

REAL PROPERTY TAX ASSESSMENT & EMINENT DOMAIN

Real property tax provides the largest share of local government revenue and a significant expense to business entities. Hodgson Russ provides skilled, practical guidance to public and private entities in all matters of real property tax, starting with tax planning and tax exemption applications, establishing PILOT arrangements, assessment grievance filings, and administrative and judicial proceedings at the trial and appellate levels. We work closely with appraisers and assessors to resolve tax disputes and ensure fair treatment of taxpayers.

Our firm has particular experience in dealing with issues raised by contaminated properties. Significant efforts are being made by government and business to restore former industrial lands to productive use; these properties provide both challenges and opportunities. Our attorneys have worked on tax disputes involving some of the largest contaminated sites in the country. Our experience includes working on properties that include power generation assets like wind farms and co-generation facilities, oil and gas facilities, pipelines, telecommunications towers, and wineries and other agricultural properties.

Our eminent domain experience includes all aspects of the condemnation process at the federal, state, and local level. We represent both condemning agencies and property owners in all aspects of the process as well as on inverse condemnation claims from project conception through judicial resolution. Eminent domain proceedings require a negotiation that presents opportunities to resolve disputes without litigation, and, working with appraisers, we have been able to resolve many disputes at this stage. Our command of the process and long experience in the field allow us to efficiently arrive at the fair compensation for the acquisition and to successfully navigate any required judicial proceedings.

Experience

The Appellate Division, Fourth Department dismissed two cases brought by telecommunications companies claiming their installations were exempt from real property taxes. In the case of *Level 3 Communications v. Chautauqua County*, the court upheld the dismissal of a proceeding seeking a tax exemption for fiber optic installations under the exception for property used in the transmission of radio and television signals. In the related case of *Level 3 Communications v. Erie County*, the court modified the lower court decision and dismissed a similar proceeding claiming a tax exemption for fiber optic installations under the radio and television transmission exception. Mike Risman successfully defended these two attempts by

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the telecommunications industry to circumvent and undermine the recent ruling of the New York Court of Appeals upholding the real property taxation of fiber optic cables in the case of *T-Mobile Northeast, LLC v. City of Mount Vernon*, which was also handled by Mike. These decisions are of statewide importance in upholding the taxation of fiber optic installations of telecommunication companies.

Hodgson Russ attorney Michael Risman successfully represented the City of Mount Vernon before the New York Court of Appeals in the case of *T-Mobile Northeast, LLC v. City of Mount Vernon*. The case involved an issue of statewide importance as to whether telecommunication facilities and fiber optic cables are taxable as real property in New York State and was argued at a Special Session of the New York Court of Appeals in Kingston, New York, honoring the 200-year anniversary of the Ulster County Supreme Court.

Learn more on the significance of this ruling in our Hodgson Russ alert here: <https://www.hodgsonruss.com/newsroom-publications-10856.html>

Since this original landmark win, Mike has been successful in defending his clients in two similar rulings: <https://www.hodgsonruss.com/experience-981.html>

Peter Lutz and Henry Zomerfeld were successful in obtaining an exemption under Real Property Tax Law § 420-a for a non-profit client's medical office that it purchased in the City of Rochester. The City initially denied the exemption because the property was leased to a third-party. After demonstrating that the lessee was a related non-profit entity carrying out the mission of the non-profit lessor, the Rochester Board of Assessment Review recommended the Assessor grant the exemption. The Assessor accepted the recommendation and granted the exemption. As a result, the property is wholly exempt from property taxes for this year. The exemption will remain subject to annual renewal.

Successfully resolved multi-year litigation on behalf of a New York-based hospital and healthcare system resulting in sizeable refunds to the client. The litigation concerned the allocation of the Real Property Tax Law Section 420-a exemption for nonprofit entities based on the use of the properties. New York law imposes a two-part test to qualify for the exemption: the property must be both owned by the exempt entity and used for an exempt purpose. What constitutes an exempt use by the entity has been a source of increasing litigation in New York as taxing jurisdictions, facing fiscal restraints, are more aggressive in denying exemptions. The resolution of the litigation included the proper allocation of the property tax exemption and resulted in tax refunds with interest, which in total exceeded \$1.3 million.

With deep experience in all areas of complex municipal law, Hodgson Russ has a proven track record of success in representing municipalities on challenging real property tax assessment cases. In a case involving several public entities in multiple jurisdictions and a large publically traded telecommunications company, partner Michael Risman successfully defended the clients, which included a regional county, city, two villages and five school districts in a Supreme County Court over the taxability of fiber optic cables. The outcome helped save our clients more than a million dollars over a six-year period.

A favorable decision obtained by a Hodgson Russ team led by Michael B. Risman could discourage the practices of owners of low-income housing who use disputed income and expense information to challenge real property assessments. In the case, Hodgson Russ defended a town assessor in responding to a petition brought by the owner of a low-income housing facility. The property owner claimed in a tax certiorari proceeding that the town's assessment of the property was illegal and

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sought to have the assessed value of the low-income housing facility dropped. The owner cited Section 581-a of the Real Property Tax Law (RPTL), which gives the owners of low-income rental properties the right to have their properties valued for tax purposes by the "capitalization of income" method. Assessing a property's value using this method requires the owner to provide information detailing the property's income and expenses — and in many cases, property owners have done so with the expectation that assessors must accept only the information they submit and take it at face value. However, in this case, Mike argued there were numerous concerns with the information provided by the owner of the building, including questions about the reasonableness and accuracy of the expenses claimed and the fact that the owner used only one year's worth of income and expenses to calculate the appraised value, rather than the standard and more appropriate five-year average of income and expenses. The judge ruled in the town assessors favor and denied the property owner's motion for summary judgment. The ruling made clear that municipal assessors have the right to question the expenses claimed by owners of low-income housing for tax assessment purposes.

In the News

N.Y. High Court to Decide Fate of City Property Tax Reform Suit
Bloomberg.com Daily Tax Report, January 3, 2024

Hodgson Adds Ex-Barclay Tax Pro to Energy Team
Law360, June 9, 2023

New York Court Sides with Masons in Property Exemption Suit
Tax Notes State, May 8, 2023

Kenmore Seeks to Take Insty-Prints Site for Police Expansion
Buffalo News, September 14, 2022

Coronavirus Resource Center

'What is the market for such opulence?' Judge weighs assessment for Grand Island mansion
The Buffalo News, August 8, 2021

Fiber Optic Property In NY Subject To Local Tax, Court Finds
Law360, May 18, 2020

Absence of Lease or Contract Provision Concerning Payment of Property Taxes Deemed Fatal in Tax Assessment Challenge
American College of Real Estate Lawyers (ACREL) - News & Notes, November 12, 2019

New York Court of Appeals Sides with NYCOM: Telecommunications Infrastructure and Fiber Optic Cables Are Taxable Real Property
NYCOM Municipal Matters, June 17, 2019

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Local Governments May Tax Telecommunications Infrastructure, NY High Court Rules
New York Law Journal, December 13, 2018

Press Releases

Amy D'Ambrogio Joins Hodgson Russ LLP
June 6, 2023

Publications

Temporary Restraining Order Rejected in the Latest Attack on RPTL § 575-b Assessment Model
Hodgson Russ Renewable Energy Alert, May 13, 2024

2024 Assessment Model Finalized for Solar and Wind Projects in New York: Will Project Tentative Assessments on May 1 be Accurate?
Hodgson Russ Renewable Energy Alert, May 2, 2024

Diamonds Are Forever, But New York Tax Exemptions Are Not
Hodgson Russ Real Property Tax Assessment & Eminent Domain Alert, January 29, 2024

Dual-Use Development and the Agricultural Assessment Conversion Penalty
Tax Notes State, November 6, 2023

For NY Wind And Solar Projects, Some Tax Assessment Clarity
Law360, June 9, 2023

RPTL § 575-b is Back! New York State Budget Moots Litigation Over Assessment Model
Hodgson Russ Real Property Tax Assessment & Eminent Domain Alert, May 10, 2023

Revisiting Mortgage Tax Exemptions for Federal Credit Unions
Tax Notes State, October 10, 2022

New Changes to New York State Transfer Tax
Tax Notes State, October 25, 2021

Property Maintenance Charges: A Tax or Not a Tax, That Is the Question
Tax Notes State, March 22, 2021

New York Appellate Court Decision Stops Short of Settling Solar Property Tax Issues
Hodgson Russ Renewable Energy Alert, September 22, 2020

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Presentations & Events

Local Government Training - Case Law Updates and Ethical Standards for Planning and Zoning Boards
Erie County Fire Training Academy, 3359 Broadway, Buffalo, NY 14227, May 6, 2024

New York State Bar Association Annual Meeting 2024
New York Hilton Midtown, January 16, 2024

Tax Treatment of Energy Storage Facilities in New York State - Class One
February 27, 2020

Taxing, Defending and Valuing Telecommunication Installations and Equipment
New York State Assessors' Annual Training Conference
Lake Placid, New York, September 24, 2019

2019 Municipal Law Seminar
Millennium Hotel, 2040 Walden Avenue, Cheektowaga, NY 14225, May 16, 2019

Cross Border Tax Traps with a Typical Canadian Freeze and Ownership of U.S. Real Property
October 25, 2017

New York Magistrates Annual Meeting - Zoning Code Enforcements
Verona, NY, October 20, 2017

