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Construction Law - Corporate Law - Education Law - Labor Relations - Municipal Law - Real Estate Law - Real Property Taxation

## Tax Certiorari Newsletter

## Fall 2011

### REVOCAION OF TAX EXEMPTION HELD PROPER: OWNER NOT USING PROPERTY FOR CHARITABLE USE

Pine Harbor Inc. v. Brian Dowling, Assessor of the City of Plattsburgh

Petitioner, an assisted living senior housing community challenged the revocation of an RPTL § 420 exemption by respondent city. Petitioner held a tax exemption under RPTL 420a from 2006 until 2008. The city contended that petitioner was not engaging in charitable work but rather simply providing residential living services at market value for middle and upper class senior citizens. The Supreme Court, Clinton County held that the critical factor for tax exempt status in this case is whether or not the petitioner subsidized the rentals for the residents or whether the petitioner charges less than fair market value. The Court then further held that since the petitioner charged its residents market rates, did not provide them with any discounts, and none of residents were receiving any public financial assistance, the petitioner was not engaged in charitable activity under the statute and their property tax status was properly determined by the city. This decision is currently being appealed to the Appellate Division, Third Department.

Samuel F. Vilas Home v. City of Plattsburgh

Petitioner, a certified adult home, was incorporated in 1888 and had received property tax exemption in prior years. In 2010 respondent city removed the petitioner's tax exempt status based on evidence that it was not longer being operated exclusively for charitable purposes. The Court ruled that the facts showed that only 7 percent of its residents were receiving financial assistance. The Court held that based on among other things, the abovementioned evidence the petitioner was no longer being operating exclusively for charitable purposed and therefore did not qualify for the tax exemption. This case is pending possible appeal in the Appellate Division, Third Department.

*\*Lewis & Greer, P.C. represented Assessor of City of Plattsburgh in these matters.*

### REVOCAION OF TAX EXEMPTION IS RULED PROPER; ENTITLED TO 'PARSONAGE' EXEMPTION

Rockland Hebrew Educational Center Inc. v. Village of Spring Valley

Petitioner religious and education not-for-profit corporation challenged the revocation of the real property tax exemption by respondent village. Petitioner held a tax exemption under Real Property Tax Law §420a from 1984 until 2007. The village contended its investigator found no evidence the property was being used for religious purposes and denied the exemption. It now contended that if petitioner used the property to conduct religious services and other religious activities, those activities violated the zoning code precluding the granting of a tax exemption. The court agreed, finding while respondent made such argument for the first time at trial, it was permitted as petitioner's principal, Rabbi Weinstein, testified he conducted services on the premises in knowing violation of the zoning code. Hence, that barred eligibility under §420-a(1) for a tax exemption. Still, the court found respondent's denial of an exemption under §462, the "parsonage exemption," was improper. It found the property was subject to exemption as the premises was also used as a residence for petitioner's clergy, ruling the village failed to meet its burden of proving Weinstein was not a full-time officiating clergy for petitioner or that he did not reside at the premises.

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### PRIOR ORDER DECLARING PROPERTY TAX EXEMPT GRANTED RES JUDICATA EFFECT; LIENS VACATED

Durazzanese Societa Italo-Americano Di Mutuo Socorso Corp. of New York v. Nassau County Treasurer

Durazzanese Societa sued defendants regarding the tax exempt status of plaintiff's property. In a previous petition by the same parties, plaintiff society began an Article 78

proceeding in 2002 challenging the denial of its application for real property tax exemption. The court found petitioner met its burden of establishing its entitlement to the exemption. This court noted the prior determination regarding the exempt status of the property was not reargued, modified or reversed. As such, it stated the prior determination had res judicata effect regarding the issues herein, finding the parties and issues were the same. Plaintiffs sought vacatur of all liens and that all real estate tax assessments, arrears and liens be null and void nunc pro tunc as of October 1996. Defendants argued the requested relief was time-barred by the four-month statute of limitations. But the court found such assertion misplaced as plaintiff was afforded tax-exempt status by the prior court and any denial of said exemption and assessment of real property taxes would be in direct violation of that order. Therefore, plaintiff was granted judgment.

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## **JUDGE FINDS MTA IS ENTITLED TO EXEMPTION FOR LEASED PROPERTY DEVOTED TO ITS BUSINESS**

### *Metropolitan Transportation Authority v. Assessor of the City of Mount Vernon*

Metropolitan Transportation Authority, the petitioner, challenged the denial by respondent City of Mount Vernon of a real property tax exemption that petitioner sought for tax years 2009 and 2010 for a premises in Mount Vernon owned by OTR Properties. Petitioner had entered into a lease with lessor OTR for the purpose of providing an MTA Police Department station. Respondent argued the action was time-barred as it was begun more than four months following its determination, conveyed by the City Supreme Court Comptroller's 2009 letter regarding OTR's non-exempt status. The court agreed with petitioner, determining that even though the lessor is a private—and not a tax-exempt—entity as advocated by the City of Mount Vernon, petitioner was entitled to an exemption for leased property devoted to MTA business pursuant to §1275 of the Public Authorities Law. The court also held the action was not time-barred, as the time within which to commence an Article 78 proceeding begins to run when the determination by the municipality becomes final, which here was upon receipt of the tax bill in 2010.

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## **\$101,700 INCREASE CONSTITUTES SELECTIVE REASSESSMENT OF REAL PROPERTY**

### *Matter of Shoecraft v. Town of North Salem*

This Tax Certiorari Real Property Tax Law Article 7 proceeding challenged the valuation by the municipal respondent of the real property owned by petitioners based upon improvements to the property. With regards to the tax year 2005, the court found that respondent and its assessor failed to either properly explain and justify the increase of \$101,700 that year; to offer convincing proof of the assessor's methodology; or to present evidence that the assessor had followed an equitable comprehensive written policy for reassessing the subject property upon improvement. The court noted the assessor conceded she based her estimates not only on statements of other parties as to the conditions at the subject premises, but also on multiple listings, and there was no way to judge the accuracy of such information. The court ruled the \$101,700 increase in the assessed value constituted a selective reassessment of the subject premises. As a result of this ruling, it concluded that the assessments in 2006 and 2007 were partially products of selective reassessment because they were a product of the unlawful \$101,700 increase. The court ordered the assessment rolls to be corrected and to refund any overpayment of taxes with interest.

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## **RELIGIOUS ORGANIZATION IS ENTITLED TO TAX EXEMPTION FOR 1999 TO 2006**

### *Matter of Legion of Christ Inc. v. Town of Mount Pleasant*

This Real Property Tax Law ("RPTL") proceeding challenged respondent's denial of the tax exemption sought by petitioner religious organization for the years 1999 through 2006. The court found that petitioner had established that the subject premises were owned by it during the tax assessment years in question, and petitioner was indeed a religious organization. It further found that all of petitioner's affiliates that rented the premises were religious corporations and during the years in question used the premises exclusively for religious purposes. Respondent asserted that the amount paid by the affiliates to petitioner exceeded the amount of carrying, maintenance, and depreciation charges on the premises. The court concluded the amount of rent paid by the affiliates for use of the premises varied between \$12 and \$120 per year, and these

amounts did not exceed those charges. Thus the court ruled that petitioner was entitled to an exemption under RPTL §420-a(2) for the tax years of 1999 through 2006.

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## **COURT TAKES PROACTIVE APPROACH IN CORRECTING APPRAISAL DEFICIENCIES IN RE-VALUING PROPERTIES**

*Mavis Tire Supply Corp. v. Town*

The court considered a Tax Certiorari Real Property Tax Law Article 7 suit, challenging value by respondent Town of Ossining, of real property owned by petitioner corporation. The court determined that substantial defects existed with regard to both parties' appraisals of the property. Although the court approved petitioner's use of both the comparative sales and income capitalization methods, petitioner's methodology was found to be unclear both in his method of reporting average sales and his computation of lease values. The court rejected respondent's decision to utilize only the comparative sales approach and its appraiser's determination to reject an income capitalization approach with regard to the income-producing property. The court also found other deficiencies in respondent's appraisal such as numerous instances in which the appraiser underreported the square footage of comparable properties. The court was required to make corrections and/or adjustments to both parties' calculations in determining final indicated market values for tax years at issue.

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## **HAIR SALON KEEPS TAX EXEMPT STATUS, REASONABLY INCIDENTAL TO SENIOR HOME'S CHARITABLE PURPOSES**

*Southwinds Retirement Home Inc. v. City of Middletown*

Municipal Respondent revoked the tax exemption enjoyed by petitioner not-for-profit retirement home. Respondent asserted that petitioner had leased part of the property for the operation of a hair salon. The court noted that as a matter of law petitioner could not avail itself of the not-for-profit tax exemption for the salon since there was no evidence the salon was a not-for-profit corporation. However since the vast majority of the salon's patrons were residents of petitioner's retirement home, the court reasoned that the salon was completely in accord with the retirement home's founding purpose of affording dignity and enrichment to its elderly residents. Thus, the court held as a matter of law that respondent failed to show the use of the

salon was not reasonably incidental to petitioner's charitable purposes. Accordingly, the court ordered the tax assessment rolls to be corrected and refund any overpayment of taxes with interest.

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## **DISMISSAL OF TAX ASSESSMENT REVIEW DENIED; PETITIONER'S NONCOMPLIANCE NOT WILLFUL**

*Archstone Communities Trust v. Board of Assessors*

Respondents Board of Assessors moved for dismissal of petitioner's 2008/09 tax year Real Property Tax law Article 7 petition. Petitioners initially filed a correction application with the Administrative Review Commission for a change of the tax assessment on the property, but did not mention water intrusion problems or potential mold growth. The commission dismissed the application alleging petitioner failed to submit documents establishing its property suffered water intrusion damage and mold infestation on the taxable status date. The court stated Real Property Law §523-b precluded a party from seeking an adjustment in real estate tax assessments if the failure to disclose requested information was willful. It found respondent failed to demonstrate that petitioner's noncompliance was willful or occasioned by a desire to frustrate the administrative review. The court stated, in light of the pending "behemoth litigation" against petitioner, it needed time to ascertain the full extent of the mold condition. Thus, dismissal was denied.

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## **RECENT SALES OF FIXTURES NOT PROPER EVIDENCE FOR DETERMINING PROPERTY VALUE**

*Megamat Laundromat Inc. v. Village of Port Chester*

Claimant moved for additional allowances. Condemnor village effectuated a taking and a court found in claimant's favor with the amount representing the current sound value of trade fixtures. The Appellate Division reversed, and upon remittur, the court nearly halved the compensation. Claimant asserted its appraiser's reliance on evidence other than the contract price was proper given the "novel expansion" by the Appellate Division of its value analysis to include the contract price in a fixtures claim as evidence of the highest value. The court was unpersuaded that the use of the recent sale of the fixtures as the best evidence of value was a novel expansion. It noted that the court relied on tax certiorari and non-tax certiorari decisions that such evidence was of prime importance in setting value. The court stated it was hard-pressed to see a distinction between the use of a recent sale of real property as the best evidence of value and

the use of a recent sale of a fixture attached to real property as the best value. It ruled claimant and its appraiser deliberately chose to employ a valuation method other than consideration of the recent sale of the property as best evidence of its value so as to claim a substantially higher fixture value.

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## COSTS OF ACQUIRING EASEMENT FOR UTILITY TRANSMISSION LINES MUST BE CONSIDERED IN RCNLD ANALYSIS

*Matter of Central Hudson Gas and Electric v. Assessor of Town of Newburgh*

In a proceeding to review assessments of parcels consisting of gas and electric transmission lines, the Second Department found that the Supreme Court erred in granting a motion to strike that portion of claimant's trial appraisal report concerning valuation of easements on which transmission lines were placed based upon the town's determination that easements were not subject to tax as real property. When an assessor values real property, although the owner of the property is taxed on the full value of the land, the holder of the easement is normally not additionally taxed for the benefit incurred from the easement. Thus, in this case the town had ascribed a land value of \$0.00 on its rolls to each of the parcels on which the utility lines were located and considered as improvements.

The parties agreed that the appropriate method of valuation for all components of the utility was "reproduction cost new less depreciation." While the value of the easements is not taxable, the trial court erred in striking that portion of the petitioner's appraisal which included the costs of acquiring those easements. In a "reproduction cost new less

depreciation" analysis, those costs were necessary to the re-creation of the value of functioning transmission lines, and therefore must be considered in re-calculating reproduction cost of the subject transmission line.

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## COURT ADOPTS "ASSESSOR'S FORMULA," GRANTS COUNTRY CLUB TAX ASSESSMENT REDUCTION

*Glen Head Country Club v. Assessor, County of Nassau*

Country club petitioner sought a review of assessed valuations placed on the subject property by respondent assessor in these Article 7 Real Property Tax Law proceedings. A 1986 landmark decision established the standard for valuation of golf and country clubs in New York for real estate tax purposes as value in use, not highest and best use. That decision established a basic formula for determining market value. In *Hempstead Country Club v. Board of Assessors, Nassau County*, the court rejected the net approach and adopted the "assessor's formula" as producing a mathematically accurate finding. This court ruled the preferred approach was the assessors formula that, when applied properly through the tax load factor, produced the correct tax burden for the subject property. It found only petitioner's expert used this approach in his report, and credited petitioner's proof, yet modifying petitioner's conclusions for green fees, rounds played and for "pro shop" and "other" fees. Further, the percentage rents found by petitioner were substantiated by supporting data and testimony, thus adopted by the court. As such, the court granted over \$100,000 in reduction of assessments, cumulatively, for the years 2006-2010.

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Representing petitioners, municipalities and school districts, we prosecute and defend real property assessments on large utility, industrial, and commercial facilities.

Through a unique involvement in the appraisal of power generating facilities, the firm has close ties with a network of nationally recognized utility appraisers and engineering experts.

Our attorneys have made numerous presentations on this specialized area of practice to both attorneys and appraisers.

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