



FOR THE RECORD

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TOWN TAXATION OF VILLAGE RESIDENTS

A Key Cause in the Creation of Special Districts and an Impediment to Consolidation

As discussed in the May/June 2009 edition of the NYCOM *Municipal Bulletin*, the law regarding local government consolidation and dissolution in New York is undergoing its most dramatic change in decades. “The New N.Y. Government Reorganization and Citizen Empowerment Act” (the Act), which was signed into law on June 24, 2009 and which becomes effective March 21, 2010, amends state law in an attempt to reduce the number of local government entities in New York. Proponents of the Act argue that there are too many local government entities in the state and that it is this large number of local government entities, the majority of which are special districts, that is creating a crushing tax burden on New York’s local property taxpayers. The Act’s supporters contend that the Act will reduce the number of local government entities in the state and thereby reduce property taxes. Despite this stated goal, the Act does not cover school districts, counties, or cities, which together account for 88 percent of New York’s property taxes. School districts alone account for both the largest percentage of property taxes in New York, and school property taxes are growing at the fastest rate of any type of local government entity.¹

Moreover, the Act does not actually address the underlying causes of the large number of local government entities in New York, and as a result, the number of local government entities in the state is just as likely to increase after the Act becomes effective as it is to be reduced. As noted in the previous edition of the NYCOM *Municipal Bulletin*, this outcome is likely for two reasons: (1) the requirement that village residents pay town taxes for town services not provided within the village; and (2) the state’s cumbersome annexation law, which make it extremely difficult for cities and villages to grow their boundaries to reflect population growth and development. In “What is the Rationale for Local Government Boundaries” (May/June 2009 *Municipal Bulletin*, p.25), I discussed how New York’s cumbersome annexation law basically forces districts to be created. This article is the follow-up to that article and will provide an overview of how the requirement that village residents pay town taxes incentivizes the creation of districts and serves as a disincentive to consolidating towns.

Overview of How Town Taxes Are Applied

In New York, there are four types of general purpose local governments: counties, cities, villages, and towns. Outside of the sovereign Indian lands, all of the state is divided into counties. The state is then further divided into cities and towns. Thus, every resident of the state is also a resident of (1) a county, and (2) a city or a town. Only residents of villages are considered residents of three general purpose local governments: counties, towns, and villages. This often leads people to question: why does New York need counties, towns, and villages? What village officials know, but many New York residents do not, is that, as a general rule, villages provide services which the towns in which they are located do not. In many instances, the town provides little or no service to the village residents. Regardless of whether a town provides services to residents of villages within its jurisdiction, pursuant to New York State Law, village residents must still pay town taxes.

This tax structure has been upheld by New York’s highest court, which stated the justification for such result as follows:

The present system of allocation of taxing powers between towns and villages, which has evolved over a period of legislative history . . . serves several legitimate purposes. Adequate revenue base is assured, particularly in instances in which a disproportionate ratio of the taxable real property is situated within the village, and it cannot be denied, however categorically one might wish to view village boundaries, that villages benefit indirectly, if not directly, from town services.²

Many village residents would dispute the Court’s assertion that they benefit, even indirectly, from town services. It could be argued more strongly that, in many instances, residents of towns outside of villages benefit more from village services (streets, parks, playgrounds, etc.) for which the town residents pay nothing, than the village residents benefit from the town taxes.

Overview of How Town Taxes Are Allocated

The general rule for the imposition of town taxes is that all town residents -- both town residents who live in and outside villages -- must pay for all town expenses, unless a state statute requires or permits otherwise. Moreover, all town revenues are paid into the town’s general fund, unless a state statute requires or permits otherwise.



Town taxes can be broken down into three categories: those which all town residents pay (both those that live in and outside villages), those taxes which only residents of the town outside of villages pay, and those town taxes which the town board may or may not in its discretion impose on the residents of villages within the town. These taxes are frequently referred to by how they are identified in the State Comptroller's Uniform System of Accounts for Towns: Part A are townwide taxes which are paid into the town's general fund, and Part B are those taxes that are collected solely on the residents of the town outside of villages (also commonly referred to as part-town taxes). Optional highway taxes are referred to Part DA (townwide highway tax) and Part DB (town outside of the village highway tax).

Some examples of what townwide taxes are imposed to pay for, whether or not the village residents benefit from the service, include:

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| 1. Town supervisor, | 8. Town clerk, | 12. Dog licensing, |
| 2. Town board, | 9. Town | 13. Town court, |
| 3. Town justice, | superintendent | 14. Town hall, and |
| 4. Town assessor, | of highways, | 15. Sidewalk |
| 5. Town receiver of | 10. Town traffic | construction |
| taxes, | signals, | and maintenance, |
| 6. Town attorney, | 11. Liability | and snow |
| 7. Town engineer, | insurance, | removal. ³ |

By law, the following expenses are to be funded solely from taxes raised from residents of the town who live outside of the village:

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| 1. Town building, | 3. Town registrar of | 5. Town highway |
| zoning, and | vital statistics, | garage, and |
| planning activities, | 4. Town police | 6. Town highway |
| 2. Town board of | department | repair and |
| health, | (when the village | improvements. ⁴ |
| | maintains its own), | |

Town boards may, but are not required to, limit the taxes for highway machinery and tools, snow removal, and other miscellaneous highway expenses to the town outside of the village.

Town Taxation of Village Residents Is an Incentive to Create Special Districts

The unfairness of requiring village residents to pay town taxes is obvious to village residents. But what is not obvious to most people is that requiring village residents to pay town taxes when they do not actually receive a service or benefit from the town serves as a substantial barrier to reducing the total number of local government entities in the state.

Town taxation of village residents is an obstacle to reducing the number of special districts by serving as a disincentive to creating villages. Areas of suburban and urban growth in towns are frequently served by multiple overlapping special districts that provide services which such areas need, such as water, sewer, street lighting, sidewalks, parks, and libraries. One option to reduce the number local government entities is to create one village to provide and administer all of the services provided by those multiple districts. However, individuals interested in creating a village are naturally discouraged from doing so by the prospect of having to continue to pay town

taxes after the village is formed. Consequently, the state's property tax laws actually discourage reducing the number of districts by requiring village residents to pay town taxes. From another perspective, the requirement that village residents pay town taxes also serves as an incentive to increase the current number of special districts. Time and again, studies of proposed village dissolutions demonstrate how the requirement to pay town taxes encourages village dissolution and, as a result, the creation of special districts. Recent studies conducted for the Villages of Macedon,⁵ Lake George,⁶ and Albion⁷ indicate that if those villages dissolve, their residents' taxes would be reduced, frequently in an amount that is close to what the village residents pay in town taxes. That the projected reduction in the village resident tax burden is due in large part to the village residents no longer having to pay town taxes for services which they do not receive is evidenced by the fact that, in each of the studies, the taxes of the residents of the town outside of the village were projected to increase. Moreover, each dissolution study revealed that numerous districts would have to be created to provide the same level of service that the single village provides.⁸

It must be stressed that the creation or dissolution of each village is unique, and the impact on local property taxes varies depending upon a wide variety of factors in both the village and the town(s) in which the village is located. Additionally, while village dissolutions frequently do find nominal cost-savings through modest increases in efficiency, dissolution proponents and local government officials should be aware that only a small percentage of any projected reduction in village residents' property taxes is a direct result of increased efficiencies or improved economies of scale. Rather, the most significant reduction in village resident property tax burden as a result of a village dissolution is attributable to village residents no longer paying town taxes for services which the town does not provide to them.

Town Taxation of Village Residents Can Serve as a Disincentive to Consolidate Towns

Village residents paying town taxes also inhibits the efforts to reduce the number of local government entities in the state by creating a disincentive for town consolidation. A different way to look at the town tax issue is that village residents paying town taxes for services the town is not providing to them is a subsidy of town operations by village residents. The three dissolution studies discussed above highlight this subsidy, which is reflected in the projected increase in the taxes of the town residents outside of the villages if the villages dissolve. For the Village of Macedon, the townwide tax rate was projected to increase from \$2.28 to \$3.04 per \$1,000. For the Village of Lake George, the townwide tax rate was projected to increase from \$1.74 to \$1.95 per \$1,000. And in the Village of Albion study, the tax rate for residents outside of the village was projected to increase from \$4.68 to \$9.01 per \$1,000. Ironically, the State is spending hundreds of thousands of dollars to study dissolving villages and is offering millions of dollars in increased aid to promote village dissolutions that will raise the taxes of the residents of towns outside of villages and create more local government entities.

These projected increases in the property taxes of the residents of the towns outside of the villages, in essence, represent the extent to which the village residents are subsidizing town government operations. This subsidy serves as a disincentive for towns receiving such a benefit to consolidate with neighboring towns. A town with village residents who subsidize town operations would have to share that subsidy with any towns with which it consolidates, thereby reducing the tax relief their residents receive from the subsidy. This disincentive can be fairly large, particularly if the village in which the town is located has substantial property value. Consequently, it is highly unlikely that a town with one or more villages that subsidize town operations will agree to consolidate with a neighboring town because it would require the residents to agree to an increase in their taxes, unless the cost-savings from the increased efficiencies are enough to overcome the dilution of the village subsidization.

Conclusion

While the Act addresses perceived procedural obstacles to consolidating and dissolving New York's myriad local governments, it does nothing to address town taxation of village residents, which simultaneously discourages reducing the number of special districts via village government, encourages the creation of special districts that result from village dissolution, and discourages reducing the number of local government entities through town consolidations. For more information on the issue of village residents paying town taxes and the role this issue has in the local government consolidation debate, contact Wade Beltramo, NYCOM General Counsel at wade@nycom.org or (518) 463-1185.

Endnotes

1. From 2000 to 2005, school property taxes increased at an average annual rate of 7.3 percent. Well above the counties, which had the next highest average annual rate of increase in property taxes at just under 6 percent. See "Property Taxes in New York State," *Legal Government Issues in Focus*, Office of the New York State Comptroller, pp. 4-5 (April 2006), available online at <http://osc.state.ny.us/localgov/pubs/research/propertytaxes.pdf>.
2. *DuBois v. Town of New Paltz*, 35 N.Y.2d 617, 623 (1974).
3. See *Ops. St. Comp.* 72-800, 89-61, 80-456, 80-334, 2002-15, 94-26, 77-614, 82-59, and 56-32.
4. See *Town Law* §§ 138 & 261, *Ops. St. Comp.* 72-800, 89-61, and 96-51; *Public Health Law* §§ 304 & 4124; *Town Law* § 150; *Highway Law* § 142(4a) & *Op. St. Comp.* 80-456; *Highway Law* §§ 141 & 277 & *Op. St. Comp.* 83-172.
5. Village of Macedon residents voted against dissolving in March 2008. The Village of Macedon Dissolution Plan called for creating a Brush & Leaf Special District, Sidewalk Special District, Street Lighting Special District, Fire Special District, and an Ambulance Special District.
6. A copy of the Lake George Dissolution Study is available online at <http://lakegeorge.ning.com/forum/topics/final-dissolution-study>.
7. The Village of Albion study is available online at http://www.egr.org/reports/08_R-1564_Seneca%20Falls.pdf.
8. The Village of Macedon Dissolution Plan called for creating a Brush & Leaf Special District, Sidewalk Special District, Street Lighting Special District, Fire Special District, and an Ambulance Special District. For the Village of Lake George, the initial scenario developed by the consultant estimated that up to eight districts would have to be created to provide the services of the village. In the final proposal developed by the consultant in conjunction with the Village's dissolution committee, it was recommended that three districts be created (water, sewer, and fire), with the remainder of the services being provided on a townwide basis. The Village of Albion dissolution study called for the creation of several special districts including street lighting, street cleaning, and police districts (there is no authority in state law to create a police district so special legislative authority would have to be enacted to create the police district).