New York State Assessors Association

FY 2025 Executive Budget

Rev. Bill

Part M – **Clarifying the Telecommunications Assessment Ceiling Program**

Purpose: This bill would clarify that only property "primarily and exclusively" used in the transmission of radio, television, or cable television signals is excluded from the definition of real property.

Summary: Under Real Property Tax Law Sec. 102(12)(i)(D), telecommunications property is not taxable if it is "used in the transmission of news or entertainment radio, television or cable television signals for immediate, delayed or ultimate exhibition to the public." Technically, this is an exclusion from the definition of real property, not an exemption from taxation, but that is largely a distinction without a difference. This provision was enacted in 1987 to promote the development of the cable television industry when it was still fledgling.

Widespread internet access in households and businesses has transformed the way people work, access information, and communicate, thank to the extensive network provided by various internet service providers. Some of these providers have attempted to escape property taxation on the theory that their property is also "used" to transmit news and entertainment television and radio signals. However, they have not found it necessary to quantify the extent to which their property is so used. Judicial and administrative opinions have read the law to mean that the property must be "primarily or exclusively" used for the stated purposed to qualify. However, litigation over this question persists. This proposal would remove any doubt about the scope of this provision.

FY 2025 New York State Executive Budget, Revenue, Article VII Legislation
FY 2025 New York State Executive Budget, Revenue Article VII Legislation, Memorandum in Support
Association of Towns Legislative Update, dated February 19, 2024

Part N **Return Tax Foreclosure Surplus to Property Owner**

Purpose: This bill would reform the State's property tax enforcement laws to bring them into compliance with a recent decision of the United State Supreme Court, Tyler v. Hennepin County, Minnesota, 598 U.S. 631 (2023), by providing that when tax-delinquent property is sold, any excess proceeds be returned to the former owner or owners, and where appropriate, to lienors.

Summary: In 2023, the United States Supreme Court found that keeping excess proceeds from in rem foreclosure sales could constitute a taking in violation of the Takings Clause of the Constitution (Tyler v Hennepin County, Minnesota, et al (143 US 1369 [2023]). This proposal seeks to align New York's statutory framework with the Constitutional implications addressed in Tyler by requiring any surplus proceeds from tax foreclosure sales to be distributed to former owners and any lienors of the subject properties. The current proposal allows taxing districts to retain $250 or two percent of the sum of the taxes, penalties and other charges; whichever is greater, to cover administrative costs.

If enacted, tax districts have six months to pay any surplus associated with delinquent tax sales that occurred between May 25, 2023 and the effective date. Any other aggrieved property owners whose properties were foreclosed upon before May 25, 2023 were required to commence an Article 78 proceeding within four months of the sale in order to pursue any surplus funds. Practically speaking, this means that taxing districts will not be liable for surplus proceeds in any in rem foreclosure sale prior to May 25, 2023 unless the property owner filed suit in the four months following the sale.

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