STATE OF NEW YORK

2971

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the real property tax law, in relation to an energy-related public utility mass real property central assessment program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision 2 of section 200-a of the real property tax law, as separately amended by section 2 of part J of chapter 57 and chapter 475 of the laws of 2013, is amended to read as follows:

(a) The power to determine the final special franchise value, special franchise assessment, railroad ceiling, state equalization rate or any other equalization product established pursuant to this chapter for which a complaint has been filed, as provided by sections four hundred eighty-nine-o, four hundred eighty-nine-ll, four hundred ninety-nine-pppp, *four hundred ninety-nine-bbbbb,* six hundred fourteen, twelve hundred ten, twelve hundred fifty-three, and twelve hundred sixty-three of this chapter;

§ 2. Paragraph (a) of subdivision 2 of section 200-a of the real property tax law, as amended by section 2 of part J of chapter 57 of the laws of 2013, is amended to read as follows:

(a) The power to determine the final special franchise value, special franchise assessment, railroad ceiling, state equalization rate or any other equalization product established pursuant to this chapter for which a complaint has been filed, as provided by sections four hundred eighty-nine-o, four hundred eighty-nine-ll, *four hundred ninety-nine-bbbbb,* six hundred fourteen, twelve hundred ten, twelve hundred fifty-three, and twelve hundred sixty-three of this chapter;

§ 3. Article 4 of the real property tax law is amended by adding a new title 6 to read as follows:

TITLE 6

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

LBD04352-01-1

ENERGY-RELATED PUBLIC UTILITY MASS REAL PROPERTY CENTRAL ASSESSMENT PROGRAM

Section 499-tttt. Definitions.
499-uuuu. Annual fee.
499-vvvv. Assessment of local energy-related public utility mass real property.
499-wwww. Assessment ceiling.
499-xxxx. Local energy-related public utility mass real property value.
499-yyyy. Equitable ratio of assessment.
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499-aaaaa. Tentative determination of assessment ceiling; notice, complaints and hearing.
499-bbbbb. Final determination of assessment ceiling; certificate.
499-ccccc. Application of assessment ceiling; computation of exemption.
499-ddddd. Reports to commissioner.
499-eeeee. Inspection of accounts and property of public utilities.

§ 499-tttt. Definitions. When used in this title:

1. "Local energy-related public utility mass real property" means energy-related public utility mass real property.

2. "Local assessing jurisdiction" means the town, city, village or county assessing unit that establishes the assessment rolls for such town, city, village or county.

3. "Energy-related public utility mass real property" means real property that is: (a) owned by an electric corporation, gas corporation, combination gas and electric corporation, or steam corporation as such terms are defined in section two of the public service law, and (b) used in the storage, transmission and distribution of electricity, gas, or steam including conduits, cables, lines, wires, poles, mains, pipes, substations, tanks, supports and enclosures for electrical conductors located on, above and below real property. Such term shall include all property described in paragraph (e) of subdivision twelve of section one hundred two of this chapter. Special franchise property as described in subdivision seventeen of section one hundred two of this chapter and all property described in paragraphs (a) and (b) and subparagraphs (A), (B), (C) and (D) of paragraph (i) of subdivision twelve of section one hundred two of this chapter shall not be considered energy-related public utility mass real property for purposes of this title.

4. "Taxation" means an ad valorem levy or special assessment for which energy-related public utility mass real property is otherwise liable pursuant to this chapter.

§ 499-uuuu. Annual fee. Any costs and expenses incurred by the commissioner under the energy-related public utility mass real property central assessment pilot program shall be paid from the collection of an annual charge upon the owners of such local energy-related public utility mass real property. The commissioner shall provide by rule for computation of such charge through the apportionment of these costs and expenses to owners of local energy-related public utility mass real property in relation to the total full value of the local energy-related public utility mass real property eligible for an assessment ceiling pursuant to this title. Prior to collecting payment of such charges, the commissioner shall annually provide a detailed report to each owner of local energy-related public utility mass real property identifying costs related to the establishment of assessment ceilings, including, but not limited to, expenditures, revenue sources and any allocations. The charges established pursuant to this section shall be subject to the approval of the director of the budget. Each owner of local energy-related public utility mass real property shall be authorized to challenge any such charges pursuant to article seventy-eight of the civil practice law and rules. All fees collected by the commissioner under this section shall be retained by the department for the purposes outlined herein.

§ 499-vvvv. Assessment of local energy-related public utility mass real property. Subject to the provisions of section four hundred ninety-nine-ccccc of this title, the assessor in each city, town and village and in each county having a department of assessment shall annually assess all local energy-related public utility mass real property situated in such city, town, village or county, as the case may be. Where a village has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter, the town or county assessor shall apportion that part of the assessment of local energy-related public utility mass real property in the town or county to the village for village tax purposes.

§ 499-wwww. Assessment ceiling. 1. To determine the extent to which local energy-related public utility mass real property shall be exempt under this title, an assessment ceiling for the local energy-related public utility mass real property shall be established annually by the commissioner as follows:

(a) Determine: (i) the local energy-related public utility mass real property value in accordance with the provisions of section four hundred ninety-nine-yyyy of this title; and (ii) the equalization rate factor for the local energy-related public utility mass real property in accordance with the provisions of section four hundred ninety-nine-zzzz of this title.

(b) Multiply the local energy-related public utility mass real property value by the equalization rate factor.

The result shall be the assessment ceiling.

2. The valuation date for all local energy-related public utility mass real property shall be January first of the year preceding the year in which the assessment roll on which such property is to be assessed, completed and filed in the office of the city or town clerk. The taxable status for all local energy-related public utility mass real property shall be based upon its condition and ownership as of the taxable status date applicable to the assessment roll on which it is to appear.

3. For assessment rolls with taxable status dates in the years two thousand twenty-six, two thousand twenty-seven, two thousand twenty-eight and two thousand twenty-nine, the commissioner shall establish no assessment ceiling that is below the lower limit or above the upper limit specified in this subdivision, except that the commissioner may establish assessment ceilings below such lower limit or above such upper limit to take into account any change in level of assessment and/or to take into account any additions or retirements to energy-related public utility mass real property or litigation affecting the value or taxable status of the local energy-related public utility mass real property initiated prior to the effective date of this title.

(a) For assessment rolls with taxable status dates in two thousand twenty-six, the assessment ceiling shall not be less than ninety percent or more than one hundred ten percent of the assessment of such local energy-related public utility mass real property appearing on the municipal assessment roll with a taxable status date occurring in the year two thousand twenty-three.

(b) For assessment rolls with taxable status dates in two thousand twenty-seven, the assessment ceiling shall not be less than seventy-five percent or more than one hundred twenty-five percent of the assessment of such local energy-related public utility mass real property appearing on the municipal assessment roll with a taxable status date occurring in the year two thousand twenty-two.

(c) For assessment rolls with taxable status dates in two thousand twenty-eight, the assessment ceiling shall not be less than fifty percent or more than one hundred fifty percent of the assessment of such local energy-related public utility mass real property appearing on the municipal assessment roll with a taxable status date occurring in the year two thousand twenty-two.

(d) For assessment rolls with taxable status dates in two thousand twenty-nine, the assessment ceiling shall not be less than twenty-five percent or more than one hundred seventy-five percent of the assessment of such local energy-related public utility mass real property appearing on the municipal assessment roll with a taxable status date occurring in the year two thousand twenty-three.

§ 499-xxxx. Local energy-related public utility mass real property value. The commissioner shall compute the local energy-related public utility mass real property value as follows:

1. The local reproduction cost of the energy-related public utility mass real property of each energy-related public utility mass real property owner in every assessing unit is the cost of reproduction, less depreciation of that energy-related public utility mass real property.

2. In ascertaining depreciation of property under this section, consideration may be given to the age, physical condition, average service lives of assets and other relevant factors.

3. Adjustments for economic or functional obsolescence shall only be made upon application by an energy-related public utility mass real property owner. Every such application shall be submitted with the annual report required by section four hundred ninety-nine-ddddd of this title.

§ 499-yyyy. Equitable ratio of assessment. The commissioner and any assessing authority shall be prohibited from assessing local energy-related public utility mass real property at a value that has a higher ratio to the full value of the local energy-related public utility mass real property than the ratio of assessed value of other real property in the same assessment class and jurisdiction to its full value, as provided in section three hundred five of this chapter.

§ 499-zzzz. Equalization rate. In determining assessment ceilings, the commissioner shall apply the final state equalization rate for the assessment roll of the local assessing jurisdiction for which the ceiling is established. If that final rate is not available, the commissioner shall apply the most recent final state equalization rate for the local assessing jurisdiction, except that if a special equalization rate has been established as provided in title two of article twelve of this chapter, such rate shall be applied. In the case of a special assessing unit as defined in section eighteen hundred one of this chapter, the equalization rate to be applied shall be the applicable class equalization rate.

§ 499-aaaaa. Tentative determination of assessment ceiling; notice, complaints and hearing. 1. Each year the commissioner shall make a tentative determination of an assessment ceiling for all local energy-related public utility mass real property. Thereafter, the commissioner shall give notice, in writing or electronically, to each assessing unit and each owner of local energy-related public utility mass real property for which such tentative determination of an assessment ceiling shall have been made, specifying the amount of such ceiling, and making available for inspection and copying the computations used to establish the tentative assessment ceiling amount pursuant to the public officers law, and setting forth the time and place where the commissioner or his or her designee will meet to hear any complaint concerning such tentative determination. Such notice shall be sent electronically and served in writing at least forty-five days prior to the date specified for such hearing.

2. A tentative assessment ceiling may be challenged before the commissioner as follows:

(a) An owner of local energy-related public utility mass real property or the local assessing jurisdiction objecting to a tentative ceiling must serve a complaint upon the commissioner, in writing, and a copy thereof upon the assessing unit or owner of local energy-related public utility mass real property, as the case may be, at least ten days before the date specified for the hearing. The complaint shall specify the objections to such tentative determination. Service may be made either in person or by mail.

(b) On or before the date specified for the hearing, an affidavit of service shall be filed with the commissioner stating that service has been made in accordance with the provisions of this section.

3. The commissioner or his or her designee shall meet at the time and place specified in such notice set forth in subdivision one of this section to hear complaints in relation to the tentative determination of the assessment ceiling. The provisions of section five hundred twelve of this chapter shall apply so far as may be practicable to a hearing under this section.

§ 499-bbbbb. Final determination of assessment ceiling; certificate. 1. After the hearing provided in section four hundred ninety-nine-aaaaa of this title, the commissioner shall finally determine the assessment ceiling for the local energy-related public utility mass real property of each local energy-related public utility mass real property owner situated in each assessing unit.

2. Notwithstanding that a complaint may not have been filed with respect to a tentative determination of an assessment ceiling, the commissioner shall give effect to any special equalization rate established pursuant to section twelve hundred twenty-four of this chapter or the final state equalization rate for the assessment roll for which the ceiling is established as provided in section four hundred ninety-nine-zzzz of this title prior to the date for the final determination of the assessment ceiling.

3. No later than ten days before the last date prescribed by law for the levy of taxes, the commissioner shall file a certificate setting forth each assessment ceiling as finally determined with the assessor of the appropriate assessing unit or the town or county assessor who prepares a copy of the applicable part of the town or county assessment roll for village tax purposes as provided in subdivision three of section fourteen hundred two of this chapter. The commissioner shall, at the same time, transmit to each owner of local energy-related public utility mass real property for which such ceiling has been determined a duplicate copy of such certificate.

4. Any final determination of an assessment ceiling by the commissioner pursuant to subdivision one of this section shall be subject to judicial challenge by an owner of local energy-related public utility mass real property or a local assessing jurisdiction in a proceeding under article seven of this chapter; provided however, the time to commence such proceeding shall be within sixty days of the issuance of the final assessment ceiling certificate and all questions of fact and law shall be determined de novo. Any judicial proceeding shall be commenced in the supreme court in the county of Albany. Nothing in this section shall preclude a challenge of the assessed value established by a local assessing jurisdiction with respect to local energy-related public utility mass real property as otherwise provided in article seven of this chapter. In any proceeding challenging an assessed value established by a local assessing jurisdiction for local energy-related public utility mass real property, the final certified assessment ceiling established pursuant to subdivision one of this section shall not be considered by the court.

§ 499-ccccc. Application of assessment ceiling; computation of exemption. 1. Upon receipt of a certificate setting forth the final certified assessment ceiling for local energy-related public utility mass real property, the assessor shall compare the assessed valuations attributable to the local energy-related public utility mass real property for each owner of local energy-related public utility mass real property included in the assessment ceiling. Where the owner of the local energy-related public utility mass real property reports information by specific property identification to the commissioner or the local assessing jurisdiction has implemented a system by the commissioner standardizing the identity of energy-related public utility mass real property on assessment rolls, such certified assessment ceilings shall be provided by the commissioner, as set forth on the local assessing jurisdiction's assessment rolls. Where the assessed valuation does not exceed the final certified assessment ceiling, as set forth in the certificate for the local energy-related public utility mass real property, the assessor need not make any adjustment in such assessed valuation. Provided, however, the assessed valuation exceeds the final certified assessment ceiling, as set forth in the certificate, such local energy-related public utility mass real property shall be exempt from taxation to the extent of such excess and the assessor shall forthwith reduce the assessments of such local energy-related public utility mass real property, so that the taxable assessed valuation of such property shall not exceed the certified assessment ceiling. All certificates of assessment ceilings shall be attached to the assessment roll or filed therewith as provided in article fifteen-C of this chapter.

2. The assessor is hereby authorized and directed to make the reductions, if any, provided for in this section on the assessment roll of the local assessing jurisdiction in which the local energy-related public utility mass real property is located, notwithstanding the fact that he or she may receive the certificate of the assessment ceiling after the final completion, verification and filing of such assessment roll. Other local officers, including school authorities, applying such final assessment roll, are hereby authorized and directed, on the basis of information which shall be provided by the assessor, to make the reductions provided for in this section on their respective tax rolls prior to levy of tax or, if received after the tax rolls have been established, to correct any tax levy of local energy-related public utility mass real property to reflect such reduction. If the reduction

is made after the tax levy and payment of same by the owner of local energy-related public utility mass real property, then such owner of local energy-related public utility mass real property shall be entitled to a refund in accordance with section seven hundred twenty-six of this chapter.

3. In assessing units for which he or she is required by law to prepare an assessment roll, the assessor of a county having a county department of assessment shall perform all the acts prescribed for an assessor by this title. Where a village has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter, the assessor of the town or county who prepares a copy of this applicable part of the town or county assessment roll for village tax purposes shall also perform the acts prescribed for assessors by this title on behalf of the village.

§ 499-ddddd. Reports to commissioner. 1. The commissioner may require from an owner of a local energy-related public utility mass real property an annual report that shall include such information and data that is prescribed in regulation by the commissioner and is reasonable and necessarily related to the establishment of a ceiling assessment by the commissioner for the local energy-related public utility mass real property, and which shall be in the same format and substance as required for special franchise property pursuant to article six of this chapter. Such reports shall be the same for similarly situated local energy-related public utility mass real property owners.

2. Every report required by or pursuant to this section shall be made by a person authorized to prepare such reports and having knowledge of the contents thereof, or who is authorized to obtain such information. The commissioner may prepare and require the use of forms for making such reports.

3. Any owner of local energy-related public utility mass real property failing to file the annual report pursuant to this section within the time specified by the commissioner shall not be entitled to judicial review of an assessment ceiling that would have been the subject of such report as provided in this title and shall be subject to a fine of one hundred dollars for each day until such report is filed in accordance with this section; provided, however, such fine shall not be applied as a tax lien; and provided, further, such owner of local energy-related public utility mass real property shall not be subject to any other fine or penalty for a violation of this section.

4. In addition to the provisions of subdivision three of this section, if an owner of local energy-related public utility mass real property fails to furnish a report required by this section within the required timeframe, the commissioner may commence a special proceeding in supreme court to compel such owner to furnish such report.

5. If an owner of local energy-related public utility mass real property fails to submit an annual report as required by this section, the assessment ceiling on the next annual assessment roll shall be calculated using the best information available to the commissioner.

6. If an owner of local energy-related public utility mass real property makes reasonable efforts to file an annual report, such owner shall not be subject to any charge or fine pursuant to this section.

§ 499-eeeee. Inspection of accounts and property of public utilities. 1. The commissioner shall, upon reasonable prior notice, have access at reasonable times to reasonable disclosure of accounts and records established and maintained by a local energy-related public utility mass real

<u>property owner relating to its local energy-related public utility mass real property.</u>

<u>2. The commissioner shall, at reasonable times in the normal business operations of the local energy-related public utility mass real property owner, and with prior notice and appointment, and not otherwise limited by federal law or regulations, have access to inspect locations where the local energy-related public utility mass real property is situated.</u>

§ 4. (a) On or before January 1, 2029 and biennially thereafter, the commissioner of taxation and finance, in consultation with owners of energy-related public utility mass real property, shall examine and evaluate whether energy-related public utility mass real property continues to constitute a "specialty" and, if not, such commissioner shall examine and evaluate alternative valuation methodologies to the reproduction cost less depreciation methodology to compute the value of local energy-related public utility mass real property, including, but not limited to, the three valuation methodologies (income, sales comparison and cost approaches), with reconciliation in accordance with nationally recognized professional appraisal practice standards.

(b) The commissioner of taxation and finance shall report to the governor, the temporary president of the senate and the speaker of the assembly his or her findings and recommendations, including any amendment of statute or regulation, related to the examination and evaluation pursuant to subdivision (a) of this section, no later than December thirty-first of the second year of such biennial period.

§ 5. This act shall take effect on January 1, 2023 and shall apply to assessment rolls with taxable status dates occurring on or after the year 2026; provided, however, that the amendments to paragraph (a) of subdivision 2 of section 200-a of the real property tax law made by section one of this act shall not affect the expiration and reversion of such section pursuant to section 4 of chapter 475 of the laws of 2013, as amended, when upon such date the provisions of section two of this act shall take effect.