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**Village of Bronxville – Real Property Assessment Function Study**

I. Village Assessment Options

Section 1402 of the Real Property Tax Law (“RPTL”) provides the Village of Bronxville with the following assessment options<sup>1</sup> with regard to the valuation of real property within the Village for tax purposes:

1. As an assessing unit,<sup>2</sup> the Village may continue to have its assessor prepare an assessment roll of the real property within the Village in the same manner and form as required by law for the preparation of a Town assessment roll. As an assessing unit, the Village is responsible for determining the taxable (or exempt) status of Village real property,<sup>3</sup> determining the tentative assessed value,<sup>4</sup> providing for administrative review of assessments,<sup>5</sup> filing a final assessment roll,<sup>6</sup> correcting administrative errors on rolls,<sup>7</sup> defending judicially challenged assessments,<sup>8</sup> and filing an assessor’s annual report.<sup>9</sup>
2. The Village may, by resolution, authorize the assessor to utilize the Town assessment roll as the basis for the Village assessment roll “so far as practicable”. RPTL § 1402 (2). Such resolution remains effective until revoked by subsequent resolution or superceded by a local law enacted pursuant to RPTL § 1402 (3) whereby the Village ceases being an assessing unit. The Village Board must notify

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<sup>1</sup> See, generally, “Village Assessment Options”, State Board of Real Property Services, April 12, 2005.

<sup>2</sup> “Assessing Unit” is defined to include a village, as provided in RPTL § 1402, with the power to assess real property. RPTL § 102 (1).

<sup>3</sup> RPTL § 1400.

<sup>4</sup> RPTL §§ 1402, 1406 (1).

<sup>5</sup> RPTL § 1408.

<sup>6</sup> RPTL § 1410.

<sup>7</sup> See generally RPTL Article 5 Title 3.

<sup>8</sup> RPTL, Article 7.

<sup>9</sup> RPTL § 575.

the State Board of Real Property Services (“State Board”)<sup>10</sup> of the enactment or revocation of such a resolution. Should it exercise this option, the Village remains an assessing unit with the attendant assessment responsibilities described above. A model resolution for the exercise of this option prepared by the State Board is attached as Exhibit A.

3. The Village may enact a local law, subject to permissive referendum as provided in Article 9 of the Village Law, providing that the Village shall cease being an assessing unit and that Village taxes shall thereafter be levied on a copy of the part of the Town assessment roll. RPTL § 1402 (3). A copy of a model local law prepared by the State Board is attached as Exhibit B. Within ten days of the adoption of such local law, the Village must send a copy of the law to the State Board. Upon the expiration of thirty days after its adoption and where no referendum is held, or upon the approval of the local law at a referendum election, the Village ceases to be an assessing unit provided however, that if the local law becomes effective on or after the taxable status date of the Village and before Village taxes are levied on an assessment roll based on such taxable status date, the Village does not cease to be an assessing unit until after the Village taxes are levied. RPTL § 1402 (3) (a); See also 9 Op. Counsel SBEA No. 95. Such law remains in full force in effect unless rescinded by a subsequently enacted local law subject to the same notice and referendum provisions. The local law must be filed with the Secretary of State to be effective. Within five days of the effective date of the local law, copies of the law must be filed with the State Board, the Town Clerk and Town Assessor.

## II. Real Property Tax § 1402 (2)

Were it to exercise the to option to use the Town’s assessment roll as the basis for Village assessments so far as practicable, the Village would remain an assessing unit. As such, the Village would continue to be responsible to make its own valuations and exemption determinations resulting from differing Town and Village taxable status dates.<sup>11</sup> Regardless of whether they are originally completed by the Village or the Town, the assessments are subject to administrative and judicial review (including small claims assessor review), and must be defended by the Village.

Assuming that the Village was inclined to use the Town roll so far as practicable as provided in RPTL § 1402 (2), the question arises as to the extent to which the Village is free to utilize or not utilize assessments on the Town roll for Village purposes. Based upon our review of the available legislative history, case law and opinions interpreting the language of § 1402 (2) and its predecessors, it appears the Village would be afforded broad discretion in deciding what portions of the Town assessment roll it wishes to utilize in preparing the Village assessment roll.

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<sup>10</sup> The term “State Board” is also used to describe the State Board of Equalization and Assessment, the predecessor to the State Board of Real Property Services.

<sup>11</sup> The Town of Eastchester’s taxable status date is June 1. The Village’s taxable status date is January 1.

## A. Legislative History

Real Property Tax Law § 1402 (2) is derived from former Village Law Section 104 which was originally enacted in 1897. Village Law § 104, entitled “Annual Assessment Roll,” provided:

“The assessors of a village shall, on or before the first Tuesday of June, if a village of the first or second class and on or before the first Tuesday of May, if a village of the third or fourth class, prepare an assessment roll of the persons and property taxable within the village in the same manner and form as is required by law for the preparation of a town assessment roll...The assessors of a village of the third or fourth class, included wholly within the town, may, and upon the adoption of a proposition therefore at an annual election, shall adopt the assessment roll of the Town of the last preceding year as the basis of their assessment, so far as practicable. If such town roll be adopted the assessors shall copy therefrom a description of all real property of the village and the value thereof as the same appears thereon;...Where the Town assessment roll is adopted and the valuation of any taxable property cannot be ascertained therefrom, or where the value of such property shall have increased or diminished since the last assessment roll of the town was completed, or an error, mistake or omission on the part of the town assessors shall have been made in the description or valuation of taxable property, the assessor shall ascertain the true value of the property to be taxed from the best evidence available.” L.1897, ch.414.

In 1927, the Legislature repealed Village Law § 104 as it then existed<sup>12</sup> and added a new Village Law § 104 which provided in relevant part:

“The village assessor or assessors shall, on or before the first day of November of each year, prepare an assessment roll of the persons and property taxable within the village, in the same manner and form as

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<sup>12</sup> Minor amendments to the 1897 version of § 104 were enacted in 1909 and 1921 but those amendments do not bear upon the interpretation to be given to the “so far as practicable” language. L.1909, ch.64, L1921, ch. 234.

required by law for the preparation of a town assessment roll. The board of trustees, may, by resolution authorize the assessor or assessors to use the assessment roll of the town of the current year as the basis for the assessment so far as practicable..." L.1927, ch.650.

Under the new § 104, village assessors were no longer mandated to adopt the town's assessment roll as the basis for village assessments or to copy therefrom the description and valuation of all real property in the village. Instead, the new § 104 substituted the word "may" for "shall" and "use" for "adopt" and eliminated the requirement to copy the town's assessment roll for village purposes, in providing that village assessors may use the town's assessment roll as the basis for its assessments "so far as practicable."<sup>13</sup>

Describing this legislative change as "radical" the Court in People ex rel. International Hydro-Electric Corporation v. Podvin, 171 Misc. 785 (Supt. Ct. Saratoga Co. 1939) confirmed the conclusion that the Legislature intended to confer broader discretion upon village assessors in determining the extent to which they would rely upon the town assessment roll in establishing village assessments. In International Hydro, a proceeding was brought to compel the village board of trustees to adopt a valuation placed upon the relator's property as it appeared on the town assessment roll in the preparation of the village assessment roll. Dismissing the petition, the Court concluded that based upon the 1927 amendments respecting the preparation of a village assessment roll and the correction of errors and omissions in that roll, "the assessors were not bound to adopt the valuation placed upon relator's property as it appeared on the town roll even though generally they found it practical to and did use the valuations recorded thereon as the foundation for the roll they were preparing." Contrasting the two enactments, the Court opined:

"Power to adopt, and requirement to adopt, the town roll as the basis of the village roll, in the case of certain villages, was formerly the law, whereas we now have, in the case of all villages, only a provision for giving permission for its use as such a basis. When under the former law the 'adoption' took place, the town roll, as respects description and valuations, thus practically became the content of the village roll save in the isolated cases of impracticality due to changes in ownership or

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<sup>13</sup> Thereafter, Village Law § 104 underwent a number of amendments but the critical language remained substantially untouched. See L. 1936, ch.149, L.1944, ch.319, L. 1951, ch.516 and L.1954, ch.809. The Legislature enacted the Real Property Tax Law which was intended to recodify and incorporate without substantive change, all of the provisions of general application in the Tax Law, Education Law and Village Law and other laws relating to the assessment and taxation of real property. L.1958, ch.959. Pursuant to such recodification, Village Law § 104 (renumbered in 1954 as Village Law § 100 (3)) was repealed and reenacted as Real Property Tax Law § 1402. RPTL § 1402 (2) carries forward unchanged the 1927 amendments to former Village Law § 104 permitting the Board of Trustees to adopt a resolution authorizing the village assessor to "use" the town's assessment roll "so far as practicable."

physical alterations of the property to be assessed. Now the content of the town roll may not be thus imposed. In a proper case the assessors may, if they see fit, use it as a basis whenever practicable.”

Underscoring the broad discretion now conferred by the Legislature on village assessors in the use of the town roll, the Court concluded:

“To me it appears evident that the greatest change affected by the new enactment was the elimination of the provisions for a compulsory use of the town roll as a basis for the village roll. The present provision for its permitted use as such must then be construed in the light of that elimination, and of what was intended thereby. So considered I may not by construction read back into the new enactment that which was thus abolished. Thus I cannot hold to the view that there is any particular requirement or limitation upon the assessors as regards the matter by or the extent to which they shall use the town roll as a foundation in making up the village roll. They may, as I view it, use it to the extent that judgment directs -- all or nearly all of it, little of it or none of it.” (Emphasis supplied).

Id.

The State Comptroller and the State Board have reached a similar conclusion. See 1968 Op. St. Comp. 850, 7 Op. Counsel SBEA No. 98; 4 Op. Counsel SBEA No. 39 [Village assessor is not bound by the valuations on the town’s assessment roll]; See also 9 Op. Counsel SBEA No. 28 (1988) [“Even when an RPTL § 1402 (2) resolution is in effect, however, the village assessors retain the right and duty to disregard the town... assessment when warranted (e.g., where physical changes occur between the town... taxable status date and the village taxable status date).”].<sup>14</sup>

Based upon the International Hydro case and the opinions of the State Comptroller and the State Board, the village assessor retains the responsibility to make independent

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<sup>14</sup> Given that the taxable status date for the Town of Eastchester is June 1 and the taxable status date for the Village of Bronxville is January 1, the Village has approximately seven (7) additional months of market changes, individual property improvements and values and degradation of property values to consider when valuing properties which may result in significant differences between the Town and Village assessments. Moreover, similar disparities may result from differences in professional opinion of value regarding a specific property and the currentness of the respective municipal assessment data. The Town’s use of a different percentage of market value to value properties would also have to be considered by the Village when making adjustments to Town assessments.

determinations and adjustments to the adopted town assessment roll to reflect the condition, ownership and taxable status within the village as of the taxable status date for the village.

### III. Real Property Tax Law § 1402 (3)

Upon receipt of notice of a village's enactment of a local law pursuant to this section, the assessor for the town in which the village is located is required to thereafter annually prepare a copy of the village portion of the final town assessment roll and deliver same to the village board of trustees within five days after the completion and filing of the final town assessment roll. RPTL § 1402 (3) (a)<sup>15</sup>. The expense of preparation and delivery of such duplicate copy of the town roll would be a village expense. The village then levies its taxes based upon such assessment roll. As a result, village, school, town and county taxes would all be levied from the town's assessment roll.

The taxable status date of the town (June 1) shall control for village purposes. Depending upon the dates the village and school set for their levies, either a current year assessment roll or the prior year's assessment roll would be used. A non-assessing village may elect to change its fiscal year to conform to the town's fiscal year. Village Law § 5-510.

Under this option, a village is no longer responsible for the preparation, maintenance and defense of assessments for village purposes. The village will no longer have an assessor or a Board of Assessment Review and is not responsible for defending small claims or tax certiorari proceedings. However, the village will receive notice of such proceedings. RPTL § § 708 (3), 730 (8).

The town assessor will be responsible for making the necessary changes to the portion of the town roll used for village purposes to correspond to exemptions granted at village option where those exemptions are different from the corresponding exemptions provided by the town. The State Board would continue to be responsible for making special franchise assessments and separate railroad ceiling assessments and approving assessment of State-owned lands for assessing units. The town assessor would also be responsible for apportioning special franchise assessments and railroad ceiling properties on the portion of the town roll used for village purposes. The town assessor would be required to perform the duties specified in RPTL § 1424 regarding the apportionment of village tax liens otherwise performed by village assessors. Responsibility for the investigation and reporting on administratively correctable errors on village tax rolls is vested in the county real property tax director.<sup>16</sup>

Responsibility to refund village taxes based upon errors found remains with the village board. The State equalization rate for the town will be deemed to be the

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<sup>15</sup> When the assessment roll is prepared by computer and town and village officials agree, the data file used to generate the roll could be substituted for a paper copy of the roll.

<sup>16</sup> In Westchester County, the duties of real property tax director are performed by the chief administrative officer of the Westchester County Tax Commission. 10.Op. Counsel SBRPS No. 122; RPTL § 1530 (4).

equalization rate for the village provided, however, that where the town rate is shown to be inequitable, the State Board may determine a special rate for the village.

Regardless of not being an assessing unit, a village will continue to levy a village tax and to collect taxes and enforce the collection of delinquent taxes. A non-assessing village located wholly within a town that is an “approved assessing unit” is eligible to establish classified assessment under RPTL Article 19. To employ this option, an eligible non-assessing village must adopt a local law adopting the provisions of RPTL § 1903 and file copies of that local law with the town assessor and county real property tax director.<sup>17</sup>

A non-assessing village is not required to file an assessor’s annual report. RPTL § 575. The town assessor will include the relevant information for the village as part of the town’s report. 9 NYCRR 193-4.2 (b) (4).

#### IV. Trends in Assessment by Villages

On its website, the State Board maintains a list of villages that have exercised the options under RPTL § § 1401 (2) and (3) to base their assessment roll on the town or county roll or to terminate their assessing unit status. According to the State Board’s calculation, of the 554 villages in the state, 390 have terminated their assessing unit status and 74 others have opted to base their assessments on the town or county roll as far as practicable.<sup>18</sup> Specifically, in Westchester County, Briarcliff Manor, Ossining, Pelham, Pelham Manor, Port Chester and Rye Brook have ceded their property tax assessment authority pursuant to RPTL § 1402 (3). The Villages of Ardsley and Hastings-on-Hudson have elected to utilize the Town of Greenburgh’s assessment roll as far as practicable. See New York State Office of Real Property Services, Village Assessment Option List, <http://www.orps.state.ny.us/legal/localop/village.htm> (as of October 7, 2005) (Exhibit C).

#### V. Board of Assessment Review

Effective January, 1983, the Legislature amended RPTL § 523 to provide assessing unit villages<sup>19</sup> with the option to appoint an independent, non-partisan board of assessment review (“BAR”). RPTL § 523. As set forth in more detail below, under that legislation, no assessor is eligible to serve on such a board and a majority of the board shall consist of members who are not officers or employees of the village. The members of such board serve fixed terms, are required to have knowledge of property values in the village, must undergo mandatory training and make financial disclosure.

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<sup>17</sup> See footnote 16.

<sup>18</sup> Four town/villages, Green Island, East Rochester, Harrison and Scarsdale produce a single assessment roll for both town and village purposes, as provided in Village Law § 17-1722-a.

<sup>19</sup> Non-assessing unit villages do not have boards of assessment review. RPTL § § 523 (1), 1402 (3). Village Law § 3-301 (2) (b). The assessment review function is performed by the board of assessment review of the town in which the village is situated.

In prior iterations of that statute, only towns and cities were authorized to appoint such independent boards.

The legislative history behind the enactment of predecessor legislation to RPTL § 523 indicates that its purpose was to require independent assessment review rather than review by the same person who made the assessment, as had frequently previously occurred. NY Op. Atty. Gen. (Inf.) No. 2002-21 citing the Memorandum of the State Executive Department in support of Chapter 1957 of the Laws of 1970, which created RPTL § 1524 and which section was subsequently recodified as RPTL § 523. In support of the 1983 legislation, the Bill's sponsor, Senator Mary Goodhue wrote:

“As government grows more complex and assessment practices become more controversial it is unfair to exclude villages from this more equitable assessment hearing procedure. By allowing villages to opt to exclude assessors and their staff from the assessment board of review, and by requiring the members of the review board to disclose any direct or indirect interest in any property in question, more objective decisions will be made. Furthermore, a non-partisan review board affords village residents a more equitable vehicle with which to challenge real property assessments.”

Sponsor's memorandum in support of Senate Bill 7760-A.

Previously, the only options available to assessing unit villages were for the village board of trustees and assessors or for a committee of the board of trustees and assessors to serve as the board of assessment review. RPTL § 1408; See also Village Law 3-301 (2) (b) providing that every village may have an assessor or a board of assessors and authorizing the board of trustees, by adoption a local law or resolution, to determine that such board of trustees shall act as the board of assessors or may appoint such board from its members.

Under RPTL § 523, the BAR may consist of 3 to 5 members appointed by the village board. Members shall have knowledge of property values in the village. Neither the assessor nor his or her staff members may be appointed to the BAR. Members of the board of trustees are also ineligible to serve on the BAR, based upon the common law rule prohibiting self-appointment. Wood v. Town of Whitehall, 120 Misc. 124 (Sup. Ct. Washington Co., 1923), aff'd, 206 App. Div. 786 (3<sup>rd</sup> Dept. 1923); N.Y. Op. Atty. Gen. (Inf.) No. 82-52; 8 Op. Counsel SBEA No. 31. A majority of the BAR shall consist of individuals who are not officers or employees of the village.

BAR members are appointed for 5-year terms commencing on October 1 and terminating on September 30, five years later. However, the first appointees shall serve staggered terms (1, 2, 3, 4 and 5 years respectively for a five member board). Members of the BAR shall annually choose one of their own to be Chairman and notify

the village clerk within 5 days of such designation. Notice of appointments and chair designations shall be given by the village clerk to the State Board and the county director of real property services<sup>20</sup> within 20 days of the appointment or designation. Compensation of BAR members is optional with the village.

BAR members must attend training courses upon their initial appointment and reappointment. Disclosure forms must be completed by members disclosing any direct or indirect interests they have in any property for which a complaint has been filed.

The Board of Trustees of Bronxville currently serve as members of the Board of Assessment Review. The creation of an independent board of assessment review pursuant to RPTL § 523 would have the effect of taking away the power of elected officials to serve as members of the board of assessment review. As such, a question arises as to whether a mandatory referendum pursuant to Municipal Home Rule Law § 23 (2) (f) may be required. Municipal Home Rule Law § 23 (2) (f) provides that, “except as otherwise provided by or under authority of a state statute, a local law may be subject to a mandatory referendum if it abolishes, transfers or curtails the power of any elected officer.” The term “local law” does not “mean or include an ordinance, resolution or other similar act of the legislative body or of any other board or body.” MHRL § 2 (9).

RPTL § 523 is silent as to the mode of legislation (local law or resolution) that must be used by a village to create a BAR under that statute. However, Village Law § 4-412 empowers the board of trustees to create or abolish by resolution offices, boards, agencies and commissions and delegate to them so much of its powers, duties and functions as it shall deem necessary for effectuating and administering the board of trustees’ duties and functions. By appointing an independent board of assessment review, the board of trustees would essentially abolish their role in the review of assessments and delegate that power to its appointees. Therefore, it would appear that if the board of trustees adopts a resolution pursuant to RPTL § 523 to appoint an independent board of assessment review as authorized by Village Law § 4-412, no referendum would be required.

In sum, as reflected by the legislative history of RPTL § 523, an appointed board of assessment review offers several advantages in comparison with the board of trustees and assessors review model. The non-partisanship, independence, mandatory training and financial disclosure and breadth of real estate experience of members associated with an appointed board of assessment review establishes a more equitable and objective process for the review of real property tax assessments within the village.

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<sup>20</sup> See footnote 16.

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