



**OFFICE OF COUNSEL**

**SUMMARY OF 2023 REAL PROPERTY TAX LEGISLATION**

*This publication summarizes noteworthy 2023 legislation related to real property tax administration. These descriptions are intended only as a source of general information about the key elements of the new laws. For a more complete and authoritative account of what these new laws do, the best resource is, of course, the laws themselves. As used herein, “RPTL” means the Real Property Tax Law and the “Tax Department” means the Department of Taxation and Finance.*

**EXEMPTION ADMINISTRATION**

**Agricultural exemption; Tree nuts**

□ Chapter 395 (A.5928) • Agriculture and Markets Law §§ 301(2)(b) and 301(4)(o)

Chapter 395 adds “tree nuts” to the definition of “fruits” in Agriculture and Markets Law (“AML”) § 301. This clarifies that land used to produce tree nuts for sale may qualify for the agricultural exemption and that the proceeds of tree nut sales may count towards the gross sales requirement. While the law has specified for some time that apples, peaches, grapes, cherries, and berries all constitute “fruits” for this purpose, prior to this amendment it made no reference to tree nuts, even though botanically they may also be considered fruits. The legislation also amends AML § 301 to allow newly established tree nut orchards to qualify for the agricultural exemption in their first through sixth years of agricultural production, even though they are not yet producing a crop during this period and, therefore, would otherwise fail to meet the gross sales requirement to qualify for the exemption.

**Alternative veterans exemption; Career military servicemembers**

□ Chapter 611 (A.3381-A) • RPTL § 458-a(1)(e)

Chapter 611 revises the definition of “veteran” for purposes of the alternative veterans exemption to include career military service members who remain active if they meet certain conditions. The key conditions are that they must have reenlisted after completing a tour of duty, they would have been eligible for a non-dishonorable discharge or release if they had not reenlisted, and they must have served for at least 10 years. Until fairly recently, a veteran who reenlisted after completing a tour of duty was issued discharge papers – e.g., Form DD-214 – showing that the prior tour had been completed. Those papers were sufficient to qualify them as “veterans” for exemption purposes (see [11 Op. Counsel SBRPS No. 58](#)). However, the current practice is that service members who reenlist are not issued discharge papers until the completion of their final tour of duty, which has effectively prevented them from receiving the exemption while they were still in service. This legislation overcomes that impediment.

**Housing Finance Agency**

□ Chapter 205 (S.6943) • RPTL § 421-d

Chapter 205 extends certain statutory authorizations relating to the New York State Housing Finance Agency, and increases its bonding authority. One of the statutes that was extended is the exemption authorized by RPTL § 421-d for the construction of multiple dwellings financed by the HFA. That statute had been set to sunset on July 23, 2023, but this legislation keeps it (and the other HFA-related statutes) in effect until July 23, 2025.

### **Persons with disabilities; Workers' Compensation award letters**

□ Chapter 757 (S.2574) • RPTL § 459-c(2)(b)

Chapter 757 revises the exemption for persons with disabilities and limited incomes to provide that a Workers' Compensation award letter based on either a "permanent total disability" or "permanent partial disability" as defined by Workers' Compensation Law § 15 may serve as proof of disability. Upon signing this measure into law, the Governor issued an Approval Message (#79), a copy of which appears below. This legislation takes effect March 21, 2024.

### **Senior citizens exemption; Definition of income**

#### **Persons with disabilities; Definition of income**

□ Chapter 59 (S.4009-C), Part K • RPTL §§ 467 and 459-c

Chapter 59, Part K, substantially simplified the definition of "income" for the senior citizens exemption and the exemption for persons with disabilities and limited incomes, beginning with 2024 assessment rolls. The new law requires an applicant's income to be determined by taking the applicant's Federal Adjusted Gross Income and applying the following adjustments:

- (1) any taxable IRA distributions must be deducted – unless the municipality has opted to disallow this deduction;
- (2) any non-taxable Social Security benefits must be added – unless the municipality has opted to decline to add them;
- (3) medical and prescription drug expenses not reimbursed by insurance may be deducted if the municipality has opted to allow this deduction;
- (4) any tax-exempt interest must be added (this is not a local option); and
- (5) any losses claimed on the return may be limited (generally, the cap is \$3,000 for each category of loss, and \$15,000 in total; this is not a local option).

For most applicants who file federal income tax returns, the only document needed to prove income eligibility will be a copy of the return. Supporting documentation generally should not be needed unless the applicant is seeking a deduction for unreimbursed medical and prescription drug expenses (and even then, supporting documentation might not be needed if the applicant chose to itemize deductions on their tax return). Low-income applicants who do not file tax returns will need to demonstrate their income eligibility by completing a worksheet prescribed by the Tax Department (Form [RP-467-Wkst](#) or [RP-459-c-Wkst](#)).

The new law also clarifies that where the local taxable status date is earlier than April 15, the "applicable income tax year" is the second-latest calendar year; elsewhere, it is the latest calendar year. However, for a "fiscal year" filer, the latest return should be used.

Further information about this new law may be found on the Tax Department's website.

### **Retroactive Exemptions for Specific Properties**

In certain assessing units, the assessor has been authorized to accept an exemption application after taxable status date for a specific parcel owned by a named nonprofit or governmental entity that either acquired the parcel after taxable status date, or acquired title but failed to apply for the exemption by taxable status date. Upon signing one of these measures (specifically, Chapter 692), the Governor issued an Approval Message (# 42, set forth below) indicating that an amendment will be forthcoming.

<b>MISCELLANEOUS</b>
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### **Solar and wind energy systems**

□ Chapter 59 (S.4009-C), Pt. N • RPTL § 575-b; State Admin. Proc. Act § 102(2)(b)(viii)

Chapter 59, Part N, clarifies that the adoption by the Tax Department of its Solar and Wind valuation model pursuant to RPTL § 575-b does not constitute a rulemaking and is not subject to the requirements of the State Administrative Procedure Act.

## Oil and gas fee extender

□ Chapter 59 (S.4009-C), Part L • RPTL § 593

Chapter 59, Part L, extends the authority to impose charges upon oil and gas producers to defray the cost of establishing oil and gas unit of production values. Those charges are now scheduled to remain in effect until March 31, 2027.

## Legislation of local interest

Enactments that are primarily of local interest include the following:

- The County of Schenectady has been authorized to issue taxpayer assistance payments of up to \$250 to eligible households in county fiscal year 2023 (Chap. 489)
- The formula for determining current base proportions in the Towns of Clarkstown and Orangetown has been temporarily modified (Chaps. 310, 309).
- The following enactments primarily affect Suffolk County or jurisdictions therein:
  - The formula for determining current base proportions in the Town of Islip has been modified for another year (Chap. 488).
  - The Peconic Bay community preservation program has been modified in accordance with Approval Message # 74 of 2022 (Chap. 2).
- The following enactments primarily impact Nassau County or jurisdictions therein:
  - The formula for determining current base proportions in the county and its approved assessing units has been modified for another year (Chap. 488).
  - The authority for the Town of Hempstead to pay PILOTs on certain land it owns in Lido Beach has been extended (Chap. 174).
  - The authority of the Village of Plandome Manor to sell tax liens has been extended (Chap. 284).
  - The Island Park Union Free School District has been authorized to establish a power plant tax assessment reserve fund (Chap. 554)
- The following enactments primarily impact New York City:
  - The tax abatement program for commercial properties in certain parts of NYC has been extended (Chap. 55, Pt. AA, §§ 15-19).
  - The SCRIE and DRIE programs have been modified in relation to property in Battery Park City (Chap. 85).
  - The tax abatement program for condos and co-ops in Class 2 has been extended (Chap. 147).
  - Additional time has been provided to implement certain changes to the SCRIE and DRIE programs (Chap.232; *see also* L.2022, Chap.687).
  - The rules for determining the income of NYC residents under the SCHE, DHE, SCRIE and DRIE programs have been modified (Chap. 276).
  - The formula for determining current base proportions in NYC has been modified for another year (Chap. 347).
  - The tax abatement program for solar and electric storage systems has been updated and modified (Chap. 485).
  - The former “J-51” abatement program has been replaced with a new affordable housing rehabilitation program (Chap. 536).
  - Businesses in New York City have been exempted from the provisions of new RPTL §561-a regarding PILOTs and assessment challenge notices (Chap. 565).

**GOVERNORS' APPROVAL MESSAGES**

**APPROVAL MEMORANDUM - No. 42 Chapter 692**

MEMORANDUM filed with Assembly Bill Number 6557-A, entitled:

"AN ACT in relation to authorizing the county of Nassau assessor to accept an application for a real property tax exemption from the Maritime Administration, a component of the United States Department of Transportation"

APPROVED

This bill authorizes the Merchant Maritime Academy to file certain late applications for exemptions for real property taxes with respect to the assessment roll, school taxes, and general taxes.

This bill is unique, as it involves federal property that is not subject to property taxation. Therefore, a clarifying amendment was needed that would remove the application requirement for the Maritime Administration, the current federal property owner.

I have reached an agreement with the Legislature to enact that change. On the basis of this agreement, I am pleased to sign this bill.

This bill is approved.

(signed) KATHY HOCHUL

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**APPROVAL MEMORANDUM No. 79 Chapter 757**

MEMORANDUM filed with Senate Bill Number 2574, entitled:

"AN ACT to amend the real property tax law, in relation to tax exemptions for persons with disabilities"

APPROVED

This bill would allow certain Workers' Compensation Board (WCB) award letters to be submitted as proof of disability for the purpose of securing property tax exemptions for persons with disabilities and limited incomes. This bill would require that any municipality that offers an exemption to its severely disabled homeowners must include homeowners with lesser levels of disability who have received permanent partial disability awards from the WCB, which would have unintended fiscal consequences for municipalities.

As drafted, the bill required technical changes to allow a municipality the option to offer an exemption to disabled homeowners that had either a permanent total or permanent partial disability award from the WCB.

I have reached an agreement with the Legislature to enact these changes. On the basis of this agreement, I am pleased to sign this bill.

This bill is approved.

(signed) KATHY HOCHUL

**GOVERNORS' DISAPPROVAL MESSAGES**

**VETO MESSAGE - No. 63**

*[Note: The body of this veto message applies to multiple bills, only one of which relates to real property taxation. The other bill numbers and bill titles have been omitted.]*

TO THE SENATE:

I am returning herewith, without my approval, the following bills: \* \* \*

Senate Bill Number 57, entitled:

"AN ACT to amend the tax law, in relation to enacting the "STAR credit bill of rights" and establishing the office of STAR ombudsman" \* \* \*

NOT APPROVED

These thirty-two bills would establish various commissions and task forces touching nearly every aspect of state government. Several of the bills would require intensive studies and reports to be undertaken by state agencies and authorities. I share a strong interest in addressing the problems and issues identified in this legislation, and I commend the Legislature for seeking to address such a broad array of problems.

However, enactment of this package of legislation would collectively cost the State approximately thirty-five million dollars. None of these costs are accounted for in the State Financial Plan. Without appropriate funding, these unbudgeted costs would create significant staffing and other programmatic burdens on State agencies. Additionally, because of the ongoing work of State agencies and authorities, a number of the proposals would result in duplication and unnecessary bureaucracy.

Many of the proposed studies, task forces and commissions are important to a wide-variety of stake holders and constituencies. Therefore, I am directing state agencies that have ongoing efforts or future plans to address the issues described in these bills to continue their efforts and to review and incorporate the goals in the legislation to the extent practicable. Where this is not the case, I am directing my office to work with State agencies to assess what components of the legislation can be implemented using resources already in their financial plans.

I expressed these concerns regarding the fiscal impact of this legislation in 2022, when I vetoed many of these same bills and others that would have created commissions and task forces at similarly high cost. In my message to the Legislature last year, I noted that these proposals would be more appropriately considered in the context of the State budget process; indeed, I was pleased to sign legislation this year that created commissions or task forces for which there was a designated appropriation in the Fiscal Year 2024 Enacted Budget.

Because of the fiscal impact of this legislation, the proposals would be more appropriately considered in the context of the State budget process. Therefore, I am constrained to veto these bills.

These bills are disapproved.

(signed) KATHY HOCHUL

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*Continued on following page*

**VETO MESSAGE No. 110**

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 1567, entitled:

"AN ACT to amend the general municipal law and education law, in relation to payment in lieu of taxes"

NOT APPROVED

This bill would amend the General Municipal Law and Education Law to increase the total amount of property taxes that a municipality or school district receiving payments in lieu of taxes (PILOTs) may levy in a given year without piercing the tax cap. It would also eliminate the Department of Taxation and Finance Commissioner's current authority to draft regulations and adopt rules that regulate PILOTs.

The property tax cap, which was enacted in 2011, limits the annual growth of property taxes levied by local governments and school districts to two percent or the rate of inflation, whichever is less. The tax cap has succeeded in curbing the growth of local property taxes, resulting in significant savings for taxpayers. This bill, as proposed, would raise the property taxes for homeowners and businesses in communities where local officials have already negotiated PILOT agreements.

Therefore, I am constrained to veto this bill.

The bill is disapproved.

(signed) KATHY HOCHUL

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**VETO MESSAGE No. 124**

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 5477-A, entitled:

"AN ACT to amend the real property tax law and the tax law, in relation to exempting income earned working at the polls from the definition of income"

NOT APPROVED

This bill would exclude income earned from working as an election inspector, poll clerk, or election coordinator, in a general or primary election, from a determination of such individual's eligibility for a School Tax Relief ("STAR") exemption or credit.

Poll workers play a critical role in our democracy, and I am deeply grateful for their commitment to public service. However, there are significant feasibility issues with this bill that make it impossible to implement. Employers and poll workers do not disaggregate this type of income from other earned income and job titles are not differentiated in tax filings for the purposes of election work. This bill would also have an undetermined cost to the State and localities.

Therefore, I am constrained to veto this bill.

The bill is disapproved.

(signed) KATHY HOCHUL

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**VETO MESSAGE No. 149**

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 7549-A, entitled:

"AN ACT relating to a temporary in rem foreclosure moratorium; and providing for the repeal of such provisions upon the expiration thereof"

NOT APPROVED

This bill would impose a moratorium on all in rem real property tax foreclosure proceedings until June 30, 2024, and place the proceeds from any foreclosures that took place between May 25, 2023 and July 1, 2023 into a "segregated trust account," in direct response to the United States Supreme Court decision in Tyler v. Hennepin County, Minnesota, 143 S. Ct. 1369 (2023). In Tyler, the Court held that where properties are acquired and sold by a local government for delinquent property taxes in excess of the amount owed to the local government, the former owner is entitled to the surplus.

This bill would put most foreclosure proceedings in New York State on hold for almost one year, to allow the Legislature time to develop new property tax foreclosure procedures for local governments in light of the Tyler decision. It would also allow foreclosures to proceed that were filed between May 25, 2023, and July 1, 2023, while requiring any surplus proceeds to be placed in a "segregated trust account." However, these proposals do not address the constitutional issues in Tyler.

In anticipation of the Tyler decision, in my 2023-2024 Executive Budget, I offered a proposal, which the Legislature rejected, that would have attempted to prevent the disruption to the foreclosure process. While I have not been able to reach an agreement with the Legislature to remedy these issues, I will continue to work with the Legislature to find common ground that is fair to homeowners, and not unduly burdensome for local government to administer and operationalize.

Therefore, for these reasons I am constrained to veto this bill.

The bill is disapproved.

(signed) KATHY HOCHUL

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For the 2023 Legislative Status Chart, see <http://www.tax.ny.gov/research/property/legal/legis/23bills.htm>.