

REAL PROPERTY TAX LAW

Chapter 517

REAL PROPERTY TAX LAW--SMALL CLAIMS TAX ASSESSMENT REVIEW PROCEEDING--PETITION

TO COMMENCE--SERVICE

AN ACT to amend the real property tax law, in relation to service of a petition to commence a small claims tax assessment review proceeding

Approved September 3, 1997, effective as provided in § 2.

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

§ 1 Section 1. Subdivision 8 of section 730 of the real property tax law, as amended by chapter 735 of the laws of 1983 and as renumbered by chapter 687 of the laws of 1985, is amended to read as follows:

8. The petitioner shall mail a copy of the petition within ten days from the date of filing with the clerk of the supreme court to: (a) the clerk of the assessing unit named in the petition, or if there be no such clerk, then to the officer who performs the customary duties of that official, or to the president of the tax commission in a city with a population of more than one million and having a tax commission; (b) the clerk of any school district, except a school district governed by the provisions of article fifty-two of the education law, within which any part of the real property on which the assessment to be reviewed is located, or if there be no clerk or [his] the clerk's name and address cannot be obtained, then to a trustee; (c) the treasurer of any county in which any part of the real property is located; and (d) the clerk of a village which has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter if the assessment to be reviewed is on a parcel located within such village. Service upon the clerk of the assessing unit or other appropriate official specified in paragraph (a) of this subdivision shall be made by personal delivery or by certified mail, return receipt requested. In the event that service is made by personal delivery, the clerk of the assessing unit or other appropriate person shall provide a receipt for such service to the petitioner stating the date and time of service. Neither the school district,

EXPLANATION--Matter underlined or in italics is new;

county nor such village shall be deemed to have been made a party § 1
to the proceeding.

§ 2. This act shall take effect on the first day of January next § 2
succeeding the date on which it shall have become a law.

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Chapter 154

REAL PROPERTY TAX LAW--SMALL CLAIMS ASSESSMENT REVIEW

AN ACT to amend the real property tax law, in relation to small claims assessment review

Approved June 28, 1993, effective as provided in § 2.

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

- § 1 Section 1. Paragraph (b) of subdivision 1 of section 730 of the real property tax law, as amended by chapter 552 of the laws of 1991, is amended to read as follows:
- (b) the property is: (i) improved by a one, two or three family owner-occupied structure used exclusively for residential purposes other than property subject to the assessment limitations of section five hundred eighty-one of this chapter and article nine-B of the real property law or (ii) the property is unimproved and is not of sufficient size as determined by the assessing unit or special assessing unit to contain a one, two or three family residential structure;
- § 2 This act shall take effect immediately, and shall apply to petitions filed against assessment rolls prepared on or after the first day of January next succeeding the date on which it shall have become a law.

EXPLANATION--Matter underlined or in *italics* is new;

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19₉₀; that a copy of said resolution is hereto annexed marked Exhibit “₉₁”, and made a part of this petition.

19. On the ₉₂ day of ₉₃, 19₉₄, your petitioner caused to be served upon ₉₅, Comptroller, of the County of ₉₆, ₉₇, Chairman of the Board of Supervisors of the County of ₉₈, ₉₉, Clerk of the Board of Supervisors of the County of ₁₀₀, ₁₀₁, Treasurer of the County of ₁₀₂, and ₁₀₃, attorney of the County of ₁₀₄, a duly verified claim for the refund pursuant to the terms of said final order in the aforesaid review proceedings, a copy of which proof of claim is hereto annexed, marked Exhibit “₁₀₅,” and made a part of this petition.

20. Thereafter and on or about the ₁₀₆ day of ₁₀₇, 19₁₀₈, the said Board of Supervisors adopted a resolution rejecting the said claim, a copy of which resolution is hereto annexed, marked Exhibit “₁₀₉”, and made a part of this petition.

21. Theretofore in cases where refund of County taxes has been directed by the Supreme Court in review proceedings because of erroneous assessments, the amount of State and County taxes directed to be refunded has been paid by direction of the Board of Supervisors from County funds.

22. The said Board of Supervisors of the County of ₁₁₀ has refused and neglected to take such proceedings as are necessary to refund to your petitioner the proportionate amount of the State and County Taxes paid by your petitioner as directed by the aforesaid final order in review proceedings, and has unlawfully rejected the same.

WHEREFORE your petitioner prays that the proceedings and determination of the Board of Supervisors of ₁₁₁ County relating to the claim of your petitioner hereinbefore set forth be reviewed to the end that the action of said Board of Supervisors in rejecting the aforesaid claim of your petitioner may be annulled and your petitioner's said claim allowed; and for said other or different relief as may be proper.

[Signature]
[Attorney for petitioner]
[Address and Telephone No.]

[Verification]

TITLE 1-A

Special Proceeding for Small Claims Assessment Review

- Section 729. Definitions
- 730. Procedure to review small claims
- 731. Appointment of hearing officers
- 732. Hearing procedures
- 733. Decision of petition for small claims assessment review
- 734. Refund of taxes resulting from small claims assessment review
- 735. Determination not precedent
- 736. Waiver of other remedies and right to judicial review
- 737. Rules of practice and procedure
- 738. Residential assessment ratio

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).

NOTES:**Editor's Notes:**

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.).

CROSS REFERENCES:

This title referred to in § 731.

CODES, RULES AND REGULATIONS:

Assessor's report for equalization purposes and of exempt property for all assessment rolls beginning with those filed in the year 1984. 9 NCYRR §§ 193-3.1 et seq.

CASE NOTES

CLS Real P Tax Art 7 Title 1-A, establishing small claims assessment review program, is constitutional; differentiation between owners of one-, 2- and 3-family residences and other property owners is rationally related to legitimate government purpose, classification does not violate equal protec-

tion by establishing differentiation that is arbitrary, and small claims procedure, contemplating possibility of correction in assessment, is not in conflict with town's option under CLS Real P Tax Art 19. *Tonawanda v Ayler* (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

§ 729. Definitions

When used in this title:

1. "Assessed valuation" or "assessed value" means the determination made by assessors or the board of assessment review of the valuation of real property, including the valuation of exempt real property.
2. "Excessive assessment" or an assessment which is excessive shall mean and include:
 - (a) an entry on an assessment roll of the assessed valuation of real property which exceeds the full value of such real property; or
 - (b) an entry on an assessment roll of the taxable assessed valuation of real property which is excessive because the real property failed to receive all or a portion of a partial exemption to which the real property or owner thereof is entitled pursuant to the law authorizing the partial exemption.
3. "Taxable assessed valuation" or "taxable assessed value" means the assessed valuation of real property less partial exemptions.
- 3-a. "Tax district" means a county, city, town, village, school district or special district by or on behalf of which a tax or special ad valorem levy is imposed.
4. "Unequal assessment" or an assessment which is unequal shall mean and include:

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- (a) an entry on an assessment roll of the assessed valuation of real property improved by a one, two or three family residential structure which is made at a higher proportion of full value than assessed valuation of other residential real property on the same roll; or
- (b) an entry on an assessment roll of the assessed valuation of real property which is made at a higher proportion of full value than the assessed valuation of all real property on the same roll.

HISTORY:

Add, L 1982, ch 714, § 20, eff Jan 1, 1983.
 Sub 3-a, add, L 1985, ch 687, § 1, eff Aug 1, 1985.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment § 450.

Texts:

NY Real Property Service § 61:44.

CASE NOTES

Use of residential assessment ratios and residential comparables in small claims assessment review procedure is constitutional. *Tonawanda v Ayler* (1985, 4th Dept) 115 App Div 2d 940, 497 NYS2d 781, affd (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

§ 730. Procedure to review small claims

1. The chief administrator of the courts shall establish a small claims assessment review program in the supreme court. An owner of real property claiming to be aggrieved by an assessment on real property on the ground that such assessment is unequal or excessive may file a petition for review pursuant to this article provided that:

- (a) the property owner shall have first filed a complaint pursuant to section five hundred twenty-four or section fourteen hundred eight of this chapter or the provisions of a local law or charter providing for administrative review of assessments;
- (b) the property is improved by a one, two or three family owner-occupied structure used exclusively for residential purposes other than property subject to the assessment limitations of section five hundred eighty-one of this chapter and article nine-B of the real property law;
- (c) the equalized value of the property does not exceed one hundred fifty thousand dollars or, in the event such equalized value exceeds one hundred fifty thousand dollars, the total assessment reduction requested does not exceed twenty-five percent of the assessed value of the property; and
- (d) the petition shall not request an assessment lower than that requested in the complaint filed pursuant to section five hundred twenty-four or fourteen hundred eight of this chapter or the provisions of a local law or charter providing for administrative review of assessments.

For the purpose of this section, the equalized value of the property shall equal the assessed value of the property divided by the most recent equalization rate or, in the case of a special assessing unit, the most recent class one ratio, when established. In the event there has been a material change in the

level of assessment the special equalization rate shall be used to determine the equalized value of the property.

2. Upon determining any such complaint every real property tax board of assessment review shall inform every owner of one, two or three family owner-occupied residential real property in writing of the right to small claims assessment review in the manner provided by subdivision four of section five hundred twenty-five of this chapter. Such notice shall specify the last date on which petitions must be filed and the location where small claims assessment review forms may be obtained. The petition form for small claims assessment review shall be provided to such property owner, upon request, at no cost in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title.
3. The petition for review pursuant to this title shall be filed within thirty days after the completion and filing of the final assessment roll containing such assessment or, in a city with a population of one million or more, before the twenty-fifth day of October following the time when the determination sought to be reviewed was made, in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title. A fee of twenty-five dollars shall be paid upon filing of each petition, which shall be the sole fee required for petitions filed pursuant to this title. The county clerk of each county outside the city of New York shall retain five dollars of each filing fee and shall pay the balance of each fee to the state commissioner of taxation and finance as provided in paragraph (e) of subdivision two of section thirty-nine of the judiciary law. For the purposes of this section an assessment roll shall not be considered finally completed and filed until the last day provided by law for the filing of such assessment roll or until notice thereof has been given as required by law, whichever is later. Failure to file the petition within such time shall constitute a complete defense to the petition and the petition must be dismissed.
4. The petition form for small claims assessment review shall be prescribed by the office of court administration after consultation with the state board. Such form shall require the petitioner to set forth his name, address and telephone number, a description of the real property for which small claims assessment review is sought, the name of the assessing unit having made the assessment, the amount of the assessment and of the reduction in assessed valuation or taxable assessed valuation requested, each tax district which utilizes such assessment and the tax rate or adjusted tax rate of each tax district or consolidated tax rate, if applicable, a concise statement of the ground or grounds upon which review is sought and any such other information as may be required by the office of court administration.
5. No petition for small claims assessment review shall relate to more than one parcel of real property.
6. The petition may be made by a person who has knowledge of the facts stated therein and who is authorized in writing by the property owner to file

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such petition. Such written authorization must be made a part of such petition and bear a date within the same calendar year during which the complaint is filed.

7. Commencement of a proceeding under this article shall not stay the proceedings of the assessors or other persons against whom the proceeding is maintained or to whom the assessment is delivered, to be acted upon according to law.

8. The petitioner shall mail a copy of the petition within ten days from the date of filing with the clerk of the supreme court to: (a) the clerk of the assessing unit named in the petition, or if there be no such clerk, then to the officer who performs the customary duties of that official, or to the president of the tax commission in a city with a population of more than one million and having a tax commission; (b) the clerk of any school district, except a school district governed by the provisions of article fifty-two of the education law, within which any part of the real property on which the assessment to be reviewed is located, or if there be no clerk or his name and address cannot be obtained, then to a trustee; (c) the treasurer of any county in which any part of the real property is located; and (d) the clerk of a village which has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter if the assessment to be reviewed is on a parcel located within such village. Neither the school district, county nor such village shall be deemed to have been made a party to the proceeding.

HISTORY:

- Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).
 Sub 1, add, L 1984, ch 473, § 18; amd, L 1986, ch 858, § 1, L 1987, ch 221, § 1, L 1991, ch 552, § 1, eff Jan 1, 1992.
 Former sub 1, amd, L 1982, ch 531, § 1, L 1982, ch 714, § 21; repealed, L 1984, ch 473, § 18, eff July 20, 1984.
 Sub 1, par (a), amd, L 1991, ch 552, § 1, eff Jan 1, 1992.
 Sub 1, par (b), amd, L 1991, ch 552, § 1, eff Jan 1, 1992.
 Former sub 1, par (b), repealed, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Sub 1, par (d), amd, L 1991, ch 552, § 1, eff Jan 1, 1992.
 Sub 2, amd, L 1982, ch 714, § 21, eff Jan 1, 1983.
 Sub 3, amd, L 1982, ch 531, § 2, L 1983, ch 357, § 1, eff June 26, 1983 (see 1983 note below).
 Sub 4, add, L 1984, ch 473, § 18, eff July 20, 1984.
 Former sub 4, amd, L 1982, ch 531, § 3, L 1982, ch 714, § 21; repealed, L 1984, ch 473, § 18, eff July 20, 1984.
 Sub 5, formerly sub 6, renumbered sub 5, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Former sub 5, amd, L 1982, ch 531, § 4; repealed, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Sub 6, formerly sub 7, renumbered sub 6, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Former sub 6, renumbered sub 5, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Sub 7, formerly sub 8, renumbered sub 7, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Former sub 7, renumbered sub 6, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Sub 8, formerly sub 9, add, L 1982, ch 531, § 5; amd, L 1983, ch 735, § 23; renumbered sub 8, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Former sub 8, renumbered sub 7, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Sub 9, renumbered sub 8, L 1985, ch 687, § 2, eff Aug 1, 1985.
 Former sub 9, add, L 1981, ch 1022, § 1; repealed, L 1982, ch 531, § 5, eff July 13, 1982.

NOTES:

Editor's Notes:

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.)

Laws 1983, ch 357, § 2, eff June 26, 1983, provides as follows:

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect from and after July thirteenth, nineteen hundred eighty-two. For the purposes of this act, payments of moneys to the state comptroller pursuant to provisions of subdivision three of section seven hundred thirty of the real property tax law, in effect prior to amendment by the provisions of this act, shall be deemed to have been payments to the commissioner of taxation and finance.

CROSS REFERENCES:

This section referred to in § 733.

City school districts of cities with one hundred twenty-five thousand inhabitants or more, CLS Educ §§ 2550 et seq.

Condominium Act, CLS Real P §§ 339-d et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.

99 NY Jur 2d, Taxation and Assessment §§ 450, 453, 454.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:154.

72 Am Jur 2d, State and Local Taxation §§ 1142, 1143.

Texts:

NY Real Property Service §§ 61:44, 62:53, 62:54.

CASE NOTES

1. In general
2. Constitutionality
3. Mixed use parcel
4. Seasonal residence
5. Corporate-owned property
6. Condominiums
7. Joining parcels
8. Limitations period
9. Miscellaneous

1. In general

In an Article 78 proceeding, brought to compel a town to comply with a decision of a hearing officer directing a reduction in petitioner's real property assessment and a refund in excess taxes paid by him, based on a small claims assessment review under Real P Tax Law § 730, Special Term should have dismissed the petition without prejudice on the basis that the hearing officer had no authority to entertain the application for small claims assessment review, where the petitioner had not complied with requirements of Real P Tax Law § 730(1)(a) by not occupying the property, and where the tax reduction sought clearly exceeded the \$750 limit set forth in Real P Tax Law § 730(1)(a)(3) so that the hearing officer's decision was void for lack of subject matter jurisdiction. *Tyrrell v Greenville* (1985, 3d Dept) 108 App Div 2d 1092, 485 NYS2d 659.

In CPLR article 78 proceedings challenging the decisions by Hearing Officers in small claims assessment review proceedings (RPTL art 7, tit 1-A), petitioner homeowners have not waived their right to seek a determination of a different assessment ratio by not bringing a tax certiorari proceeding since the object of petitioners' small claims assessment review proceedings was to obtain a change in their individual assessments on the ground of inequality, relief that a title 1-A proceeding is expressly designed to provide, by application of the residential assessment ratio promulgated by the State Board of Equalization and Assessment, not by a change of that ratio. *Agosh v Cicero Bd. of Assessment Review* (1991) 150 Misc 2d 756, 570 NYS2d 876.

In determining eligibility for small claims assessment review in special assessing units, "equalized value" is determined by dividing assessed value of real property by latest class ratio established for class 1 property. 8 Op Counsel SBEA No. 87.

Whether to dismiss a small claims assessment review petition on the ground that copies of the petition were not mailed to local government officials as required by Real Prop Tax § 730(a) is within the discretion of the hearing officer. Although aware of the decision in *Dolan v. City of New Rochelle*, Supreme Court, Westchester County, Index No. 2679/84, n.o.r., which held that the failure of a petitioner to mail copies of the petition to the assessing unit and the school dis-

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strict was jurisdictionally fatal, it was added, whether other courts would follow the ruling in the Dolan case is unclear, particularly in view of the harsh result in a proceeding which is, by statute, informal. 9 Op Counsel SBEA No. 19 (1987).

Award of costs to a small claims assessment review petitioner whose petition is dismissed on jurisdictional grounds, that is, on the ground that the eligibility requirements provided in § 730 of the Real Property Tax Law were not satisfied, is void and cannot be enforced against the respondent assessing unit. 9 Op Counsel SBEA No. 27 (1988).

2. Constitutionality

CLS Real P Tax Art 7 Title 1-A, establishing small claims assessment review program, is constitutional; differentiation between owners of one-, 2- and 3-family residences and other property owners is rationally related to legitimate government purpose, classification does not violate equal protection by establishing differentiation that is arbitrary, and small claims procedure, contemplating possibility of correction in assessment, is not in conflict with town's option under CLS Real P Tax Art 19. *Tonawanda v Ayler* (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

Use of residential assessment ratios and residential comparables in small claims assessment review procedure is constitutional. *Tonawanda v Ayler* (1985, 4th Dept) 115 App Div 2d 940, 497 NYS2d 781, aff'd (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

3. Mixed use parcel

Psychiatrist, as owner of single-family residence, was entitled to small claims assessment review under CLS RPTL § 730 to contest real property tax assessment, even though residence was used on occasion as part-time office in rendering professional services, since residential taxpayers who occasionally use portion of their homes for business are no more able to expend time and cost of regular tax certiorari proceeding than those who use their dwellings exclusively for residential purposes. *New Castle v Kaufmann* (1988) 72 NY2d 684, 536 NYS2d 37, 532 NE2d 1265.

Mixed-use parcels, which are improved by qualifying residential structures, are eligible for small claims assessment review; however, such review should be limited to the portion of the parcel used for residential purposes. The question of eligibility of mixed-use structures has been disposed of by Chapter 531 of Laws of 1982, which amended § 730(1)(a)(2) of the Real Property Tax Law to explicitly provide that only structures used exclusively for residential purposes qualify for small claims assessment review. However, there has been no legislation to resolve the status of mixed-use parcels (i.e., used partly for residential purposes and partly for commercial or other nonresidential purposes). In the analysis of the latter issue, there is an unstated presumption that the values attributed to the residential and nonresidential portions are readily identifiable. In nearly all the instances in which the question of eligibility of nonresiden-

tial portions of a parcel has arisen, the petitioners have based their challenges on the values attributed to such portion as shown on property record cards maintained by the assessor. The use of the data indicated on such cards and other work products of the assessor seem adequate for the purpose of ascertaining the value attributed to the respective portions of a parcel. Accordingly, while mixed-use parcels improved by residential structures and otherwise meeting the requisites for review do qualify for small claims review, such review should be limited to the portions of the parcel used for residential purposes. 9 Op Counsel SBEA No. 43 (1991).

4. Seasonal residence

A seasonal residence may qualify for small claims assessment review, provided that during the period it is in use it is occupied by its owner. 7 Op Counsel SBEA No. 80 (1982).

5. Corporate-owned property

Real property owned by corporation does not qualify for small claims assessment review. 8 Op Counsel SBEA No. 93.

6. Condominiums

Condominiums in special assessing units which are classified as "class one" properties and condominiums in approved assessing units which are classified as "homestead" properties are eligible for small claims assessment review under CLS RPTL 730. 9 Op Counsel SBEA No. 3.

7. Joining parcels

RPTL 730 (5) clearly and unequivocally prohibits petitioner from seeking to join his two separately assessed lots in one petition for small claims assessment review; RPTL 730 (5) provides that "[n]o petition for small claims assessment review shall relate to more than one parcel of real property", and "parcel" is defined as separately assessed lot, parcel, piece or portion of real property; lots for which petitioner seeks small claims assessment review are separately assessed lots covered by definition—fact that petitioner uses two lots, one containing his residence and other containing tennis court and guesthouse-servant quarters, as one parcel, will not permit him to treat his property as one parcel for purposes of small claims assessment review. *Kline v Rye* (1989, 2d Dept) 150 App Div 2d 576, 541 NYS2d 840, app den (1989) 74 NY2d 614, 547 NYS2d 848, 547 NE2d 103.

8. Limitations period

Four month time limitation period to review small claims real property tax assessment under CLS RPTL §§ 729 et seq., begins to run from date of hearing officer's decision and not from date of filing of final assessment role. *Katz v Assessor of Southampton* (1986) 131 Misc 2d 552, 500 NYS2d 588.

9. Miscellaneous

One person may serve simultaneously as town justice, as a member of the zoning board of ap-

peals of a village within the town and, where the town justice does not serve on the town board, as a member of the town board of assessment review. Ops Atty Gen 84-14.

§ 731. Appointment of hearing officers

1. The chief administrator of the courts shall appoint a panel of small claims hearing officers selected from persons requesting to serve as such hearing officers who shall have submitted resumes of qualifications. Hearing officers to be appointed to the panel shall be qualified by training, interest, experience, temperament and knowledge of real property assessment and valuation practices and provisions of state and local law governing the making of assessments, but need not be attorneys at law. The chief administrator of the court shall randomly assign a hearing officer or hearing officers, or may assign a judicial hearing officer designated pursuant to article twenty-two of the judiciary law, to conduct an informal hearing on the petition for review with the applicants for small claims and a representative of the assessing unit which made the assessment sought to be reviewed. Hearing officers assigned shall be familiar with the assessing unit in which the real property subject to review is located, and shall not possess any conflict of interest as defined by the public officers law with regard to the petitions to be heard. Hearing officers shall be compensated for their services in accordance with a fee schedule to be established by the chief administrator of the courts. For purposes of subdivisions two and three of this section and the other provisions of this title, the term "hearing officer" shall include a judicial hearing officer.

2. A hearing officer shall disqualify himself or herself from a hearing where such officer possesses a conflict of interest as defined by the public officers law. Such hearing officer shall also disqualify himself or herself from a hearing where such hearing officer has a direct or indirect interest in any property for which a petition has been filed. For the purposes of this title, a hearing officer shall be deemed to have a direct or indirect interest in any property for which a petition has been filed when the hearing officer, spouse, or any of his or her minor children:

(a) is the owner of such property; or

(b) is an officer, director, partner or associate of a law firm or real estate firm which has a financial interest with the owner of such property.

3. Where a hearing officer disqualifies himself or herself, such hearing officer shall notify the chief administrator of the court who shall reassign the case to another hearing officer.

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).

Sub 1, formerly entire section, so numbered, L 1985, ch 687, § 3; amd, L 1992, ch 55, § 413, eff April 10, 1992.

Sub 2, add, L 1985, ch 687, § 3, eff Aug 1, 1985.

Sub 3, add, L 1985, ch 687, § 3, eff Aug 1, 1985.

NOTES:

Editor's Notes:

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

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§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.)

RESEARCH REFERENCES AND PRACTICE AIDS:

- 98 NY Jur 2d, Taxation and Assessment §§ 450-464.
- 24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:156.
- 72 Am Jur 2d, State and Local Taxation § 1151.

Texts:

- NY Real Property Service § 62:56.

CASE NOTES

In small claims assessment review proceedings, the fact that the Hearing Officer had previously been the town's assessor and as such had fixed assessments on the subject properties, did not require that he disqualify himself by reason of a conflict of interest (RPTL 731 [2]) and, thus, the

attack made on the participation of the Hearing Officer in the proceedings arising out of a previous employment is not a basis for disturbing his determinations. *Agosh v Cicero Bd. of Assessment Review* (1991) 150 Misc 2d 756, 570 NYS2d 876.

§ 732. Hearing procedures

1. Small claims hearings shall be held within forty-five days after the final day for filing petitions. In the event all such hearings cannot be held within forty-five days, hearings may be held at a later date in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title. Such hearing, where practicable, shall be held at a location within the county in which the real property subject to review is located. The petitioner and assessing unit shall be advised by mail of the time and place of such hearing at least ten working days prior to the date of the hearing; provided, however, failure to receive such notice in such time period shall not bar the holding of a hearing.
2. The petitioner need not present expert witnesses nor be represented by an attorney at such hearing. Such proceedings shall be conducted on an informal basis in such manner as to do substantial justice between the parties according to the rules of substantive law. The petitioner shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence. All statements and presentation of evidence made at the hearing by either party shall be made or presented to the hearing officer who shall assure that decorum is maintained at the hearing. The hearing officer shall consider the best evidence presented in each particular case. Such evidence may include, but shall not be limited to, the most recent equalization rate established for such assessing unit, the residential assessment ratio promulgated by the state board pursuant to section seven hundred thirty-eight of this title, and the assessment of comparable residential properties within the same assessing unit. A village which has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter shall be deemed an assessing unit for purposes of this subdivision. The hearing officer may, if he deems appropriate, view or inspect the real property subject to review. The petitioner shall have the burden of proving entitlement to the relief sought.

3. All parties are required to appear at the hearing. Failure to appear shall result in the petition being determined upon inquest by the hearing officer based upon the available evidence submitted.
4. The hearing officer shall determine all questions of fact and law de novo.

HISTORY:

Add, L 1981, ch 1022, § 1; amd, L 1985, ch 687, § 4, eff Aug 1, 1985.
 Sub 1, amd, L 1982, ch 531, § 6, L 1985, ch 687, § 4, eff Aug 1, 1985.
 Sub 2, amd, L 1983, ch 735, § 24, L 1985, ch 687, § 4, eff Aug 1, 1985.
 Sub 3, add, L 1986, ch 858, § 4, eff Aug 2, 1986.
 Former sub 3, renumbered sub 4, L 1986, ch 858, § 4, eff Aug 2, 1986.
 Sub 4, formerly sub 3, renumbered sub 4, L 1986, ch 858, § 4, eff Aug 2, 1986.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.
 24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:155.
 72 Am Jur 2d, State and Local Taxation § 1151.

Texts:

NY Real Property Service §§ 61:44, 62:55.

CASE NOTES

Determination of small claims hearing officer that state equalization rate was best evidence presented of ratio of assessed value to fair value of other residential properties on assessment roll of village rather than residential assessment ratio promulgated by state board does not constitute error of law. *Katz v Assessor of Southampton* (1986) 131 Misc 2d 552, 500 NYS2d 588.

In a year in which the assessing unit implements a revaluation or update, the residential assessment ratio (RAR) should not be accorded any probative value in the review of assessment. The RAR is a simple arithmetic computation derived by dividing the total assessments by total sales prices of all residential parcels in an assessing unit which was sold at arms length between the filing of the latest final assessment roll, and would not be a valid measure of the level of assessment in

the current assessment roll, because there has been a change in the level of assessment. The result is that the use of the RAR in reviewing assessments on the current or revalued assessment roll would be an inappropriate comparison. While § 738(2) of the RPTL does authorize the adjustment of the RAR to account for a change in level of assessment of 5 percent or more, State Board's Rules provide that such adjustment must be made no later than 60 days prior to the filing of the tentative assessment roll. The result is that only a change in the level of assessment on the previous assessment roll would be accounted for in the current RAR. A change in level of assessment on the current assessment roll would not be accounted for until the next RAR is established. 9 Op Counsel SBEA No. 40 (1991).

§ 733. Decision of petition for small claims assessment review

1. The hearing officer shall make a decision in writing with respect to the petition for small claims assessment review within thirty days after conclusion of the hearing conducted with respect thereto. The hearing officer's decision may grant the petition in full or in part or may deny the petition provided, however, that the decision of the hearing officer may not reduce the assessment lower than that requested by the petitioner. If the assessment is reduced by an amount equal to or greater than half the reduction sought, the hearing officer shall award the petitioner costs against the respondent assessing unit in an amount equal to the fee paid by the petitioner to file the petition for review. If the assessment is reduced by an amount less than half of the reduction sought, the hearing officer may award the petitioner costs against the respondent assessing unit in an amount not to exceed the fee paid by the petitioner to file the petition for review.

2. If the hearing officer determines from the petition and upon the evidence presented at the hearing that the assessment being reviewed is unequal or excessive, he shall order a correction of the assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law or shall make it conform to other residential assessments upon the same roll.

3. If the hearing officer determines that the petitioner did not qualify for review pursuant to section seven hundred thirty of this title, the petition shall be denied without prejudice and the petitioner, notwithstanding any other provision of law, shall be permitted to commence a proceeding pursuant to title one of this article within thirty days after having been served with a certified copy of the decision; provided, however, that the petitioner may, with the consent of the hearing officer, amend the petition to reduce the amount of relief sought so as to conform with the requirements of section seven hundred thirty of this title.

4. The decision of the hearing officer shall state the findings of fact and the evidence upon which it is based. Such decisions shall be attached to and made part of the petition for review and shall be dated and signed. Where the decision of the hearing officer determines that the petitioner did not qualify for review pursuant to section seven hundred thirty of this article, a notice shall be attached to such decision stating that the petitioner may seek judicial review of such assessment pursuant to this article, and that the last day to file for judicial review is thirty days after having been served with a certified copy of such decision. Where the decision of the hearing officer determines that the petition is granted in full or in part, a notice shall be attached to such decision stating that the assessment will be changed in compliance with such decision and that such change shall be made on the assessment and tax rolls before the levy of taxes, if possible, or that a refund of taxes shall be made within ninety days after such decision is made, or as is provided in Nassau and Suffolk counties, followed by name, telephone number and/or address of a person or department responsible to take the actions required by section seven hundred thirty-four of this article.

5. The hearing officer shall promptly transmit the decision to the clerk of the court, who shall file and enter it in accordance with the rules promulgated pursuant to section seven hundred thirty-seven of this title.

6. The hearing officer shall, promptly mail a copy of the decision to the petitioner, the clerk of the assessing unit, and the clerk of each tax district named in the petition.

HISTORY:

- Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).
- Sub 1, amd, L 1981, ch 1023, § 1, L 1986, ch 858, § 2, eff Aug 2, 1986.
- Sub 2, amd, L 1982, ch 714, § 22, eff Jan 1, 1983.
- Sub 3, amd, L 1982, ch 531, § 7, eff July 13, 1982.
- Sub 4, amd, L 1986, ch 858, § 3, eff Aug 2, 1986.

NOTES:**Editor's Notes:**

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be

filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.)

CROSS REFERENCES:

This section referred to in § 736.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes §§ 146:157, 146:160.

72 Am Jur 2d, State and Local Taxation § 1152.

Texts:

NY Real Property Service § 62:57.

CASE NOTES

A petition to compel a town to comply with the determination of a hearing officer pursuant to Real P Tax Law Title 1-a, directing a reduction of the assessment of petitioner's real property and a refund of the excess taxes paid, would be dismissed, without prejudice to petitioner's commencing a new proceeding; the hearing officer had no authority to entertain the application for a small claims assessment review since petitioner did not comply with the requirements of § 730(1)(a) as petitioner did not occupy the property and the tax reduction sought clearly exceeded the \$750 limit. The hearing officer's decision was thus void for lack of subject matter jurisdiction. *Tyrrell v Greenville* (1985, 3d Dept) 108 App Div 2d 1092, 485 NYS2d 659.

In small claims assessment review proceedings, the determinations of the Hearing Officers were not rendered arbitrary and capricious by their failure to state the appropriate percentage of fair value to be applied in determining each assessment since there is no statutory requirement that a ratio be stated in a Hearing Officer's decision (RPTL 733 [4]) or even that one be computed by the Hearing Officer, whose task is to determine whether the challenged assessment is unequal or excessive, a function that could be performed by comparisons of values and assessments without the

intermediate step of ratio computation. In addition, the finding that each petitioner failed to present sufficient proof to overcome a presumption that the assessment was correct or to support the claim of unequal assessment provides a basis for the decisions rendered. *Agosh v Cicero Bd. of Assessment Review* (1991) 150 Misc 2d 756, 570 NYS2d 876.

A board of assessment review may not reduce an assessment to an amount less than that requested in a complaint, notwithstanding authority of a court to do so under appropriate circumstances. 7 Op Counsel SBEA No. 83 (1982).

The failure to enter on the current assessment roll small claims assessment review deductions ordered upon the prior year's roll does not constitute a "clerical error" pursuant to CLS RPTL 550. 9 Op Counsel SBEA No. 12.

Award of costs to a small claims assessment review petitioner whose petition is dismissed on jurisdictional grounds, that is, on the ground that the eligibility requirements provided in § 730 of the Real Property Tax Law were not satisfied, is void and cannot be enforced against the respondent assessing unit. 9 Op Counsel SBEA No. 27 (1988).

§ 734. Refund of taxes resulting from small claims assessment review

1. If in a final order in any proceeding under this title, it is determined that the assessment reviewed was excessive or unequal pursuant to section seven hundred thirty of this title and ordered or directed that the same be corrected 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 prior to the expiration of the warrant for the collection of any tax or special ad valorem levy upon the real property the assessment of which has been determined to be excessive or unequal, then any amount at any time collected upon such excessive or unequal assessments shall be refunded within ninety days of such decision in the same manner as provided for in section seven hundred twenty-six of this chapter or as is otherwise provided

by law with respect to Nassau and Suffolk counties, provided, however, that no application need be made by the petitioner for such refund. The notice of the hearing officer to the clerk of the tax district shall constitute an application for refund for the purpose of this section. Where a refund is not made within ninety days, interest in the amount of one percent per month shall be added to the amount to be refunded for each month or part thereof in excess of ninety days and paid to the petitioner. Notwithstanding paragraph (a) or (b) of subdivision one of section seven hundred twenty-six of this chapter, where an assessment reduction is not in excess of ten thousand dollars the amount of tax or other levy, including interest thereon, to be refunded shall be charged to the municipal corporation or special district by or on behalf of which they were levied; or as is otherwise provided by law with respect to Nassau and Suffolk counties.

2. In a city having a population of one million or more, the notice of the hearing officer shall be mailed to the office of the city collector.

HISTORY:

- Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 8, L 1982, ch 714, § 23, eff Jan 1, 1983.
 Sub 1, formerly entire section, so numbered and amd, L 1982, ch 531, § 8; amd, L 1984, ch 832, § 1, eff Jan 1, 1985.
 Sub 2, add, L 1982, ch 531, § 8, eff July 13, 1982.

CROSS REFERENCES:

This section referred to in § 733.

RESEARCH REFERENCES AND PRACTICE AIDS:

- 98 NY Jur 2d, Taxation and Assessment §§ 450-464.
 24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:158.
 72 Am Jur 2d, State and Local Taxation § 1064.

Texts:

NY Real Property Service § 62:58.

CASE NOTES

Rate of interest applicable to a refund in a small claims assessment review proceeding is 1 percent per month (or fraction thereof) beginning on the ninety-first day after receipt of the hearing officer's decision by clerk of tax district. 7 Op Counsel SBEA No. 109 (1982).

Refund of taxes due as result of judicially ordered reduction in assessed value should be paid to mortgagor rather than mortgagee holding escrow account, unless mortgagor has defaulted in mortgage. 8 Op Counsel SBEA No. 123.

§ 735. Determination not precedent

No transcript of testimony shall be made of a small claims assessment review hearing. The hearing officer's decision of a petition for small claims assessment review shall not constitute precedent for any purpose or proceeding involving the parties or any other person or persons.

HISTORY:

Add, L 1981, ch 1022, § 1, eff Nov 6, 1981 (see 1981 note below).

NOTES:**Editor's Notes:**

Laws 1981, ch 1022, § 4, eff Nov 6, 1981, provides as follows:

§ 4. This act shall take effect immediately, provided, however, petitions may only be filed against assessments on final assessment rolls filed on or after January first next succeeding the date on which it shall have become a law. (Amd, L 1982, ch 700, § 1, eff July 22, 1982, deemed eff Nov 6, 1981.).

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:159.

Texts:

NY Real Property Service § 62:59.

§ 736. Waiver of other remedies and right to judicial review

1. Except as provided in subdivision three of section seven hundred thirty-three of this title, the election to file a small claims real property assessment review petition shall be irrevocable and shall constitute a waiver of the right to commence a review proceeding under title one of this article upon the conclusion of the hearing.

2. A petitioner to an action pursuant to this title may seek judicial review pursuant to article seventy-eight of the civil practice law and rules provided that such review shall be maintained against the same parties named in the small claims petition.

HISTORY:

Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 9, eff July 13, 1982.

CROSS REFERENCES:

Proceeding against body or officer, CLS CPLR §§ 7801 et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:160.

Texts:

NY Real Property Service § 62:60.

CASE NOTES

Appeal does not lie from decision of hearing officer in proceeding brought under CLS RPTL Art 7, Title 1-A; review is by way of CLS CPLR § 7801. *Kuchmak v Waldmiller* (1987, 4th Dept) 135 App Div 2d 1147, 523 NYS2d 329.

A petition to compel a town to comply with the determination of a hearing officer pursuant to Real P Tax Law Title 1-a, directing a reduction of the assessment of petitioner's real property and a refund of the excess taxes paid would be dismissed, without prejudice to petitioner's commencing a

new proceeding; the hearing officer had no authority to entertain the application for a small claims assessment review since petitioner did not comply with the requirements of § 730(1)(a) as petitioner did not occupy the property and the tax reduction sought clearly exceeded the \$750 limit. The hearing officer's decision was thus void for lack of subject matter jurisdiction. *Tyrrell v Greenville* (1984) 124 Misc 2d 54, 475 NYS2d 779, revd on other grounds (1985, 3d Dept) 108 App Div 2d 1092, 485 NYS2d 659.

§ 737. Rules of practice and procedure

The chief administrator of the courts shall adopt such rules of practice and procedure, not inconsistent herewith, as may be necessary to implement the small claims assessment review procedure hereby established. Such rules shall provide for the scheduling of evening hearings where practicable, the

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availability of petition forms, and the procedures for the filing of decision rendered by hearing officers pursuant to the provisions of this title.

HISTORY:

Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 10, eff July 13, 1982.

CROSS REFERENCES:

This section referred to in §§ 730, 732, 733.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 450-464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes §§ 146:155, 146:161.

Texts:

NY Real Property Service § 62:61.

§ 738. Residential assessment ratio

1.(a) For the purposes of this title, thirty days prior to the date for the filing of the tentative assessment roll of an assessing unit, the state board shall determine the residential assessment ratio for such assessing unit provided that (i) at least five arms length sales of residential property have occurred between the filing of the latest final assessment roll and the filing of the preceding final assessment roll, and (ii) during the current year the assessing unit is not completing a revaluation or update.

(b) Such ratio shall be established as the median ratio in the list of ratios of assessments to sales prices sorted in ascending order. The ratios in such list shall be calculated by dividing the assessment of each residential property sold at arms length during this period by the sales price of each such property located in each assessing unit as reported pursuant to section five hundred seventy-four of this chapter or, in the city of New York, chapter twenty-one of title eleven of the administrative code of the city of New York; provided that the state board shall correct to the extent practicable or disregard materially erroneous reports and shall increase or decrease the residential assessment ratio to account for a change in level of assessment of five percent or more in the total assessed value of residential real property or, if not available, of all taxable real property. For purposes of this section, "change in level of assessment" has the meaning set forth in section twelve hundred twenty of this chapter except that a change in level of assessment shall be determined with reference only to residential real property if the necessary information is available. The state board shall, in addition to promulgating such ratio, indicate the number of sales upon which such ratio is determined.

(c) The residential assessment ratio shall be made available at the office of the county director of real property tax services, the office of the county clerk and the office of the assessor or, in a city with a population of one million or more, the office of the tax commissioner of such city. Such ratio shall be provided to the office of court administration for distribution to small claims hearing officers.

2. If, no later than thirty days prior to the filing and completion of the final assessment roll, an assessor or county director of real property tax services presents to the state board adequate documentation or such documentation is otherwise made available to the state board that the residential assessment ratio is otherwise materially in error because it includes sales of non-residential properties or because the full sales prices or applicable assessed values as stated on real property transfer report forms or, in the case of the city of New York, their equivalent are incorrect, then the state board shall recompute such ratio by excluding the sales of such properties or making the appropriate corrections. Where such recomputation results in a substantial change the state board shall establish a new ratio prior to the filing of the final assessment roll by such assessing unit and such new ratio shall supersede for all purposes the original ratio. Such new ratio shall be made available in the same manner as provided in subdivision one of this section.

3. For the purposes of this section, "residential properties" shall mean real property, other than a cooperative or a condominium, improved by a one, two or three family residential structure as of the date of the sale and as of the taxable status date for the assessment roll from which the assessments reported pursuant to section five hundred seventy-four of this chapter were obtained.

HISTORY:

- Add, L 1981, ch 1022, § 1; amd, L 1982, ch 531, § 11, eff Dec 1, 1982 (see 1982 note below).
- Sub 1, formerly entire section, so numbered sub 1 and amd, L 1982, ch 531, § 11 (see 1982 note below); amd, L 1986, ch 858, § 5, L 1988, ch 776, § 3, L 1991, ch 552, § 2, eff Jan 1, 1992.
- Sub 1, par (a), formerly part of sub 1, so designated par (a) and amd, L 1991, ch 552, § 2, eff Jan 1, 1992.
- Sub 1, par (b), formerly part of sub 1, so designated par (b) and amd, L 1991, ch 552, § 2, eff Jan 1, 1992.
- Sub 1, par (c), formerly part of sub 1, so designated par (c), L 1991, ch 552, § 2, eff Jan 1, 1992.
- Sub 2, add, L 1982, ch 531, § 11, eff Dec 1, 1982 (see 1982 note below).
- Sub 3, add, L 1982, ch 531, § 11 (see 1982 note below); amd, L 1983, ch 735, § 25, L 1985, ch 280, § 19, eff July 1, 1985.

NOTES:

Editor's Notes:

Laws 1982, ch 531, §§ 16, 17, provides as follows:
 § 16. Where a residential assessment ratio has been or is established pursuant to section seven hundred thirty-eight of the real property tax law for any assessing unit or special assessing unit prior to the effective date of section eleven of this act and the final assessment roll for such assessing unit or special assessing unit has not been completed and filed, and where the state board is aware or made aware no later than ten days prior to the last day for the completion and filing of the final assessment roll, that such residential assessment ratio includes inappropriate sales or does not reflect a change in the level of assessment due to a physical revaluation of all real property, then the state board of equalization and assessment shall recompute such ratio by excluding such inappropriate sales or by adjusting for such change in level of assessment. Where such recomputation

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results in a substantial change, such state board shall establish a new ratio prior to the filing of the final assessment roll of such assessing unit and such new ratio shall supersede for all purposes the original ratio. Such new ratio shall be made available in the same manner as the original ratio. For the purposes of this section, inappropriate sales shall include (a) sales of residential property held in cooperative or condominium form of ownership, (b) sales of property not improved by a one, two or three family residential structure as of the date of sale and as of the taxable status date for the assessment roll on which the assessment reported pursuant to section five hundred seventy-four of the real property tax law appears, and (c) sales reported pursuant to section five hundred seventy-four of the real property tax law where the full sales price or applicable assessment was incorrect.

§ 17. This act shall take effect immediately, provided, however, section eleven of this act shall take effect December first, nineteen hundred eighty-two and such section shall be first utilized in establishing residential assessment ratios for tentative assessment rolls filed on or after such date.

CROSS REFERENCES:

This section referred to in §§ 458-a, 525, 732.

Information to be furnished by recording officers and assessors § 574.

RESEARCH REFERENCES AND PRACTICE AIDS:

98 NY Jur 2d, Taxation and Assessment §§ 377, 378, 385, 450-464.

24 Carmody-Wait 2d, Judicial Review of Tax Assessments and Taxes § 146:162.

Texts:

NY Real Property Service §§ 61:39, 62:62, 62:63.

CASE NOTES

Use of residential assessment ratios and residential comparables in small claims assessment review procedure is constitutional. *Tonawanda v Ayler* (1985, 4th Dept) 115 App Div 2d 940, 497 NYS2d 781, affd (1986) 68 NY2d 836, 508 NYS2d 171, 500 NE2d 869.

In small claims assessment review proceedings (RPTL art 7, tit 1-A), it was not improper for the Hearing Officers to take into consideration evidence offered by the Board of Assessment to impeach and demonstrate the inaccuracy of the "residential assessment ratio" (RAR) of 6.64% which had been promulgated by the State Board of Equalization and Assessment (SBEA) and had been introduced by petitioners as the major component of their proof to show inequality of their

assessments since there is no statutory prohibition preventing the Board from mounting a collateral attack on the RAR in small claims assessment review proceedings. The statutory process through which the assessing officer may challenge the RAR by presenting documentation to the SBEA showing material error in the ratio (RPTL 738 [2]) does not bar the impeachment of a RAR or an attack on the weight to be given to it in small claims assessment review proceedings. Accordingly, the determinations of the Hearing Officers were not arbitrary and capricious by reason of not having applied the RAR submitted by petitioners. *Agosh v Cicero Bd. of Assessment Review* (1991) 150 Misc 2d 756, 570 NYS2d 876.

TITLE 2

Special Provisions Relating to Special Franchise Assessments

Section	
740.	Proceeding to review a special franchise assessment
742.	Appearance by state board in proceeding to review a special franchise assessment
744.	Action by court in proceedings to review special franchise assessments