

October 26, 2017

FINANCE & MANAGEMENT COMMITTEE
REPORT NO. 13

ALL MEMBERS PRESENT.

1. COMM. 3D-6 (2017)
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 217154 through 217168, 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	2017	Petition No.	217,154.00	
	ASSESSOR	Refund	\$590.54	
S-B-L	97.00-1-10.1	12843 Genesee St	142089 ALDEN	
	Acct. No. 112		\$0.00	County
	Acct. No. 132		\$590.54	
	Town/SpecialDist/School			
<u>Charge To :</u>	142089 ALDEN		\$590.54	
	Relevy School		\$590.54	142201 AMHERST

CENTRAL

RPTL550(2): Failed to apply enhanced STAR exemption
Refund to be issued to Dennis and Gloria Nosbisch

FISCAL YEAR	2017	Petition No.	217,155.00	
	ASSESSOR	Refund	\$231.51	
S-B-L	108.18-6-16	1630 Homecort	142001 ALDEN	

	Acct. No. 112	\$0.00	County
	Acct. No. 132	\$231.51	
	Town/SpecialDist/School		
<u>Charge To :</u>	142001 ALDEN		\$231.51
	Relevy Village	\$231.51	Village of ALDEN
RPTL550(2):	Failed to apply vet exemption		
Refund to be issued to	Jeanne Gomey		

FISCAL YEAR	2017	Petition No.	217,156.00	
	ASSESSOR	Cancel	\$542.91	
S-B-L	56.17-2-24	116 Segsbury Ct	142289 AMHERST	

	Acct. No. 112	\$0.00	County
	Acct. No. 132	\$542.91	
	Town/SpecialDist/School		
<u>Charge To :</u>	142289 AMHERST		\$542.91
	Relevy School	\$542.91	142203
WILLIAMSVILLE CENT			

RPTL550(2): Failed to apply basicSTAR exemption
New yax bill to be issued

FISCAL YEAR	2017	Petition No.	217,157.00	
	ASSESSOR	Cancel	\$1,280.37	
S-B-L	67.57-4-35	467 Maynard	142289 AMHERST	

	Acct. No. 112	\$0.00	County
	Acct. No. 132	\$1,280.37	
	Town/SpecialDist/School		
<u>Charge To :</u>	142289 AMHERST		\$1,280.37
	Relevy School	\$1,280.37	142201 AMHERST
CENTRAL			

RPTL550(2): Error calculating 520 charge
New tax bill to be issued

FISCAL YEAR	2017	Petition No.	217,158.00
S-B-L	67.58-1-26	ASSESSOR Cancel 390 Longmeadow R 142289 AMHERST	\$1,714.90
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$1,714.90
		Town/SpecialDist/School	
<u>Charge To :</u>		142289 AMHERST	\$1,714.90
		Relevy School	\$1,714.90 142201 AMHERST

CENTRAL

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

FISCAL YEAR	2017	Petition No.	217,159.00
S-B-L	251.13-4-19	ASSESSOR Cancel Erie Rd 144489 EVANS	\$154.77
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$154.77
		Town/SpecialDist/School	
<u>Charge To :</u>		144489 EVANS	\$154.77
		Relevy School	\$154.77 144401 LAKE

SHORE CENTRAL

RPTL550(3): Wholly Exempt
New tax bill to be issued

FISCAL YEAR	2017	Petition No.	217,160.00
S-B-L	63.11-1-14.1	ASSESSOR Cancel 847 West River Pa 144600 GRAND ISLAND	\$1,225.00
		Acct. No. 112	\$0.00 County

		Acct. No. 132	\$1,225.00
		Town/SpecialDist/School	
<u>Charge To :</u>		144600 GRAND ISLAND	\$1,225.00
		Relevy School	\$1,225.00 144601 GRND ISLN

CENTRAL

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

FISCAL YEAR	2016	Petition No.	217,161.00
S-B-L	24.20-4-3	ASSESSOR Refund 62 Windham Ct 144600 GRAND ISLAND	\$578.49
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$578.49
		Town/SpecialDist/School	
<u>Charge To :</u>		144600 GRAND ISLAND	\$578.49
		Relevy School	\$578.49 144601 GRND ISLN

CENTRAL

RPTL550(2): Incorrect assessment
Refund to be issued to New England Estates of GI, LLC

FISCAL YEAR	2017	Petition No.	217,162.00
S-B-L	24.20-4-3	ASSESSOR Cancel 62 Windham Ct 144600 GRAND ISLAND	\$587.06
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$587.06
		Town/SpecialDist/School	
<u>Charge To :</u>		144600 GRAND ISLAND	\$587.06
		Relevy School	\$587.06 144601 GRND ISLN

CENTRAL

RPTL550(2): Incorrect assessment
New tax bill to be issued

FISCAL YEAR	2017	Petition No.	217,163.00
S-B-L	24.20-4-3	ASSESSOR Refund	\$467.05
		62 Windham Ct 144600 GRAND ISLAND	
		Acct. No. 112	\$162.77 County
		Acct. No. 132	\$304.28
		Town/SpecialDist/School	
<u>Charge To:</u>		144600 GRAND ISLAND	\$304.28

RPTL550(2): Incorrect assessment
Refund to be issued to New England Estates of GI, LLC

FISCAL YEAR	2017	Petition No.	217,164.00
S-B-L	106.00-1-17.1	ASSESSOR Cancel	\$3,456.79
		274 West wood Av 145289 LANCASTER	
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$3,456.79
		Town/SpecialDist/School	
<u>Charge To:</u>		145289 LANCASTER	\$3,456.79
		Relevy School	\$3,456.79 145201 LANCASTER

CENTRAL

RPTL550(2): Incorrect assessment
New tax bill to be issued

FISCAL YEAR	2017	Petition No.	217,165.00
S-B-L	139.00-12-13.1/6	ASSESSOR Cancel	\$10.75
		Bullis Rd 145400 MARILLA	
		Acct. No. 112	\$0.00 County

		Acct. No. 132	\$10.75
		Town/SpecialDist/School	
		145400 MARILLA	\$10.75
		Relevy School	\$10.75 144201 IROQUOIS

CENTRAL

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

FISCAL YEAR	2017	Petition No.	217,166.00
S-B-L	124.19-1-10.11	ASSESSOR Cancel	\$21.78
		Clinton St 146800 WEST SENECA	
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$21.78
		Town/SpecialDist/School	
<u>Charge To:</u>		146800 WEST SENECA	\$21.78
		Relevy School	\$21.78 146801 WEST

SENECA CENT

RPTL550(2): Parcel created in error
Delete parcel from the tax roll

FISCAL YEAR	2017	Petition No.	217,167.00
S-B-L	303.00-1-1.11	ASSESSOR Cancel	\$1,687.81
		3252 Genesee 145889 NORTH COLLINS	
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$1,687.81
		Town/SpecialDist/School	
<u>Charge To:</u>		145889 NORTH COLLINS	\$1,687.81
		Relevy School	\$1,687.81 145801 NORTH

COLLINS CENT

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

FISCAL YEAR	2017	Petition No.	217,168.00
	ASSESSOR	Cancel	\$734.99
S-B-L	153.14-1-17	17 Southwick Dr 146089 ORCHARD PARK	
	Acct. No. 112		\$0.00 County
	Acct. No. 132		\$734.99
	Town/SpecialDist/School		
<u>Charge To:</u>	146089 ORCHARD PARK		\$734.99
	Relevy School	\$734.99	146001 ORCH PARK

CENTRAL

RPTL550(2): Failed to apply exemptions
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.
(5-0)

2. COMM. 3D-6 (2017)

COUNTY EXECUTIVE AS AMENDED

WHEREAS Level 3 Communications, LLC (“Level 3”), Broadwing Communications, LLC (“Broadwing”), Global Crossing North America, Inc. (“GCNA”) and/or Global Crossing Telecommunications, Inc. (“GCT”) (collectively, “Level 3”) has submitted applications for Refund and Credit and/or Correction on form RP556, RP556-b and/or RP554 pursuant to Real Property Tax Law Section 556, 556-b and/or 554 (“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. *T-Mobile v. DeBellis and City of Mount Vernon*, 143 A.D.2d 992 (2nd Dept. 2016);
 - C. The fiber optic cables constitute fixtures and are taxable real property pursuant to Section 102(12)(b) of the Real Property Tax Law;
 - D. 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);
 - 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 (12) supports the position that fiber optic cable constitutes taxable real property and is subject to real property taxation;
 - H. The legislative history of Real Property Tax Law Section 102 supports a finding that outside plant be taxed as real property.

- I. 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
- J. 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. Moreover, in a later RCN Decision rendered by the Appellate Division, First Department, the Court expressly confirmed that telecommunications equipment is subject to real property taxation according to generally applicable provisions of the Real Property Tax Law. *Matter of RCN Telecom Services of NY, et al v. Frankel, et al*, 100 A.D.3d 538, 541-542 (1st Dept 2012).

2. 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.

3. Level 3 failed to pay the taxes under protest. The Voluntary Payment Doctrine bars Level 3 from recovery of taxes paid without protest. *Matter of Level 3 Communications, LLC v Chautauqua County*, 2017 NY Slip Op 02322 (4th Dept. March 25, 2017); *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. *Matter of Level 3 Communications, LLC v Chautauqua County*, 2017 NY Slip Op 02322 (4th Dept. March 25, 2017); *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).

4. The Applications are time barred and untimely on the basis that they were filed after the expiration of the tax warrants.

5. The 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).

6. 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).

7. 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. No tax grievances or Article 7 proceedings have been filed by *Level 3*. The Applications improperly seek retroactive tax refunds under inapplicable sections of the Real Property Tax Law.

8. 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 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).

9. 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).

10. The Applications contain only conclusory and hearsay 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; 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 pursuant to Real Property Tax Law 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.	217,169.00
S-B-L	Multiple	OWNER Cancel Multiple 144000 EDEN	\$0.00
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$0.00
		Town/SpecialDist/School	
<u>Charge To :</u>		144000 EDEN	\$0.00

Fiber optic cable not taxable
Application denied

FISCAL YEAR	2016	Petition No.	217,170.00
S-B-L	Multiple	OWNER Cancel Multiple 145801 NORTH COLLINS	\$0.00
		Acct. No. 112	\$0.00 County

	Acct. No. 132	\$0.00
	Town/SpecialDist/School	
<u>Charge To :</u>	145801 NORTH COLLINS	\$0.00

Fiber optic cable not taxable
Application denied

FISCAL YEAR	2016	Petition No.	217,171.00
S-B-L	Multiple	OWNER Cancel Multiple 145889 NORTH COLLINS	\$0.00
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$0.00
		Town/SpecialDist/School	
<u>Charge To :</u>		145889 NORTH COLLINS	\$0.00

Fiber optic cable not taxable
Application denied

FISCAL YEAR	2017	Petition No.	217,172.00
S-B-L	Multiple	OWNER Cancel Multiple 144000 EDEN	\$0.00
		Acct. No. 112	\$0.00 County
		Acct. No. 132	\$0.00
		Town/SpecialDist/School	
<u>Charge To :</u>		144000 EDEN	\$0.00

Fiber optic cable not taxable
Application denied

FISCAL YEAR	2017	Petition No.	217,173.00
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S-B-L Multiple OWNER Multiple Cancel \$0.00
 145801 NORTH COLLINS
 Acct. No. 112 \$0.00 County
 Acct. No. 132 \$0.00
 Town/SpecialDist/School
Charge To : 145801 NORTH COLLINS \$0.00

Fiber optic cable not taxable
 Application denied

FISCAL YEAR 2017 Petition No. 217,174.00

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

Fiber optic cable not taxable
 Application denied

FISCAL YEAR 2017 Petition No. 217,175.00

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

Fiber optic cable not taxable
 Application denied

and be it further

RESOLVED, that certified copies of this resolution be forwarded to the Director of Real Property
 Tax Services.
 (5-0)

JOSEPH C. LORIGO
CHAIR