
State Board of Equalization and Assessment
State of New York

Assessment roll (assessor’s duties) (final filing) (delay); board of assessment review (powers and duties) (inspections and appraisals)—Real Property Tax Law, §§ 516, 1524; Westchester County Administration Code, § 536:

Opinion of Counsel

September 20, 1974

The fiscal dates in the Real Property Tax Law and the Westchester County Administrative Code as to filing of the assessment roll are directory and not mandatory so long as the delay is not due to dilatory tactics of the officials responsible for the delay and the delay does not interfere with the statutory responsibilities of other units of government.

It is not the function of the board of assessment review to inspect and appraise property before it for review. Its determinations should be based on the information presented to it at the grievance day hearings.

*1 We have received an inquiry concerning the late final filing of an assessment roll. The board of assessment review in a Westchester County town did not complete its grievance day proceedings as of September 20, and consequently did not file a final assessment roll on September 15 as required by section 536 of the Westchester County Administrative Code. Our opinion has been requested as to the duties of the board of assessment review and the assessor in this factual situation.

While we know of no cases interpreting the mandatory or directory nature of the fiscal dates contained in Article 16 of the Westchester County Administrative Code (i.e., Westchester County Tax Law), a number of judicial decisions have been rendered construing the nature of similar fiscal dates contained in Article 5 of the Real Property Tax Law.

As was stated in the case of Draper Division v. Board of Assessors of the Town of Piercfield, 37 App.Div.2d 1038, 326 N.Y.S.2d 56, “the cases have consistently held that a showing of injury or prejudice is required before procedures set forth in the statute will be regarded as mandatory.... The purpose of the provisions of the Real Property Tax Law is to give the taxpayer notice of the assessment so that he may protest the action within the time limitation specified.” In Bertholf v. Cisco, 72 Misc.2d 901, 339 N.Y.S.2d 798, the Court stated: “... [I]t should be noted that late filing does not vitiate either the roll or the tax levied thereunder ....” A similar conclusion was reached in Bablo v. Andrews, 4 Misc.2d 105, 157 N.Y.S.2d 427 and Rose v. Elliott, 218 App.Div. 287, 218 N.Y.S. 185.

The language in sections 536 and 537 of the Westchester County Administrative Code concerning the filing of the final assessment roll is similar to that language used in section 516 of the Real Property Tax Law. It seems reasonable to presume that a court construing the fiscal dates in the Westchester County Tax Law would follow the line of precedents indicating that fiscal dates in the Real Property Tax Law are directory rather than mandatory, so long as due process of law has been afforded the complaining party, and the delay is not due to dilatory tactics of the officials responsible for such delay, and such delay does not interfere with the statutory responsibilities of other units of government.

Such dates cannot be disregarded, however, the actions of the town must not interfere with the functioning of other units of government. We understand from the Westchester County Director of Real Property Tax Services that the county requires the town’s final assessment roll to carry out its statutory responsibilities for county equalization purposes. We therefore recommend that the roll be completed and filed with all deliberate speed so that the County’s responsibilities are not impeded and that the taxpayers of the town are not penalized by a county apportionment based on insufficient data.

*2 We have been advised that much of the delay in filing the final roll has been occasioned by certain actions of the board of assessment review. It seems that the board found it necessary to inspect and appraise much of the property before it for review. It is not the function of the board of assessment review to act in this manner. Rather, it is to arrive at its decision as to whether an assessment should be reduced on the basis of the arguments heard by it and information given to it at the grievance day proceedings (Real Property Tax Law, § 1524). Naturally, the board of assessment review only has jurisdiction
to change the assessments of parcels properly before it for such review.

We also understand that many of the grievances were prompted by dissatisfaction with the reappraisal conducted by experts hired for that purpose. We have previously stated that the assessor has the sole right to determine the level of assessment within his assessing unit and that neither the town board nor the board of assessment review may substitute its judgment for that of the assessor (1 Op.Counsel SBEA No. 39). (See also, Drelich v. Kahn, 60 Misc.2d 227, 302 N.Y.S.2d 634; McAlevey v. Williams 41 App.Div.2d 971, 344 N.Y.S.2d 193.)

Accordingly, as indicated above, any short delay in filing the completed roll will not be regarded as a violation of law. However, once a demand is made by the county for the production of the completed roll after the statutory date, based on its statutory responsibility to the taxpayers of the entire county, the assessor must turn such roll over to the county with the changes as made by the board of assessment review up to that time. Any complaints not yet heard by the board of assessment review must be deemed to have been denied, and the taxpayers left to their judicial remedy.