§ 726. Refund of taxes. 1. If in a final order in any proceeding under this article it is determined that the assessment reviewed was excessive, unequal or unlawful, or that real property was misclassified, and ordered or directed that the same be corrected or stricken from the roll, and such order is not made in time to enable the assessors or other appropriate officer, board or body to make a new or corrected assessment or to strike such assessment from the roll prior to the imposing of any tax or special ad valorem levy upon the real property the assessment of which has been determined to be excessive, unequal or unlawful, or which has been determined to be misclassified, then any amount at any time collected upon such excessive, unequal or unlawful assessment, or as a result of such misclassification shall be refunded as follows:

(a) When such tax or other levy shall have been imposed by the board of supervisors, there shall be audited and paid to the petitioner or other person paying such tax or other levy in the same manner as county charges, the amount paid by him in excess of the amount which would have been paid had such assessment been made as determined by such order, together with interest thereon as provided in subdivision two of this section. So much of any tax or other levy, including interest thereon, as shall be refunded which was imposed for city, town, village or special district purposes, shall be charged to such city, town, village or special district. So much of the amount of any tax or other levy, including interest thereon, as shall be refunded which was imposed for other than city, town, village or special district purposes, shall be a general county charge; provided, however, that if the assessment is reduced by such order by an amount not in excess of ten thousand dollars, such portion of the amount refunded shall be charged to the city or town in which the real property is situated. However, with regard to condominiums, the amount paid by the petitioner or other person paying such tax, in excess of the amount which would have been paid had such assessment been made, as determined by such order, for assessments other than city, town, village or special district purposes, shall not be a city or town charge regardless of the amount of the reduction in the assessment.

(b) When such tax or other levy shall have been imposed by the appropriate board or body of any city, town or village, there shall be

audited and paid to the petitioner or other person paying such tax or other levy in the same manner as city, town or village charges, as the case may be, the amount paid by him in excess of the amount which would have been paid had the assessment been made as determined by such order, together with interest thereon as provided in subdivision two of this section. So much of any tax or other levy, including interest thereon, as shall be refunded which was imposed for city, town, village or special district purposes, shall be charged to such city, town, village or special district. So much of the amount of any tax or other levy, including interest thereon, as shall be refunded which was imposed for other than city, town, village or special district purposes, shall be a general county charge; provided, however, that if the assessment is reduced by such order by an amount not in excess of ten thousand dollars, such portion of the amount refunded shall be charged to the city or town in which the real property is situated. However, with regard to condominium owners, the amount paid by the petitioner or other person paying such tax, in excess of the amount which would have been paid had such assessment been made, as determined by such order, for assessments other than city, town, village or special district purposes, shall not be a city or town charge regardless of the amount of the reduction in the assessment.

(c) Any final order in a proceeding under article seven of this chapter, which orders or directs the correction or striking of an assessment appearing on that portion of a city, town or county assessment roll applicable to a school district, shall be binding on such school district. Any amount of taxes of such school district at any time collected upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order, shall be refunded by the school authorities of such school district, together with interest thereon computed as provided in subdivision two of this section. A school district which levies taxes on behalf of a school district public library, association library, municipal public library, or special district public library may charge back to such library the portion of such refund attributable to library purposes. Such refund shall be made in accordance with the procedure set forth in this section, provided, however, that application for such refund shall be made, by the petitioner or other person paying such tax,

within three years after the entry of the final order ordering or adjudging or determining such assessment to have been excessive, unequal or unlawful, or that real property was misclassified. The time of the pendency of any appeal in any such proceeding or from any such order shall not be deemed part of such three years.

* 2. Interest shall be paid on the amount of any refund made pursuant to this section, computed from the date of payment of the tax or other levy or portion thereof refunded; provided, however, that interest on the amount of any such refund for the period after any final order determining the assessment reviewed to be excessive, unequal or unlawful, or determining that real property was misclassified, notwithstanding that an appeal in the proceeding or from such order may be pending, shall be paid only from the date that application for audit and payment of such refund shall have been duly made to the appropriate fiscal officer or body. Such rate of interest shall be the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (j) of section six hundred ninety-seven of the tax law and such interest rate shall not be greater than nine percent per annum. Provided, the interest rate of the first calendar quarter set forth in the first month of the calendar year shall be the annual interest rate, and shall be the rate of interest prescribed by this subdivision. If, as a result of an appeal, there shall be an increase in the amount to be refunded, for the purposes of computing the interest thereon the determination upon such appeal shall be deemed a determination only with respect to such increase.

* NB Applies to interest chargeable on or after April 1, 2003

3. Application for the audit and payment of a tax or other levy paid upon an assessment determined upon final order to be excessive, unequal or unlawful, or paid upon an assessment of real property determined upon final order to be misclassified, must be made to the proper fiscal officer or body by the petitioner or other person paying such taxes within three years after the entry of such order; provided, however, that the time of the pendency of any appeal in any such proceeding or from any such order shall not be deemed any part of such three years.

4. Provision for the payment of all amounts charged to a city, town,

village, school district or special district pursuant to paragraphs (a), (b) and (c) of subdivision one of this section, shall be included in the next annual budget or estimate of such city, town, village, school district or special district; provided, however, that in the event the aggregate amount charged to any city, town, village, school district or special district pursuant to paragraphs (a), (b) and (c) of subdivision one of this section for any fiscal year exceeds twenty-five thousand dollars or if such amount exceeds one per centum of the full valuation thereof, such amount may be financed, in whole or in part, in the same manner as a final judgment against such city, town, village, school district or special district. Full valuation shall mean the valuation obtained by dividing the assessed valuation, as shown on the last completed assessment roll for which a state equalization rate has been established, by such state equalization rate. If a town shall issue obligations to finance the payment, in whole or in part, of the aggregate amount so charged back to such town for any fiscal year, taxes or other levies required for payment of the principal of an interest on such obligations shall be imposed in the first instance upon the entire town or such parts thereof, in the same proportion and manner, as the taxes or other levies refunded and included in such aggregate amount were imposed upon the entire town or such parts thereof.

5. (a) If the parties have so agreed, a final order may provide that a refund which is payable pursuant to this section shall be paid in installments over a specified period, not to exceed five years. The order may further provide, if the parties have so agreed, that interest shall be paid on such installments, at the rate provided by this section. Each such installment shall be audited, paid and charged back in the manner provided by this section.

(b) Notwithstanding any agreement of the parties to the contrary, in no event shall an excessive, unlawful or unequal assessment be reduced by more than is necessary to correct an excessive, unlawful or unequal assessment, or reapportioned by more than is necessary to correct a misclassification, so as to avoid paying a refund pursuant to this section.