



Report on the “Specialty” Status of Telecommunications Mass Property as Required by Chapter 475 of the Laws of 2013 (Posted June, 2019)

Introduction

Chapter 475 of the Laws of 2013 required the New York State Department of Taxation and Finance (“the Department”) to establish assessment “ceilings” for telecommunications “mass property” that is located outside of the public way. This law, which is codified in Real Property Tax Law §§ 499-hhhh - 499-ssss, took effect on January 1, 2015. Its provisions were originally set to expire January 1, 2019, but were extended by Part G of Chapter 59 of the Laws of 2018 and are now set to expire on January 1, 2023.

The chapter law includes a provision that requires the Department, in consultation with the owners of telecommunications mass property, to biennially evaluate and report on whether telecommunications mass property still constitutes “specialty” property.

This report fulfills the Department’s second biennial reporting requirement.

Background

The assessment of all kinds of utility mass property¹ situated within the public way – “special franchise property” – has been the responsibility of the State since 1899. The authority to determine special franchise assessments (which include both the value of tangible property located in the public way, and a value associated with the right to occupy the public way) was first exercised by the State Board of Tax Commissioners, and now rests with staff of the Office of Real Property Tax Services within the Department.

The assessment of utility mass property situated outside of the public way, however, has historically been the responsibility of the local assessor. While Chapter 475 of the Laws of 2013 has temporarily shifted responsibility for the setting of assessment ceilings on mass property used for telecommunication purposes to the Department, local assessors continue to be responsible for the assessment of all mass property outside of the public way in the first instance. With respect to telecommunication mass property only, the State’s determination of the ceiling value now sets a maximum limit on the assessment for local property tax purposes.

¹ Statutory definitions in different programs vary, but mass property generally consists of lines, pipes, wires, cables, conduits, poles and other support structures, used in the conveyance of various utilities.

The first of these new telecommunications mass property assessment ceilings were issued for use on local assessment rolls with taxable status dates on or after January 1, 2015. In the most recently completed roll year of 2018, the Department issued a total of 2,254 such ceilings for use by local assessing units. These ceilings affect properties owned by 52 different entities, about half of which are controlled by seven different parent companies. Almost 85 percent of the full value of the telecommunication mass property assessment ceilings established by the Department in 2018 related to two of these parent companies.

Specialty Property Issue

Chapter 475 of the Laws of 2013 includes a provision that requires the Department, in consultation with the owners of telecommunications mass property, to periodically evaluate whether telecommunications mass property still constitutes “specialty” property, which is valued using the reproduction cost new less depreciation (RCNLD) valuation methodology. If the Department determines that telecommunications mass property no longer qualifies as specialty property, then the Department must evaluate whether alternative methodologies to value this property, such as income capitalization, may be appropriate.

The definition of “specialty property” that has emerged from the case law is that: “(a) [t]he improvement must be unique and must be specially built for the specific purpose for which it is designed; (b) [t]here must be a special use for which the improvement is designed and the improvement must be so specially used; (c) [t]here must be no market for the type of property * * * and no sales of property for such use; and (d) [t]he improvement must be an appropriate improvement at the time of the taking and its use must be economically feasible and reasonably expected to be replaced.” Brooklyn Union Gas Co. v. State Board of Equalization and Assessment and City of New York, 65 N.Y.2d 472, 486 (1985), citing Matter of County of Suffolk (C. J. Van Bourgondien, Inc.), 47 NY2d 507, 512 (1979).

In its initial report, the Department concluded that these criteria still applied to telecommunications mass property, stating:

The Department is not aware of any evidence that property of the sort covered by Chapter 475 of the Laws of 2013 no longer meets the “specialty property” criteria articulated by the Court of Appeals. Moreover, the Department sought input with respect to this specialty question from all of the entities owning the affected telecommunications mass property in New York; none of the responses received offered an alternative view with respect to this particular issue.

Nothing has changed in this regard since that report was issued.

Accordingly, the Department has determined that the telecommunications mass property continues to be “specialty” property that is most appropriately valued using the reproduction cost new less depreciation valuation methodology.