S T A T E O F N E W Y O R K

738

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to authorizing the imposition of service charges upon certain real property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 20 of section 102 of the real property tax law is amended and a new subdivision 13-a is added to read as follows:

13-A. "SERVICE CHARGE" MEANS A CHARGE, OTHER THAN A SPECIAL AD VALOREM LEVY OR SPECIAL ASSESSMENT, IMPOSED UPON REAL PROPERTY BY OR ON BEHALF OF A COUNTY, CITY, TOWN OR VILLAGE, TO DEFRAY THE COST OF SERVICES AND IMPROVEMENTS NECESSARY OR CONVENIENT IN PROVIDING SUCH SERVICES FOR THE FOLLOWING PURPOSES: POLICE PROTECTION; FIRE PROTECTION; STREET AND HIGHWAY CONSTRUCTION, MAINTENANCE AND LIGHTING; SANITATION; AND WATER SUPPLY. ALL IMPROVEMENTS SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED NINETY OF THIS CHAPTER SHALL BE DEEMED SUCH IMPROVEMENTS.

20. "Tax" or "taxation" means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, INCLUDING A SERVICE CHARGE, but does not include a special ad valorem levy or a special assessment. The term "tax" or "taxes" as used in articles five, nine[, ten] and eleven of this chapter shall for levy and collection purposes include special ad valorem levies.

S 2. The real property tax law is amended by adding a new section 403 to read as follows:

S 403. LIMITATION ON EXEMPTIONS GRANTED BY THIS TITLE. 1. NOTWITHSTANDING THE PROVISIONS OF SECTIONS FOUR HUNDRED FOUR AND FOUR HUNDRED SIX OF THIS TITLE, ALL REAL PROPERTY FOR WHICH EXEMPTION IS ALLOWED BY ANY OF SUCH SECTIONS, EXCLUSIVE OF PROPERTY USED EXCLUSIVELY FOR CHARI-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TABLE, HOSPITAL, EDUCATIONAL OR CEMETERY PURPOSES, SHALL BE SUBJECT TO SERVICE CHARGES COMPUTED AS PROVIDED IN SECTION FOUR HUNDRED NINETY-SIX OF THIS ARTICLE AND TO SUCH SPECIAL AD VALOREM LEVIES AND SPECIAL ASSESSMENTS AS ARE SPECIFIED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY OF THIS ARTICLE, EXCEPT THAT:

(A) REAL PROPERTY OWNED BY A MUNICIPAL CORPORATION WITHIN ITS CORPORATE LIMITS WHICH IS OTHERWISE EXEMPT FROM TAXATION SHALL BE EXEMPT FROM ANY SUCH SERVICE CHARGE, SPECIAL AD VALOREM LEVY OR SPECIAL ASSESSMENT IMPOSED BY OR ON BEHALF OF SUCH MUNICIPAL CORPORATION; OR

(B) REAL PROPERTY OWNED BY A MUNICIPAL CORPORATION NOT WITHIN ITS CORPORATE LIMITS WHICH IS OTHERWISE EXEMPT FROM TAXATION, EITHER WHOLLY OR PARTIALLY, SHALL BE EXEMPT FROM ANY SUCH SERVICE CHARGE, SPECIAL AD VALOREM LEVY OR SPECIAL ASSESSMENT IMPOSED BY OR ON BEHALF OF ANY MUNICIPAL CORPORATION IN WHICH SUCH PROPERTY IS LOCATED, PROVIDED THE GOVERNING BOARD THEREOF SHALL SO AGREE IN WRITING.

2. TO THE EXTENT THAT THE PROVISIONS OF THIS SECTION ARE INCONSISTENT WITH ANY OTHER PROVISION OF LAW, THE PROVISIONS OF THIS SECTION SHALL BE CONTROLLING.

S 3. Title 2 of article 4 of the real property tax law is amended by adding a new section 420 to read as follows:

S 420. LIMITATION ON EXEMPTIONS GRANTED BY THIS TITLE. 1. NOTWITHSTANDING THE PROVISIONS OF SECTIONS FOUR HUNDRED TWENTY-ONE-A, FOUR HUNDRED TWENTY-FOUR THROUGH FOUR HUNDRED TWENTY-EIGHT, FOUR HUNDRED THIRTY-TWO, FOUR HUNDRED THIRTY-FOUR, FOUR HUNDRED THIRTY-EIGHT THROUGH FOUR HUNDRED FORTY-FOUR, FOUR HUNDRED FIFTY, FOUR HUNDRED FIFTY-TWO, FOUR HUNDRED SIXTY-FOUR, FOUR HUNDRED SEVENTY-TWO, FOUR HUNDRED SEVENTY-FOUR, FOUR HUNDRED EIGHTY-SIX AND FOUR HUNDRED EIGHTY-EIGHT OF THIS TITLE; REAL PROPERTY FOR WHICH EXEMPTION IS ALLOWED BY ANY SUCH SECTIONS, EXCLUSIVE OF PROPERTY OWNED BY A CORPORATION OR ASSOCIATION ORGANIZED OR CONDUCTED EXCLUSIVELY FOR RELIGIOUS, CHARITABLE, HOSPITAL, EDUCATIONAL OR CEMETERY PURPOSES, SHALL BE SUBJECT TO SERVICE CHARGES COMPUTED AS PROVIDED IN SECTION FOUR HUNDRED NINETY-SIX OF THIS ARTICLE AND TO SUCH AD VALOREM LEVIES AND SPECIAL ASSESSMENTS AS ARE SPECIFIED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY OF THIS CHAPTER.

2. TO THE EXTENT THAT THE PROVISIONS OF THIS SECTION ARE INCONSISTENT WITH ANY OTHER PROVISION OF LAW, THE PROVISIONS OF THIS SECTION SHALL BE CONTROLLING.

S 4. Section 490 of the real property tax law, as amended by chapter 87 of the laws of 2001, is amended to read as follows:

S 490. Exemption from special ad valorem levies and special assessments. [Real] 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, REAL property exempt from taxation pursuant to subdivision two of section four hundred, subdivision one of section four hundred four, subdivision one of section four hundred six, sections four hundred eight, four hundred ten, four hundred ten-a, four hundred ten-b, four hundred eighteen, four hundred twenty-a, four hundred twenty-b, four hundred twenty-two, four hundred twenty-six, four hundred twenty-seven, four hundred twenty-eight, four hundred thirty, four hundred thirty-two, four hundred thirty-four, four hundred thirty-six, four hundred thirty-eight, four hundred fifty, four hundred fifty-two, four hundred fifty-four, four hundred fifty-six, four hundred sixty-four, four hundred seventy-two, four hundred seventy-four and four hundred eighty-five of this chapter shall also be exempt from special ad valorem levies and special assessments against real property located outside cities and villages for a special improvement or service or a special district improvement or service and special ad valorem levies and special assess-

ments imposed by a county improvement district or district corporation except [(1)] (A) those levied to pay for the costs, including interest and incidental and preliminary costs, of the acquisition, installation, construction, reconstruction and enlargement of or additions to the following improvements, including original equipment, furnishings, machinery or apparatus, and the replacements thereof: water supply and distribution systems; sewer systems (either sanitary or surface drainage or both, including purification, treatment or disposal plants or buildings); waterways and drainage improvements; street, highway, road and parkway improvements (including sidewalks, curbs, gutters, drainage, landscaping, grading or improving the right of way) and [(2)] (B) special assessments payable in installments on an indebtedness including interest contracted prior to July first, nineteen hundred fifty-three, pursuant to section two hundred forty-two of the town law or pursuant to any other comparable provision of law.

2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, REAL PROPERTY SUBJECT TO SERVICE CHARGES AS PROVIDED IN SECTION FOUR HUNDRED THREE OR FOUR HUNDRED TWENTY OF THIS ARTICLE SHALL ALSO BE SUBJECT TO SPECIAL AD VALOREM LEVIES AND SPECIAL ASSESSMENTS IMPOSED TO DEFRAY THE COST, INCLUDING OPERATION AND MAINTENANCE, OF SPECIAL DISTRICT IMPROVEMENTS OR SERVICES OR OF SPECIAL IMPROVEMENTS OR SERVICES FOR THE FOLLOWING PURPOSES: POLICE PROTECTION; FIRE PROTECTION; STREET AND HIGHWAY CONSTRUCTION, MAINTENANCE AND LIGHTING; SANITATION; AND WATER SUPPLY. ALL IMPROVEMENTS SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL BE DEEMED SUCH IMPROVEMENTS.

S 5. The real property tax law is amended by adding a new section 496 to read as follows:

S 496. SERVICE CHARGES. 1. ANY SERVICE CHARGE TO WHICH ANY REAL PROPERTY MAY BE SUBJECT AS PROVIDED IN SECTION FOUR HUNDRED THREE OR SECTION FOUR HUNDRED TWENTY OF THIS ARTICLE SHALL BE IMPOSED AT A RATE COMPUTED AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION.

2. FOR THE PURPOSES OF THIS SECTION, "CHARGEABLE SERVICES AND IMPROVEMENTS" MEANS SERVICES, AND IMPROVEMENTS NECESSARY OR CONVENIENT IN PROVIDING SUCH SERVICES, FOR THE FOLLOWING PURPOSES: POLICE PROTECTION; FIRE PROTECTION; STREET AND HIGHWAY CONSTRUCTION, MAINTENANCE AND LIGHTING; SANITATION; AND WATER SUPPLY. ALL IMPROVEMENTS SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED NINETY OF THIS TITLE SHALL BE DEEMED CHARGEABLE IMPROVEMENTS.

3. THE AMOUNT OF THE SERVICE CHARGE SHALL BE DETERMINED AS FOLLOWS:

(A) THE SERVICE CHARGE SHALL BE BASED ON THE ASSESSED VALUE OF THE TAX EXEMPT REAL PROPERTY AND THE AMOUNT WHICH THE COUNTY, CITY OR TOWN OR VILLAGE EXPENDED, IN THE YEAR PRECEDING THE YEAR IN WHICH SUCH CHARGE IS ASSESSED, FOR CHARGEABLE SERVICES AND IMPROVEMENTS. ANY AMOUNT RECEIVED FROM FEDERAL OR STATE AID SPECIFICALLY DESIGNATED FOR THE ABOVE-MENTIONED PURPOSES SHALL NOT BE CONSIDERED IN DETERMINING THE COST OF PROVIDING SUCH SERVICES FOR THE REAL PROPERTY. THE EXPENDITURES FOR SERVICES NOT PROVIDED FOR CERTAIN REAL PROPERTY SHALL NOT BE CONSIDERED IN THE CALCULATION OF THE SERVICE CHARGE FOR SUCH REAL PROPERTY, NOR SHALL SUCH EXPENDITURES BE CONSIDERED WHEN A SERVICE IS CURRENTLY FUNDED BY ANOTHER SPECIAL AD VALOREM LEVY OR SPECIAL ASSESSMENT.

(B) THE SERVICE CHARGE RATE FOR THE TAX-EXEMPT PROPERTY SHALL BE DETERMINED BY DIVIDING THE EXPENDITURES DETERMINED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION BY THE ASSESSED VALUE OF ALL REAL PROPERTY LOCATED WITHIN THE COUNTY, CITY, TOWN OR VILLAGE IMPOSING THE SERVICE CHARGE, INCLUDING NONTAXABLE PROPERTY.

(C) THE RESULTING RATE SHALL THEN BE APPLIED TO THE ASSESSED VALUATION OF THE TAX EXEMPT PROPERTY SUBJECT TO SERVICE CHARGES TO DETERMINE THE AMOUNT OF SUCH CHARGES.

(D) UNDER NO CIRCUMSTANCES SHALL THE AMOUNT OF SUCH SERVICE CHARGE EXCEED TEN PERCENT OF THE PROPERTY TAX LIABILITY IF THE PROPERTY WERE SUBJECT TO TAXATION.

4. THE PROVISIONS OF THIS SECTION SHALL NOT AUTHORIZE THE IMPOSITION OF ANY SERVICE CHARGE, SPECIAL AD VALOREM LEVY OR SPECIAL ASSESSMENT BY ANY MUNICIPAL CORPORATION ON REAL PROPERTY OTHERWISE EXEMPT BY LAW FROM TAXATION UNLESS THE GOVERNING BOARD OF SUCH MUNICIPAL CORPORATION SHALL PREVIOUSLY, AFTER PUBLIC HEARING, HAVE ADOPTED A LOCAL LAW, ORDINANCE OR RESOLUTION ELECTING TO MAKE THE PROVISIONS OF THIS SECTION APPLICABLE. FOR THE PURPOSES OF THIS SECTION, GOVERNING BOARD, WITH RESPECT TO THE CITY OF NEW YORK, SHALL MEAN THE BOARD OF ESTIMATE OF THE CITY OF NEW YORK.

S 6. This act shall take effect on the first of April of the calendar year next succeeding the date on which it shall have become a law, and shall apply to all assessments made with reference to a taxable status date which falls on or after such effective date.