

NEW YORK EXECUTIVE ORDER MODIFIES REAL PROPERTY TAX DEADLINES

Hodgson Russ Municipal Alert
May 5, 2020

On May 1, many towns published their tentative assessment roll as required by the Real Property Tax Law.[1] However, the Governor of New York issued Executive Order 202.22 which granted an extension of time for municipalities to publish their assessment rolls.[2] The Executive Order also extended the deadlines for the filing of grievances and the scheduling of board of assessment review hearings. Furthermore, the Executive Order provided relief concerning penalties and interest for certain property taxes in Westchester and Nassau Counties. As a result, many communities have delayed publishing their tentative rolls and that has consequences for the remainder of the tax roll calendar.

Municipal Assessment Rolls and Grievance Complaint Hearings

Tentative Assessment Rolls

Under the Executive Order, a municipality normally filing a tentative assessment roll on or before by June 1, 2020 – which covers most towns in the state – is permitted, by local option, to extend the filing up to 30 days. Acknowledging the reality of the NY-PAUSE, publication of the tentative roll is permitted to be done solely online “so long as the date for hearing complaints is prominently displayed.” In-person inspection of the tentative roll is also suspended.[3]

Grievance Hearings

For those municipalities that filed their tentative roll on May 1, the general deadline for grievances remains the fourth Tuesday in May unless subject to a different date set by charter or special law.[4] For those that took advantage of the extension under the Executive Order, the date for hearing grievance complaints may be set to a date at least 21 days after the filing of the tentative roll.

Boards of Assessment Review (“BAR”) are public bodies required to comply with the Open Meetings Law.[5] Grievance hearings, whether delayed or not, may now be held by conference call or similar manner so long as complainants can present their complaints through such service and the public has the ability to view or listen to such proceeding. This process is consistent with prior executive orders modifying the requirements of the Open Meetings Law for in-person meetings. Not all the requirements have been suspended, however. While a BAR may deliberate in private, oral presentations before the board as well as the act of voting or taking

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action must occur during a meeting held open to the public, but that meeting can be by video or telephonically. Any notices regarding grievance hearings should clearly state the method chosen by the municipality and how the public can listen in. In accordance with Executive Order 202.1, the non-in person hearing must be recorded and a transcript of the proceedings, not mere minutes, must be taken and later published.[6]

Final Assessment Rolls

The Executive Order also extended the time for filing of the final assessment roll. The final roll is typically to be filed July 1,[7] but now may also be extended up to 30 days. What the Order does not make clear is whether a municipality can delay its final roll if it did not delay its tentative roll, or if it can delay the final roll up to the full thirty days if it delayed the tentative roll less than thirty days. Although the Executive Order refers to “the tentative and final assessment rolls” rather than “the tentative or final assessment rolls,” we believe the answer is yes. The purpose of the Executive Order is public safety, and if a situation arises causing the delay of the final but not tentative rolls, perhaps a delay in being able to hold all BAR hearings, delay is appropriate. And as the statute of limitations to challenge an assessment is “thirty days after the final completion and filing of the assessment roll [which] . . . assessment roll shall not be considered finally completed and filed until the last day set by law for the filing of such assessment roll or until notice thereof has been given as required by law, whichever is later,” the delay does not prejudice the rights of any property owner.[8]

Extension of Commissioner of Taxation and Finance Certification Deadline

Besides to the changes to the process municipalities undertake, the Executive Order also grants the Commissioner of Taxation and Finance additional time, to the extent necessary, to certify final state equalization rate, class ratios, and class equalization rates, if required. This is to be done no later than ten days prior to the last date set by law for levy of taxes of any municipal corporation to which such equalization rate, class ratios, and class equalization rates are applicable.

Westchester County-Specific Changes

Temporary changes were made to the laws impacting Westchester County. Under the Executive Order, the Westchester County Executive is allowed to negotiate with any town supervisor or mayor of any city, to accept a lesser percentage of taxes, special ad valorem levies, or special assessments which are otherwise due on May 25, provided that any town or city is not to pay more than sixty percent. The County Executive may determine whether penalties for any late payments or interest can be waived. That determination will depend on whether the town or city applies the County Executive’s criteria for determining hardship due to COVID-19.[9]

Town supervisors in Westchester County are required to waive payment penalties for the late payment of county and county district taxes up to July 15, 2020. They may also waive penalties for late payment of town and town district taxes and assessments so long as the town applies the County Executive’s criteria for determining hardship due to COVID-19. The same authority was granted to mayors related to city and city district taxes and assessments so long as the city applies the County Executive’s hardship criteria.

Nassau County-Specific Change

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Finally, the deadline to pay the final one-half of school taxes in Nassau County without interest or penalty is extended until June 1, 2020.

If you have any questions about Executive Order 202.22 or real property tax assessment issues generally, please contact Daniel Spitzer (716.848.1420), Henry Zomerfeld (716.848.1370), or a member of our Municipal Practice.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to our Municipal mailing list or any other of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html>

[1] Real Property Tax Law (“RPTL”) § 506(1).

[2] New York Executive Order 202.22, *available from*: <https://www.governor.ny.gov/news/no-20222-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

[3] RPTL § 506(2).

[4] RPTL § 512(1).

[5] *See* Open Meetings Law Op. OML-AO-3668 (2003) (“a board of assessment review is in my view clearly a ‘public body’ required to comply with the Open Meetings Law) (citing *Orange County Publications v. City of Newburgh*, 60 A.D.2d 409, 418 (2d Dep’t 1978) (“there is a distinction between that portion of a meeting...wherein the members collectively weigh evidence taken during a public hearing, apply the law and reach a conclusion and that part of its proceedings in which its decision is announced, the vote of its members taken and all of its other regular business is conducted. The latter is clearly non-judicial and must be open to the public, while the former is indeed judicial in nature, as it affects the rights and liabilities of individuals.”)).

[6] New York Executive Order 202.1, *available from* <https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

[7] RPTL § 516(1).

[8] RPTL § 702(2) (brackets and ellipsis added).

[9] Westchester County COVID-19 Hardship Guidance, *available from* <https://www.harrison-ny.gov/home/news/westchester-government-real-property-tax-law-guidance-for-determination-of-taxpayer>.