

COVID-19's Impact on New York Property Tax Assessment Challenges

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In this installment of Real Assessment, the authors discuss the impact of COVID-19 on property tax grievances and lawsuits in New York.

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Among the many unforeseen consequences of the COVID-19 crisis is the uncertain status of real property grievances and lawsuits in New York state. Grievances must typically be filed by the fourth Tuesday in May in most jurisdictions, and lawsuits challenging the determination listed on the final tax roll must be filed within 30 days of the publication of the final roll. The

deadline for most jurisdictions is July 31. However, some deadlines are sooner, such as in the city of Buffalo, where the deadline for such lawsuits is March 31.

New York Gov. Andrew Cuomo (D) issued Executive Order 202.8 on March 20, temporarily tolling statutes of limitations, service deadlines, and various other legal time periods through April 19. The order provides:

In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020.¹

Following the governor's issuance of that executive order, however, the chief administrative judge created difficulty for real property tax matters by issuing an order on March 22 that precluded filings of any legal papers, whether in hard copy or through

¹New York Executive Order 202.8.

e-filing, unless the filing is related to an “essential matter” as defined by the administrative order.² Matters under Real Property Tax Law (RPTL) are not listed as “essential.”

Impact on Special Franchise Property

The tolling provided by the executive order covers real property tax lawsuit deadlines, but it does not specifically include the administrative grievances that start the real property assessment challenge process. For special franchise property,³ those grievances were due to be filed with the Office of Real Property Tax Services (ORPTS) under RPTL section 610.

Section 610 hearings are typically held in April and have been scheduled for some time. RPTL section 610(1) requires service upon the Department of Taxation and Finance commissioner 10 days before the hearing. The risk to owners of properties under the auspices of the ORPTS is that while the executive order temporarily extended the deadlines for filing and service of grievance complaints, the timing of service is dictated by the date of the hearing set by the ORPTS.

Up until last week, the ORPTS had not formally made any decisions about whether hearings would be postponed or whether it would accept service electronically rather than require hard copies, as the RPTL requires. The ORPTS initially advised by email that grievance complaints be timely filed through the appropriate statutory procedures under RPTL section 610,⁴ but later advised in a follow-up email that grievance complaints should be emailed and mailed, and that hearings were being rescheduled.⁵ Importantly, the obligation to serve the assessing units copies of the grievance complaint in hard copy remains unchanged. Since the ORPTS has not issued formal guidance on this issue, it is

recommended that property owners seeking to file grievance complaints with the ORPTS contact it directly to confirm appropriate procedures and learn whether their hearings will be postponed. Those seeking to commence lawsuits following determinations by the ORPTS should closely monitor the state of filing the lawsuits given the executive order tolling legal deadlines through April 19 and the administrative order permitting only “essential” filings at this time.

Commencing Lawsuits When Deadlines Fall During the Tolling Period

For some jurisdictions, such as Buffalo, the deadline to file article 7 judicial proceedings fell during the tolling period created by the executive order (and prevented in any case by the closing of the courts to all but essential matters). With the executive order tolling deadline of April 19 rapidly approaching, either the governor will need to extend the tolling period even further or the chief administrative judge will need to lift or otherwise amend the administrative order to allow those papers to be filed. In the meantime, property owners seeking to commence lawsuits over their property tax assessments are in limbo.

The problem is that the governor has not extended the time for setting tax rates or calculating bills. If those are based on the unchallenged final tax roll, taxpayers will be forced to pay taxes based on the final roll and then seek refunds. (Taxpayers should remember the rule to always write “Paid Under Protest” on any tax payment, as otherwise refunds may not be available, only prospective relief.) Judicial challenges may eventually lead to refunds plus interest being owed by taxing jurisdictions, and in a city like Buffalo, which completed a revaluation, the number of cases could result in significant refund costs.

Impact on Other Property Taxpayers

As the COVID-19 pandemic continues to affect legal issues, it remains possible that the toll for statutes of limitations and other legal deadlines could be extended further by executive order. The orders could be extended to delay finalizing the tax rolls (for most

²Administrative Order 78/20.

³“Special franchise” generally means the franchise and property rights, along with the tangible property occupying those property rights, of a utility. RPTL section 102(17).

⁴Email from Edward Martorana, director of ORPTS Valuation Services Bureau, to Henry A. Zomerfeld (Mar. 23, 2020).

⁵Email from Martorana to Zomerfeld (Apr. 2, 2020).

jurisdictions, the deadline is May 1). This could have a significant impact on school districts across the state if final rolls are delayed and the ability to issue timely bills is affected. School budgets are finalized and voted upon on the third Tuesday in May. For now, that vote has been postponed by a separate executive order until at least June 1.⁶ At present, however, there is no tolling of the May 1 tentative roll deadline under RPTL section 506(1). Assessors, therefore, will have to comply with that legal obligation unless a further executive order addressing that deadline is issued.

Property owners should communicate with their counsel and continue to monitor action from the governor's office regarding legal deadlines. In the event of a further extension of deadlines by executive order, we would presume that the deadlines for filing the tentative and final rolls provided for by RPTL article 5 will also be extended to allow assessors to complete the rolls and allow property owners to exhaust their administrative remedies. This is important as many municipalities across New York state have a May 1 tentative roll date with a grievance date on May 26. Property owners as well as municipalities may need to adapt to not only a delay in filing, but also a change in procedure, including possible electronic filing of grievances and telephonic hearings before the board of assessment review. Property owners should confirm these procedures with their local assessor since protocols may be amended this year regardless of whether legal deadlines are extended further. ■

⁶New York Executive Order 202.13.

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