

September 15, 2016

FINANCE & MANAGEMENT COMMITTEE
REPORT NO. 13

ALL MEMBERS PRESENT.
CHAIR MILLS PRESENT AS EX-OFFICIO MEMBER.

1. RESOLVED, the following items are hereby received and filed:
 - a. COMM. 3E-17 (2016)
COUNTY EXECUTIVE: "Assistant County Attorney Position Assigned to Erie Community College"
(6-0)
 - b. COMM. 10M-5 (2016)
BRIAN & TAMMY SHELDON: "Letter to Chair Mills Regarding Complaint Against Buffalo Urban League"
(6-0)
 - c. COMM. 13E-25 (2016)
COMPTROLLER: "Report for Apportionment and Distribution of Net Collections from the 4.75% Sales and Compensating Use Tax for Mar., Apr. and May 2016"
(Chair's Motion)
 - d. COMM. 14E-15 (2016)
COUNTY EXECUTIVE: "Department of Social Services - Lease for Property 10-12 Fountain Plaza"
(6-0)
 - e. COMM. 17E-19 (2016)
COMPTROLLER: "Update on Sales Tax Revenue and ECMCC-IGT Payment Reminder"
(Chair's Motion)
 - f. COMM. 17E-20 (2016)
COMPTROLLER: "C Sales Tax Remains Down Year to Date and ECMCC-IGT Payment Expected to Increase"
(Chair's Motion)
 - g. COMM. 17E-21 (2016)
COMPTROLLER: "Interim Financial Report for Six-Month Period Ended June 30, 2016"
(Chair's Motion)

- h. COMM. 17E-22 (2016)
COMPTROLLER: "Erie County 2015 Comprehensive Annual Financial Report"
(Chair's Motion)
 - i. COMM. 17E-23 (2016)
COMPTROLLER: "Supplement to the EC 2015 Comprehensive Annual Financial Report"
(Chair's Motion)
 - j. COMM. 17D-6 (2016)
DEPARTMENT OF BUDGET & MANAGEMENT: "Budget Monitoring Report for Period Ending June 2016"
(Chair's Motion)
2. COMM. 1D-9 (2015)
COUNTY EXECUTIVE AS AMENDED
WHEREAS, the Erie County Director of Real Property Tax Services has received applications for corrected tax billings and / or refunds for taxes previously paid in accordance with New York State Real Property Tax Law sections 554 and 556; and

WHEREAS, the Director has investigated the validity of such applications (see attached listing).

NOW, THEREFORE, BE IT

RESOLVED, that petitions numbered 216121 through 216127, inclusive be hereby approved or denied based upon the recommendation of the Director of Real Property Tax Services and be charged back to the applicable towns and/or cities.

FISCAL YEAR	2015	Petition No.	216,121.00	
	ASSESSOR	Refund	\$487.00	
S-B-L	92.19-2-19	136 Banko Dr	143089 CHEEKTOWAGA	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$487.00	
	Town/SpecialDist/School			
<u>Charge To :</u>		143089 CHEEKTOWAGA		\$487.00
	Relevy School		\$487.00	145201 LANCASTER

CENTRAL

RPTL550(2): Failed to apply enhanced STAR exemption
 Refund to be issued to Theresa Goodie

FISCAL YEAR	2016	Petition No.	216,122.00
	ASSESSOR	Refund	\$152.07
S-B-L	101.60-7-20	1176 Walden Ave 143089 CHEEKTOWAGA	
	Acct. No. 112		\$0.00 County
	Acct. No. 132		\$152.07
	Town/SpecialDist/School		
<u>Charge To:</u>		143089 CHEEKTOWAGA	\$152.07

RPTL550(2): Error caculating exemption
 Refund to be issued to Henry Januszczak

FISCAL YEAR	2016	Petition No.	216,123.00
	ASSESSOR	Cancel	\$569.24
S-B-L	185.09-1-6..111	Powers Rd 146089 ORCHARD PARK	
	Acct. No. 112		\$239.59 County
	Acct. No. 132		\$329.65
	Town/SpecialDist/School		
	60141 ERIE CO SEW DST 3		\$35.82
<u>Charge To:</u>		146089 ORCHARD PARK	\$293.83

RPTL550(2): Duplicate entry
 Delete entire parcel from the tax roll

FISCAL YEAR	2016	Petition No.	216,124.00
	ASSESSOR	Cancel	\$3,120.00
S-B-L	160.53-2-15	4030 Buffalo St 144889 HAMBURG	

	Acct. No. 112	\$983.89	County
	Acct. No. 132	\$2,136.11	
	Town/SpecialDist/School		
	48003 ECWA Delinquent	\$106.77	
	48021 BIG TREE FIRE PROTECT	\$203.33	
	48115 ERIE CO SEW DST 3	\$604.49	
	48116 ECSD 3 CH2	\$85.80	
<u>Charge To:</u>		144889 HAMBURG	\$1,135.72

RPTL550(2): Duplicate entry
 Delete entire parcel from the tax roll

FISCAL YEAR	2016	Petition No.	216,125.00
	ASSESSOR	Cancel	\$2,259.20
S-B-L	171.12-2-8	4633 Parker Rd 144889 HAMBURG	
	Acct. No. 112		\$759.54 County
	Acct. No. 132		\$1,499.66
	Town/SpecialDist/School		
	48022 ARMOR FIRE PROTECT	\$185.82	
	48115 ERIE CO SEW DST 3	\$341.54	
	48116 ECSD 3 CH2	\$95.55	
<u>Charge To:</u>		144889 HAMBURG	\$876.75

RPTL550(2): Duplicate entry
 Delete entire parcel from the roll

FISCAL YEAR	2016	Petition No.	216,126.00
	ASSESSOR	Cancel	\$0.00
S-B-L	Multiple	Multiple 146600 WALES	
	Acct. No. 112		\$0.00 County

	Acct. No. 132	\$0.00
<u>Charge To :</u>	Town/SpecialDist/School 146600 WALES	\$0.00

RPTL550(2): Failed to apply veterans exemption
New tax bill to be issued

FISCAL YEAR	2016	Petition No.	216,127.00
	ASSESSOR	Cancel	\$964.10
S-B-L	73.00-2-14.2	11495 Stage Rd	145689 NEWSTEAD
	Acct. No. 112	\$0.00	County
	Acct. No. 132	\$964.10	
<u>Charge To :</u>	Town/SpecialDist/School 145689 NEWSTEAD	\$964.10	143201 CLARENCE

CENTRAL

RPTL550(2): Failed to apply senior exemption
New tax bill to be issued

and be it further

RESOLVED, that certified copies of this resolution be forwarded to the Director of Real Property Tax Services.
(6-0)

3. **COMM. 1D-9 (2015)**
COUNTY EXECUTIVE AS AMENDED

WHEREAS Level 3 Communications, (“Level 3”) have submitted applications for Refund and Credit on form RP-556 pursuant to Real Property Tax Law Section 556 (“Applications”) for various tax years and affecting multiple taxing jurisdictions, and

WHEREAS, Level 3 commenced actions for declaratory judgment and proceedings pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court of the State of New York (“Level 3 litigation”) seeking, among other things, a ruling that fiber optic cable is not taxable as real property and/or to compel the appropriate tax levying bodies to determine and approve the Applications, and

WHEREAS, the Erie County Real Property Tax Director (Director) has investigated the validity of such Applications, and

WHEREAS the Director has transmitted a written report of such investigation and his recommendations for action thereon, and

WHEREAS the Director has determined that the Applications are without merit and recommends that the Applications be denied for multiple reasons, and

WHEREAS the Director recommends that the Applications be denied for the following specific reasons:

1. The fiber optic cable constitutes taxable real property under multiple sections of Section 102 of the Real Property Tax Law as follows:
 - A. Fiber optic cable has been interpreted and taxed as real property for more than thirty years and should continue to be taxed as real property;
 - B. The fiber optic cable meets the definition of real property pursuant to Real Property Tax Law Section 102(12)(i) and is taxable under that Section;
 - C. The fiber optic cable constitutes property for the distribution of light and is taxable real property pursuant to Real Property Tax Law 102(12)(f);
 - D. The fiber optic cables constitute fixtures and are taxable real property pursuant to Section 102(12)(b) of the Real Property Tax Law;
 - E. The Real Property Tax Law does not provide any tax exemption for fiber optic cable;
 - F. Real Property Tax Law Section 102 does not contain any express or implied exclusion for fiber optic cable from the definition of taxable real property;
 - G. The legislative history of Real Property Tax Law Section 102 does not support Level 3’s position that fiber optic cable does not constitute taxable real property and is not subject to real property taxation;
 - H. The research articles submitted by Level 3 in connection its litigation have no foundation, are not authoritative, were written many years after the New York State Legislature enacted the language contained in Real Property Tax Law Section 102 and there is no evidence the New York State Legislature considered those articles when the

Legislation was enacted; and

- I. The RCN case, which Level 3 references in its Applications, is factually and legally distinguishable from the circumstances involving Level 3's property located in Erie County. The RCN case involved property in New York City in a building, and not underground cables connected to taxable fiber optic cable in the right of way, as is the situation in Erie County. In addition, the RCN case is in a different department and is not binding on the Courts in the Appellate Division, Fourth Judicial Department, to which the Level 3 litigation in Erie County is pending.
2. The legislative history of Real Property Tax Law Section 102 supports a finding that outside plant be taxed as real property.
3. The Applications contain only conclusory allegations with respect to fiber optic cables and fail to contain detailed and sufficient evidence with respect to the identity, location, composition and usage of Level 3's property and lines. The Applications fail to contain any information from any engineer, expert, person or employee with personal knowledge with respect to the cable lines in question.
4. The Applications are procedurally improper. The Applications fail to establish a clerical error, unlawful entry or an error in essential fact as those terms are defined by Section 550 of the Real Property Tax Law. Numerous Town tax assessors have also analyzed Level 3's claims and confirmed the Director's analysis that Level 3's allegations do not constitute an "unlawful entry" as that term is defined in Real Property Tax Law Section 550(7). There was no entry of assessed valuation on an assessment roll or tax roll made by an unauthorized person or body.
5. Level 3's proper remedy is to bring a *tax certiorari* proceeding under Article 7 of the Real Property Tax Law challenging the assessments prospectively. The Applications improperly seek retroactive tax refunds under inapplicable sections of the Real Property Tax Law.
6. The RP 556 Applications are time barred and untimely on the basis that they were filed after the expiration of the tax warrants.
7. The RP 556 Applications are also time-barred and untimely because they were not filed within three years from the annexation of the warrants for such taxes as required by Real Property Tax Law, Section 556(1)(a).
8. The Applications are untimely and barred by the four-month statute of limitations because they were filed more than four months after the assessment rolls became final and binding. *See Press v. County of Monroe*, 50 N.Y.2d 695 (1980).

9. Level 3 failed to pay the taxes under protest. The Voluntary Payment Doctrine bars Level 3 from recovery of taxes paid without protest. *See City of Rochester v. Chiarella*, 65 N.Y.2d 92, 98 (1985); *City of Rochester v. Chiarella*, 98 A.D.2d 8, 9, 12 (4th Dept., 1983) aff'd 63 N.Y.2d 857 (1984).

A) Level 3's argument that Real Property Tax Law Section 556 allows recovery without protest is without merit since Section 556 does not state or provide an affirmative right to recover taxes without protest. *Level 3 Communications, LLC v. Essex County*, 129 A.D.3d 1255 (3rd Dept., 2015); *Community Health Plan v. Burkard*, 3 A.D.3d 724, 725 (3rd Dept., 2004).

10. The Applications should be denied on public policy grounds because Level 3 voluntarily deferred its challenges to the public assessments for multiple years and exposed the municipalities and school districts to unnecessary retroactive disruption of their budgets. *Press v. County of Monroe*, 50 N.Y.2d 695 (1980); *Solnick v. Whalen*, 49 N.Y.2d 224 (1979), and

WHEREAS the Erie County Legislature has carefully considered and fully agrees with the investigation and recommendations of the Director, and

NOW, THEREFORE, BE IT

RESOLVED, that all of the Level 3 Applications for Refund and Credit submitted on form RP-556 pursuant to Real Property Tax Law Section 556 are hereby denied in their entirety for the reasons set forth above and based upon the recommendation of the Director of Real Property Tax Services

FISCAL YEAR	2016	Petition No.	216,128.00	
	OWNER	Refund	\$0.00	County
S-B-L	666.00-65-9	9AA Outside Plant	140200 BUFFALO	
		Acct. No. 112	\$0.00	County
		Acct. No. 132	\$0.00	
		Town/SpecialDist/School		
	<u>Charge To :</u>	140200 BUFFALO		\$0.00

RPTL550(2): Fiberoptic not taxable
Refund to be issued to Level 3 Communications, LLC.

FISCAL YEAR	2015	Petition No.	216,129.00
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	ASSESSOR	Refund	\$0.00	
S-B-L	555.00-75-1.1	Fiberoptics	144000 EDEN	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$0.00	
	Town/SpecialDist/School			
<u>Charge To :</u>	144000 EDEN			\$0.00

RPTL550(2): Fiberoptic not taxable
 Refund to be issued to Level 3 Communications, LLC.

FISCAL YEAR 2015 Petition No. 216,130.00

	OWNER	Refund	\$0.00	
S-B-L	555.00-75-1.2	Fiberoptics	144000 EDEN	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$0.00	
	Town/SpecialDist/School			
<u>Charge To :</u>	144000 EDEN			\$0.00

RPTL550(2): Fiberoptic not taxable
 Refund to be issued to Level 3 Communications, LLC.

FISCAL YEAR 2015 Petition No. 216,131.00

	OWNER	Refund	\$0.00	
S-B-L	Multiple	Multiple	145801 NORTH COLLINS	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$0.00	
	Town/SpecialDist/School			
<u>Charge To :</u>	145801 NORTH COLLINS			\$0.00

RPTL550(2): Fiberoptic not taxable
 Refund to be issued to Level 3 Communications, LLC.

FISCAL YEAR 2015 Petition No. 216,132.00

	OWNER	Refund	\$0.00	
S-B-L	Multiple	Multiple	145889 NORTH COLLINS	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$0.00	
	Town/SpecialDist/School			
<u>Charge To :</u>	145889 NORTH COLLINS			\$0.00

RPTL550(2): Fiberoptic not taxable
 Refund to be issued to Level 3 Communications, LLC.

and be it further

RESOLVED, that certified copies of this resolution be forwarded to the Director of Real Property Tax Services.
 (6-0)

JOSEPH C. LORIGO
CHAIR