

MEMORANDUM

TO: Hon. Randy Casale, Mayor
Beacon City Council
Mr. Anthony Ruggiero, City Administrator

FROM: Judson K. Siebert, Esq. *JKS*

RE: Opinion of Counsel, NYS Dep't of Taxation & Finance
Condominium Assessments

DATE: March 30, 2018

As a follow-up to the presentation to the City Council on February 26, 2018, City Assessor Kathy Martin requested an Opinion of Counsel from the New York State Department of Taxation & Finance, Real Property Services ("NYS RPS") concerning (1) the homestead/non-homestead classification of residential condominium units within industrial/commercial buildings converted to residential use and (2) the methodology to be employed in valuing such units for assessment purposes. Kathy did so in a letter dated March 22, 2018 to Mr. John Wolham of NYS RPS, a copy of which is attached hereto.

In response, Mr. Wolham obtained an Opinion of Counsel from NYS RPS. The Opinion of Counsel is set forth in an email from Mr. Wolham dated March 27, 2018, a copy of which is also attached.

The Opinion of Counsel concludes that newly created residential condominium units within buildings formerly housing commercial or industrial uses are to be placed in the homestead class. Furthermore, as set forth in this Opinion of Counsel, the placement of these units within the homestead class removes them from the standard limitation governing condominium valuation (which requires a more restricted, income-based approach in setting an assessment). In other words, as homestead class parcels, these units are to be valued based upon a sales-based, market approach.

I have reviewed the Opinion of Counsel and conferred with Kathy regarding its effect on City of Beacon assessments. Given the guidance provided by NYS RPS on this clouded issue, residential condominiums in the City of Beacon created within renovated industrial or commercial buildings should be placed in the homestead class and valued for assessment purposes on a market-based

approach. Accordingly, Kathy will review the assessments of these types of residential condominium units for purposes of the upcoming 2018 assessment roll. This, in turn, will likely cause an upward adjustment in the assessments of these types of units, as the pattern heretofore followed has been to treat them like traditional condominium units under an income-based valuation.

cc: Nicholas M. Ward-Willis, Esq.
Ms. Susan Tucker
Ms. Kathy Martin

City of Beacon

Kathleen Martin
Office of the Assessor
One Municipal Plaza
Suite 4
Beacon, NY 12508-2530

Telephone 845-838-5025
Fax 845-838-5026

March 22, 2018

Mr. John Wolham
Real Property Services Administrator I, Southern Region
New York State Department of Taxation and Finance
Office of Real Property Tax Services
Mid-Hudson Regional Office
44 South Broadway, 6th Floor
White Plains, New York 10601-4425

Re: Request for Opinion of Counsel

Dear Mr. Wolham:

As you know, I am the City Assessor of the City of Beacon. In that capacity, I respectfully request legal guidance, in the form of an Opinion of Counsel, from the New York State Department of Taxation and Finance.

My inquiry relates to the classification and valuation of residential condominium units created within properties that were previously in commercial ownership and use under Article 19 of the Real Property Tax Law (the "RPTL"). In particular, as set forth below, I request an opinion as to (1) whether these residential condominium units should be classified as "homestead" or "non-homestead" parcels and (2) depending upon the appropriate classification, the methodology that should be employed is valuing these units for assessment purposes (that is, through a comparable sales or income-based approach).

The City of Beacon is a homestead municipality, having first implemented the homestead option in 1988. Over the past several years, multiple industrial/commercial properties in the City of Beacon and within the non-homestead class have been redeveloped for residential and/or mixed commercial/residential use. With this redevelopment, these industrial/commercial properties have been repurposed from their prior use to residential use and, thereafter, placed in condominium ownership.

Section 1901(13)(a)(1) of the RPTL provides that the homestead class includes: "residential real property consisting of more than three dwelling units held in condominium form of ownership, provided that, in other than approved assessing units which have adopted the provisions of section nineteen hundred three of this article prior to April thirtieth, nineteen hundred eighty-three, no such dwelling unit previously was on an assessment roll as a dwelling unit in other than condominium form of ownership, and provided further that the governing body of an approved assessing unit which, prior to April thirtieth, nineteen hundred eighty-three, has adopted the provisions of section nineteen hundred three of this article may by local law adopted after a public hearing prior to the taxable status date of such assessing unit next occurring after December thirty-first, nineteen hundred eighty-three, provided that all such property on the assessment roll of such assessing unit on April thirtieth, nineteen hundred eighty-three shall not be classified in the homestead class."

As mentioned, the City of Beacon did not adopt the homestead option prior to April 30, 1983.

Under this definition, are residential condominium units in the City of Beacon created within pre-existing, improved properties that were in the non-homestead class and not in condominium ownership to be classified as homestead parcels?

Guidance documents published by the New York State Department of Taxation and Finance suggest that this may not be the case. For example, the pamphlet entitled "The Homestead Tax Option", a copy of which is attached, states that "condominiums that were built as condominiums *and not converted from some other form*, such as rental apartments, qualify as residential property." (emphasis added). Does this mean that residential units created within commercial buildings in fee ownership that are converted to condominium ownership remain in the non-homestead class?

I submit that this is an unresolved, and somewhat confusing, issue. Accordingly, I respectfully request an opinion as to whether residential condominium units in repurposed commercial, and formerly fee-owned, properties are to be placed in the homestead or non-homestead class.

Furthermore, in a related manner, I request guidance as to the manner in which these residential condominium units are to be valued for assessment purposes. Specifically, are they to be valued through a comparable sales or an income capitalization method?

In order to facilitate a response to this request, I am likewise forwarding a copy of this letter to the Office of Counsel at orpts.legal@tax.ny.gov.

I appreciate your consideration and attention in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kathy Martin', with a stylized, flowing script.

Kathy Martin

cc: Hon. Randy Casale, Mayor
Mr. Anthony Ruggiero, City Administrator
Judson K. Siebert, Esq.

Q. What type of property qualifies as residential class property under the homestead tax option?

A. One-, two-, and three-family residential units; farm homes; mobile homes that are owner-occupied and separately assessed, and condominiums that were built as condominiums and not converted from some other form, such as rental apartments, qualify as residential property.

Also qualifying for the residential class are vacant land parcels not larger than 10 acres that are located in zones that restrict residential use to one-, two-, or three-family residential dwellings.

Q. I understand how the homestead tax option could work in my town, but how would it work in my school district?

A. School districts that are wholly contained within the boundaries of a city or town that has the homestead tax must use the homestead tax unless they opt out of the program by passing a resolution.

There is a special requirement for school districts located in more than one city or town that want to use homestead and non homestead school tax rates. That requirement is that one-fifth or more of the properties in the school district must be located in cities or towns that use the homestead tax option.

In addition, for school districts that are in more than one city or town, the determination of class shares will be based on current market value, with adjustments at the discretion of the school district within limitations set by law.

Q. How many places are using the homestead tax option?

A. At the time this pamphlet was revised, 13 cities, 17 towns, 18 villages and 38 school districts were using the homestead option. For more information, please visit municipal profiles on our website.

Q. In addition to adopting the homestead tax option, can "approved assessing units" also phase-in the results of the revaluation?

A. Yes. By passing a local law, approved assessing units can phase in the new revaluation assessments over a five-year period.

This option sounds simple. In reality, however, most assessment officials believe it would be extremely difficult to administer. Maybe that is why no municipality to date has decided to use the transition-assessment option.

Q. Can a municipality that has adopted the homestead tax option revoke it later?

A. Yes, simply by adopting a local law, without referendum, to rescind it before the next levy of taxes.



STATE OF NEW YORK
Andrew M. Cuomo, Governor

NYS Department of Taxation and Finance
Office of Real Property Tax Services
W.A. Hartman State Campus
Albany, NY 12227
Phone: 518-591-5232
www.tax.ny.gov

The Homestead Tax Option

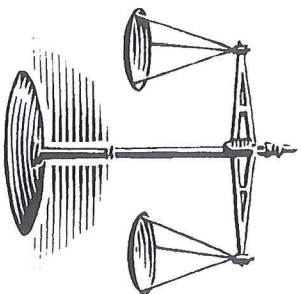
(Article 19 – Section 1903 of the RPTL)



New York State Department of
Taxation and Finance
Office of Real Property Tax Services

In a number of places in New York State, assessments of residential property frequently have been at a lower percentage of market (full) value than other types of property, such as commercial and industrial property. When a town or city with this situation decided to conduct a property revaluation to achieve correct and fair assessments, the residential properties, as a class, would bear a much larger share of the tax burden. This discouraged other municipalities with similar situations from conducting their own property revaluations. As a result of the concern for tax-burden shifts to homeowners, a State law was passed in 1981 establishing the Homestead Tax Option.

This local option prevents any large shift of the property tax burden to the residential class of property owners after a revaluation. In a revaluation, changes a remade to individual property assessments so that they are correct and uniform -- as the law requires. These changes result in increases to some individual residential property owners whose properties were under assessed before the revaluation. However, the homestead tax option prevents any large shift to the residential class of properties.



Q. What is the homestead tax option?

A. It is a local option to establish two separate property tax rates: a lower tax rate for residential property owners (homestead tax), and a higher rate for all other property owners (non-homestead tax).

Q. Is this program mandated by New York State?

A. No. It is a local-option program

Q. Is the homestead tax option available everywhere in the State?

A. No. It is available only to qualifying cities, towns, villages, counties, and school districts. It is not available in New York City, or in Nassau County except for villages and, for certain purposes, the cities.

Q. How does a municipality qualify to use the homestead tax option?

A. A city, town or village that is an assessing unit first must complete a property revaluation project that meets the State Board's regulations. That entitles the assessing unit to be certified by the State Board as an "approved assessing unit." Then the local governing body of the assessing unit can adopt a local law stating its intent to use a homestead tax and a non-homestead tax.

Q. How does the homestead tax option work?

A. The homestead tax is based on the share of property taxes paid by the residential class of property owners in the year before the new assessments from the revaluation project are used.

For example, assume that residential properties paid 40 percent of all town taxes in the Town of Smith in 1989 (the year before the revaluation project). Now, in 1990, as a result of the revaluation, the residential class represents 50 percent of the town's total taxes. As an "approved assessing unit" that has opted to use the "homestead tax option," the Town of Smith can "freeze" the residential class share of town taxes at the previous 40 percent. Thus, the town will have two tax rates: one for the residential class and another for all other property classes, such as commercial property and industrial property. The difference is that the tax rate for the residential class will be lower than the tax rate for all other property classes. For example, the town tax rate for the residential class might be something like \$25 for each \$1,000 of assessed valuation, while the tax rate for the nonresidential class might be \$30 for each \$1,000 of assessed valuation.

Q. Once the percentage shares are determined (in our example, 40 percent for residential property and 60 percent for non-residential property), do they remain that way forever?

A. No. They can change based on the following adjustments:

1. Using the example for the Town of Smith, the town would have the option of adjusting the residential share at various points between 40 and 50 percent.
2. The municipality must make annual adjustments based on property that is added to the assessment roll and property that is removed.
3. The municipality must make annual adjustments for different rates of appreciation in the two classes of property based on the changes in the current market value of the classes, subject to a 5 percent cap.

Siebert, Judson K.

From: Wolham, John (TAX) <John.Wolham@tax.ny.gov>
Sent: Tuesday, March 27, 2018 5:15 PM
To: Kathy Martin
Cc: Siebert, Judson K.; Anthony Ruggiero; rcasale@cityofbeacon.org;
tax.dl.ORPTS.RSD.Dutchess.Co
Subject: City of Beacon -- homestead
Attachments: Beacon Assessor 03222018 letter.pdf

Hi Kathy,

I forwarded your attached letter to Counsel and received the following response:

While we believe the assessor should follow any legal advice in this matter that she may have received from the city attorney, we will offer the following observations, subject to the caveat that our comments are strictly informational and non-binding.

RPTL 1903(13)(a)(2) generally provides that in an approved assessing unit that first adopted class tax rates after April 30, 1983, as Beacon did, "residential real property consisting of more than three dwelling units held in condominium form of ownership" must be classified as homestead property. However, there is an exception: The property would not belong in the homestead class if "no such dwelling unit previously was on an assessment roll as a dwelling unit in other than condominium form of ownership". So, for example, if a rental apartment building is converted into residential condominiums, it should not be placed into the homestead class. However, as we read the law, if property that is now a residential condominium had never been used as a dwelling unit before it was a condominium, there is no similar prohibition against treating it as homestead property.

As to the method of assessment, condominiums generally are to be assessed without regard to the fact that they are condominiums (e.g., by capitalizing the hypothetical rental income they might generate). However, as we read the law, that restriction does not apply to condominiums that are included within the homestead class. See RPTL 581(b)(ii), Real Property Law 339-y(1)(d)(ii).

If the assessor requires more specific guidance, she should direct her questions to the city attorney's office.

Hope this is of some help.

Best,
John W.

John Wolham
Real Property Services Administrator 1, Southern Region
New York State Department of Taxation and Finance
Office of Real Property Tax Services
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