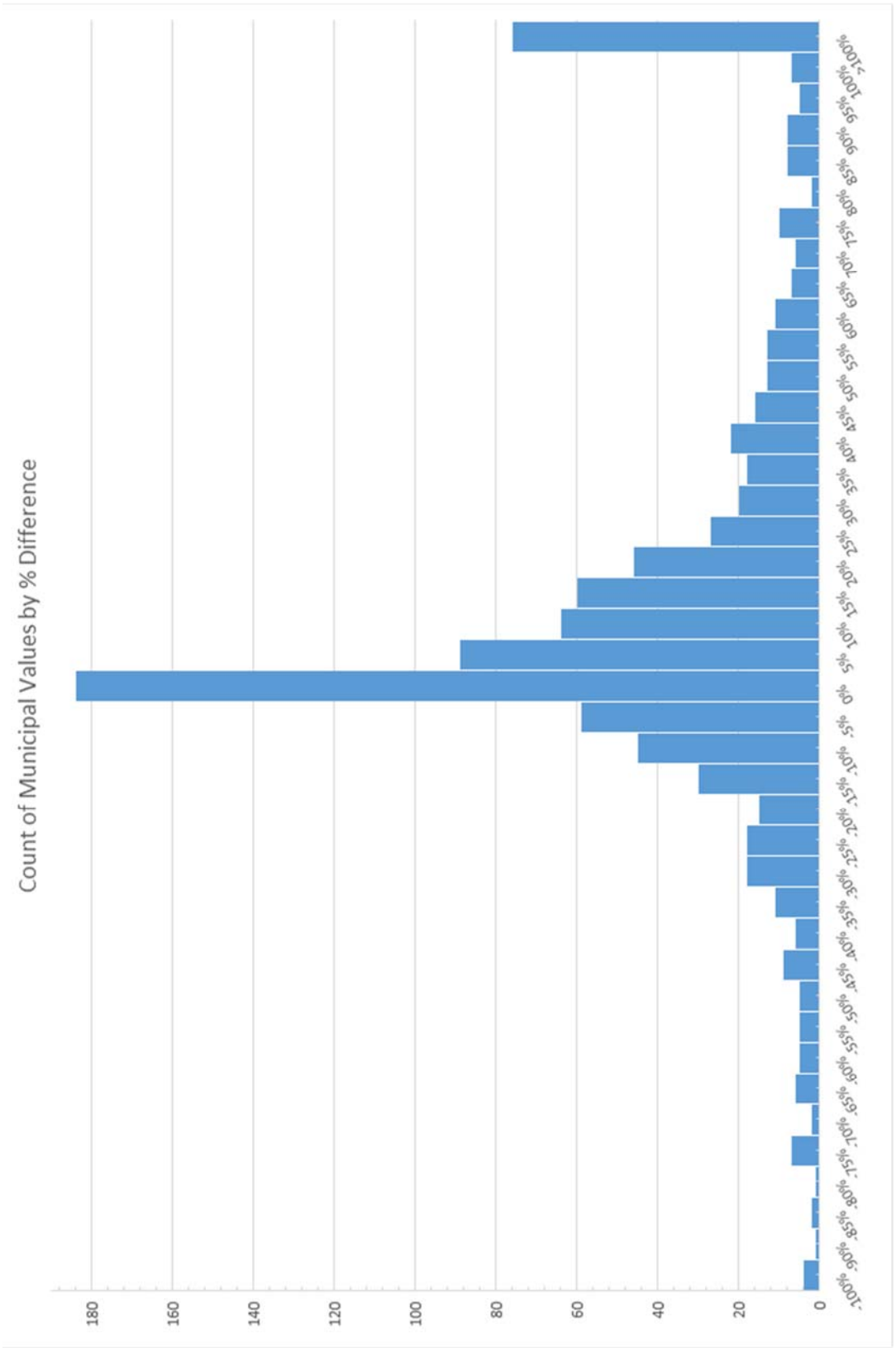
1. Upon the conclusion of a lead-in period of at least three years, the State would value mass private utility property based on RCNLD, in the same manner as it values special franchise property. It would then determine ceilings representing the full value of the property as so determined. The assessor would equalize these ceilings at the level of assessment applicable to all other locally assessed property.
2. The following types of property would be excluded from the ceiling program:
    a. Mass property contained within or associated with power plants.
        i. This is necessary because it is virtually impossible to disaggregate the mass property within the plant from the structures and equipment that comprise the plant. While there is a theoretical argument for crafting the ceiling program so as to include power plants, the Tax Department simply does not have the resources to value upwards of 300 power

plants every year, and even if it did, the fact of the matter is that the tax burden associated with power plants is a matter of deep local sensitivity.

   b. Mass property associated with companies that do not report original cost data to the Tax Department (e.g., water companies and small utility companies).
      i. This is necessary because the data does not exist, because it would be unduly burdensome to require these companies to begin reporting data to the State, and because the tax burden upon these properties is not so great as to warrant such an intervention.
   c. Wholly exempt property
      i. The establishment of ceilings for property that is not taxable would serve no purpose.

3. During the lead-in period, assessing units would be required to separately assess all mass property outside of power plants, fully disaggregating it from any other types of property.
   a. This is necessary because the ceiling program will fail if it is impossible to identify the parcels on the assessment roll that constitute or contain mass property.
4. During the lead-in period, all companies owning mass property would be required to report to the Tax Department any necessary data that the Department currently lacks.
   a. The legislation would impose meaningful penalties for noncompliance.
5. Following the conclusion of the lead-in period, the ceilings will begin to be established, but to mitigate any fiscal impact, the values will be phased in over a period of four or five years.
6. The industry would be obliged to fully reimburse the Tax Department for the administrative costs it incurs in the administration of the program, much as they must do under the special franchise program

APPENDIX A: DISTRIBUTION OF MUNICIPAL VALUES BY PERCENTAGE DIFFERENCE



APPENDIX B: DISTRIBUTION OF COMPANY-MUNICIPAL VALUES BY PERCENTAGE DIFFERENCE