

April 7, 2016

FINANCE & MANAGEMENT COMMITTEE
REPORT NO. 6

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

1. RESOLVED, the following items are hereby received and filed:
 - a. COMM. 6E-11 (2016)
COMPTROLLER: "Report on Sales Tax Collections Correlation with Gasoline Prices"
(6-0)
 - b. COMM. 6D-7 (2016)
COUNTY ATTORNEY: "Follow-Up Information Regarding Assistant County Attorney
Position Assigned to ECC"
(6-0)

2. COMM. 1D-9 (2015)
EC REAL PROPERTY TAX SERVICES 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 216077 through 216089, 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	2016	Petition No.	216,077.00
	ASSESSOR	Cancel	\$35,866.10
S-B-L	80.09-1138	4067 Harlem	142289 AMHERST
	Acct. No. 112		\$0.00 County
	Acct. No. 132		\$35,866.10
	Town/SpecialDist/School		
<u>Charge To:</u>	142289 AMHERST		\$35,866.10

RPTL 550(2): Incorrect special district charge
New tax bill to be issued.

FISCAL YEAR	2014	Petition No.	216,078.00
	ASSESSOR	Refund	\$557.81
S-B-L	114.06-2-30.1	32 Rowley Holw	143089 CHEEKTOWAGA
	Acct. No. 112		\$0.00 County
	Acct. No. 132		\$557.81
	Town/SpecialDist/School		
<u>Charge To:</u>	143089 CHEEKTOWAGA		\$557.81
	Relevy School		\$557.81 143001 CHEEKTO.

CENTRAL

RPTL 550(2): Failed to apply enhanced STAR exemption
Refund to be issued to Susan Gworek.

FISCAL YEAR	2014	Petition No.	216,079.00
	ASSESSOR	Refund	\$862.00
S-B-L	91.05-1-30	100 Mafalda Dr	143089 CHEEKTOWAGA
	Acct. No. 112		\$0.00 County
	Acct. No. 132		\$862.00
	Town/SpecialDist/School		
<u>Charge To:</u>	143089 CHEEKTOWAGA		\$862.00
	Relevy School		\$862.00 143003 CHEEK.

UNION #3

RPTL 550(2): Failed to apply enhanced STAR exemption
Refund to be issued to Frank Guglielmo

FISCAL YEAR	2015	Petition No.	216,080.00
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	ASSESSOR	Cancel	\$8,558.00	
S-B-L	92.04-1-18.2	255 Sonwil Dr	143089 CHEEKTOWAGA	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$8,558.00	
	Town/SpecialDist/School			
<u>Charge To :</u>	143089 CHEEKTOWAGA		\$8,558.00	

RPTL 550(2): Incorrect special district charge
New tax bill to be issued.

FISCAL YEAR	2014	Petition No.	216,081.00
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	ASSESSOR	Cancel	\$7,015.63	
S-B-L	92.04-1-18.2	255 Sonwil Dr	143089 CHEEKTOWAGA	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$7,015.63	
	Town/SpecialDist/School			
<u>Charge To :</u>	143089 CHEEKTOWAGA		\$7,015.63	

RPTL 550(2): Incorrect special district charge
New tax bill to be issued.

FISCAL YEAR	2016	Petition No.	216,082.00
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	ASSESSOR	Cancel	\$685.00	
S-B-L	207.00-1-1.11	2103 Shadagee Rd	144000 EDEN	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$685.00	
	Town/SpecialDist/School			
	40046 WATER DISTRICT 5 A	\$685.00		
<u>Charge To :</u>	144000 EDEN		\$0.00	

RPTL 550(2): Incorrect special district charge.
New tax bill to be issued.

FISCAL YEAR	2016	Petition No.	216,083.00
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	ASSESSOR	Cancel	\$300.00	
S-B-L	129.00-11-20	S601 Two Rod Rd	145400 MARILLA	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$300.00	
	Town/SpecialDist/School			
<u>Charge To :</u>	145400 MARILLA		\$300.00	

RPTL 550(2): Incorrect special district charge
New tax bill to be issued.

FISCAL YEAR	2016	Petition No.	216,084.00
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	ASSESSOR	Cancel		
S-B-L	53.14-3-1.1	3939 Delaware Ave	146489 TONAWANDA	
	Acct. No. 112		\$0.00	County
	Acct. No. 132			
	Town/SpecialDist/School			
<u>Charge To :</u>	146489 TONAWANDA			

RPTL 550(2): Error in special district charge
New tax bill to be issued.

FISCAL YEAR	2016	Petition No.	216,085.00
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	ASSESSOR	Refund	\$237.60	
S-B-L	143.08-6-24	51 Willowdale Dr	146800 WEST SENECA	
	Acct. No. 112		\$96.08	County

Acct. No. 132 \$141.52
 Town/SpecialDist/School
Charge To : 146800 WEST SENECA \$141.52

RPTL 550(2): Failed to apply veterans exemption
 Refund to be issued to Frank & Lora Grzechowiak

FISCAL YEAR 2014 Petition No. 216,087.00
 ASSESSOR Refund \$5,260.00
 S-B-L 92.18-9-7 67 Lydia Ln 143089 CHEEKTOWAGA

Acct. No. 112 \$0.00 County
 Acct. No. 132 \$5,260.00
 Town/SpecialDist/School
Charge To : 143089 CHEEKTOWAGA \$5,260.00
 Relevy School \$5,260.00 143002 CHEEK.

UNION #2

RPTL550(2): Failed to apply basic STAR exemption
 Refund to be issued to David Hashimi

FISCAL YEAR 2015 Petition No. 216,088.00
 ASSESSOR Refund \$533.12
 S-B-L 92.18-9-7 67 Lydia Ln 143089 CHEEKTOWAGA

Acct. No. 112 \$0.00 County
 Acct. No. 132 \$533.12
 Town/SpecialDist/School
Charge To : 143089 CHEEKTOWAGA \$533.12
 Relevy School \$533.12 143002 CHEEK.

UNION #2

RPTL550(2): Failed to apply basic STAR exemption
 Refund to be issued to David Hashimi

FISCAL YEAR 2015 Petition No. 216,089.00
 ASSESSOR Refund \$533.12
 S-B-L 92.17-12-28 79 Santin Dr 143089 CHEEKTOWAGA

Acct. No. 112 \$0.00 County
 Acct. No. 132 \$533.12
 Town/SpecialDist/School
Charge To : 143089 CHEEKTOWAGA \$533.12
 Relevy School \$533.12 143002 CHEEK.

UNION #2

RPTL550(2): Failed to apply Basic STAR exemption
 Refund to be issued to Raymond Espinosa
 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)
EC REAL PROPERTY TAX SERVICES AS AMENDED

WHEREAS Level 3 Communications, LLC and Broadwing Communications (collectively “Level 3”) have submitted applications for Correction of Multiple Parcel Errors under cover dated June 3, 2013 on form 556-b pursuant to Real Property Tax Law Section 556-b for the 2010, 2011 and 2012 tax years (collectively, the “Applications”) relative to parcels located throughout Erie County and affecting multiple taxing jurisdictions, and

WHEREAS, the Applications were initially denied, and

WHEREAS, Level 3 commenced a hybrid action for declaratory judgment and a proceeding pursuant to Article 78 of the Civil Practice Law and Rules in the Supreme Court of the State of New York under Erie County Index No. 2014-00064 seeking, among other things, to annul the determinations denying the Applications, and

WHEREAS, the petition/complaint in the hybrid Article 78 / declaratory judgment action was dismissed by the Commercial Division Decision and Order of the Supreme Court of the State of New York, County of Erie (Timothy J. Walker, A.J.), entered November 7, 2014 (the “Decision and Order”), and

WHEREAS, Level 3 appealed from the Commercial Division Decision and Order, and

WHEREAS, the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, reversed the Decision and Order, annulled the determinations denying the Applications, and remitted the matter to the affected taxing jurisdictions for further consideration of 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 the prior court case 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 instant Level 3 litigation in Erie County is pending.

2. 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.

3. 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 my 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.

4. Form RP 556-b is wholly inapplicable to Level 3's Applications and claims.

- A) Real Property Tax Law Section 556-b is applicable only to four specific types of clerical errors, none of which exist or apply with respect to Level 3's claims.
- B) There was no "mistake in the determination or transcription of a special assessment" or "charges based on units of

service provided by a special district.”

- C) There was no mathematical error or real property located entirely outside the boundaries of the assessing unit.
- D) The Appellate Division, Third Judicial Department, has previously ruled that Level 3 incorrectly used RPTL Section 556-b to apply for the relief it seeks. *Level 3 Communications, LLC v. Essex County*, 129 A.D.3d 1255, 1257 (3rd Dept., 2015).

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-b Applications are time barred and untimely on the basis that they were filed after the expiration of the tax warrants. See RPTL Section 554; *Level 3 Communications v. Essex County*, Supreme Court, Essex County, Hon. T. Buchanan, decided May 29, 2014.

7. The RP 556-b 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 Correction of Multiple Parcel Errors on Form 556-b submitted under cover dated June 3, 2013 (see attached listing) 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; 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**