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LAWS OF 20 02

SENATE BILL 6927

ASSEMBLY BILL _____

6927

IN SENATE

April 12, 2002

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT authorizing the assessor of the county of Nassau to accept an application for exemption from real property taxes from the East Meadow fire district for a certain parcel of land located in the town of Hempstead

A 10587A Ferrara

DATE RECEIVED BY GOVERNOR:

JUL 18 2002

ACTION MUST BE TAKEN BY:

JUL 30 2002

DATE GOVERNOR'S ACTION TAKEN:

JUL 30 2002

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SENATE VOTE ___ Y ___ N

HOME RULE MESSAGE ___ Y ___ N

DATE _____

ASSEMBLY VOTE ___ Y ___ N

DATE _____

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S.6927

NEW YORK
STATE
SENATE
ALBANY, NEW YORK 12247



KEMP HANNON
6TH SENATE DISTRICT
CHAIRMAN
HEALTH COMMITTEE

ROOM 609 □
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
(518) 455-2200

1600 STEWART AVENUE □
SUITE 315
WESTBURY, NY 11590
(516) 222-0068

INTERNET:
HANNON@SENATE.STATE.NY.US

July 30, 2002

Hon. James M. McGuire
Executive Chamber
State Capitol
Albany, NY 12224

Re: S. 6927/A.10587-A

Dear Mr. McGuire:

Legislation I have sponsored is currently before the Governor. The bill, S.6927, will allow the East Meadow Fire District, a not-for-profit organization, to file a retroactive application to the County of Nassau for a real property tax exemption for a portion of tax years 1999 and 2000.

The East Meadow Fire District acquired the property in question (Section 50, Block 254, Lots 3, 209, 211, and 354) on May 17, 1999, and paid real property taxes on the property before it could be removed from the tax rolls. As in so many other cases, this is attributable to a technical glitch in the law which forbids a not-for-profit real property tax exemption from attaching to property until the next applicable taxable status date.

As you know, the State routinely enacts legislation allowing a retroactive exemption to not-for-profit organizations in such circumstances. This bill is such legislation. The East Meadow Fire Department provides vital services not only to East Meadow proper, but also to virtually the entire metropolitan area. It is unfair that a technical loophole should force it to accrue a substantial tax liability to which it would not otherwise be subject.

I do, therefore, hope you approve this legislation. If I can provide any additional information, please do not hesitate to contact me.

Sincerely,

KEMP HANNON
6th Senatorial District

KH/mru

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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

Eliot Spitzer
Attorney General

Legislative Bureau

TO: COUNSEL TO THE GOVERNOR

Re: SENATE 6927

ASSEMBLY

Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

ELIOT SPITZER
ATTORNEY GENERAL

Date: July18, 2002

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B-203

BUDGET REPORT ON BILLS

S. 6927

Session Year 2002

SENATE:
No. S6927

NO RECOMMENDATION
Senator Hannon

ASSEMBLY:
No.

Title: AN ACT authorizing the assessor of the County of Nassau to accept an application for exemption from real property taxes from the East Meadow fire district for a certain parcel of land located in the town of Hempstead

The above bill has been referred to the Division of the Budget for comment. After careful review, we find that the bill has no appreciable effect on State finances or programs, and/or this office does not have the technical expertise to make a recommendation on the bill.

We therefore make no recommendation.

BMM

S 6927

STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

RANDY A. DANIELS
SECRETARY OF STATE

MEMORANDUM

July 2, 2002

TO: Honorable James M. McGuire, Esq.
Counsel to the Governor

FROM: Joshua B. Toas
Assistant Secretary of State and Deputy Counsel

SUBJECT: 10-day bills

The Department of State has no comment on the following 10-day bills:

- | | | |
|-------|-------|-------|
| S6301 | S7649 | S7542 |
| S7540 | S7648 | S7602 |
| S7546 | S7647 | S6865 |
| S7584 | S7612 | S7589 |
| S7196 | S7459 | S7314 |
| S7177 | S6482 | S6815 |
| S6165 | S7128 | S7280 |
| S4766 | S7173 | S7575 |
| S7171 | S7226 | S4004 |
| S6553 | S7685 | S7774 |
| S4735 | S2784 | S7769 |
| S3781 | S5397 | S7557 |
| S1050 | S4606 | S7497 |
| S6092 | S4137 | S6865 |
| S425 | S6136 | S3325 |
| S3968 | S6032 | S7376 |
| S7668 | A9600 | S6928 |
| S7662 | S1963 | S6978 |
| S7661 | S7164 | S6361 |
| S7660 | S4240 | S5042 |
| S7656 | S5463 | S6927 |
| S7655 | S4142 | S6384 |
| S7639 | S2976 | S5333 |
| S7633 | S7297 | S3901 |
| S7651 | S7423 | S2499 |
| S7636 | S7712 | S7351 |
| S7634 | S5709 | |
| S7489 | S1879 | |

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THOMAS G. GRIFFEN
EXECUTIVE DIRECTOR

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF REAL PROPERTY SERVICES

RICHARD J. SINNOTT
Counsel

16 SHERIDAN AVENUE
ALBANY, NEW YORK 12210-2714

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FAX (518) 474-9276
Website: <http://www.orps.state.ny.us>

July 10, 2002

The Honorable James M. McGuire
Counsel to the Governor
Executive Chamber
2nd Floor
State Capitol
Albany, New York 12224

Dear Mr. McGuire:

Re: Senate Bill No. 6927
By: Sen. Hannon

Senate Bill No. 7547-A
By: Sen. Balboni

By these bills, the State Legislature would purport to "authorize" Nassau County to grant retroactive tax exemptions to two named organizations. Since, however, "[w]hat the Legislature cannot do directly it cannot do indirectly..." (Doubleday, Doran & Co., v. R. H. Macy & Co., 269 N.Y. 272, at 281, 199 N.E. 409 [1936]), and the State Constitution bars the State Legislature from granting tax exemptions by other than general laws (N.Y. Const., Article XVI, §1; see also, id., Article III, §17, which bars the Legislature from passing "a private or local bill...[g]ranteeing to any person, association, firm or corporation, an exemption from taxation on real...property"), the Legislature may not avoid these

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The Honorable James M. McGuire
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July 10, 2002

constitutional strictures by the transparent device of granting such non-existent "authority" to others.

We also believe there are negative public policy implications which follow from the perpetuation of this legislative largesse on an owner-by-owner, and parcel-by-parcel, basis. The perception by other property owners must certainly be that a select class has access to their legislative representatives which those others do not enjoy.

Finally, we note that the consequent loss in revenue, be it from a refund of taxes paid or the waiver of a claim to taxes uncollected, will have to be recaptured by increasing taxes on all other property owners in the taxing jurisdiction. In combination with the several other bills of this type applicable to Nassau County (which we have previously addressed in correspondence to you), the financial exposure to the County from the implementation of such legislative "authority", will now approximate \$550,000 - a not insignificant sum by any reasonable standard of measurement.

Accordingly, as with any and all bills of this type, we strongly recommend Executive disapproval.

Very truly yours,

/s/

Richard J. Sinnott

Attachments:

Memorandum (re S.6927) dated July 9, 2002
by Stephen J. Harrison, Esq.

Memorandum (re S.7547-A) dated July 8, 2002
by Stephen J. Harrison, Esq.

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Memorandum



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF REAL PROPERTY SERVICES

July 9, 2002

To: Richard J. Sinnott
From: Stephen J. Harrison
Subject: Senate Bill No. 6927
by: Sen. Hannon

Nearly a century ago, the Court of Appeals recalled the status of taxation in New York State as it existed prior to the 1896 (c.908) codification of the Tax Law:

The subject of taxation has been a great embarrassment to legislative bodies throughout the history of the world. Special interests clash with general interests and seek relief, wholly or in part, from the public burden which is essential to the protection of property and the preservation of order. Claims for exemption multiply and when the legislature yields to the pressure of special interests, the precedent breeds a multitude of special statutes and brings confusion into the law. Such was the situation that confronted the legislature of 1889... (Pratt Institute v. City of New York, 183 N.Y. 151, 155, 75 N.E. 1119, 1120 (1905)).

Today, at least as to certain real property tax exemptions and the rules of eligibility therefor, history repeats itself.

That is, this is another in an increasing number of bills designed to grant tax exempt status to a specific entity (usually, though not here, a nonprofit organization) for taxes levied on an assessment roll based upon a taxable status date **preceding** the date of acquisition by that entity.¹ The proposal would authorize the Nassau County Assessor to accept from the East

¹ In 1997, although he approved 20 such chapters, the Governor called for the establishment of a task force to study the issue and stated that, “[i]n the future, [he would] not routinely approve bills of this nature” (1997 Approval Memoranda Nos. 16-24; 35-41). Nevertheless, 15 were approved in 1998, 23 in 1999, 27 in 2000, and 30 in 2001 (*i.e.*, over five percent of all chapters enacted last year); this session, as of this date, it appears that perhaps 40 similar bills may pass.

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MEMORANDUM

Richard J. Sinnott, Esq.

Page 2

July 9, 2002

Meadow Fire District an application for tax exemption pursuant to section 410 of the Real Property Tax Law.² If accepted, the application would be reviewed as if it had been timely filed on or before the applicable January 2, 1999 taxable status date (RPTL, §302; Nassau County Administrative Code, §6-2.1). If satisfied that the District would have qualified for the exemption had it owned the property on that date, the Assessor would grant tax exempt status beginning with the date of acquisition and correct the assessment roll. Paid taxes would be refunded and unpaid taxes canceled. The bill states that the District acquired its property on May 17, 1999, and the sponsor's memo states that some \$84,314 in taxes are in issue.

Pursuant to section 302 of the RPTL, real property is assessed according to its condition and ownership as of taxable status date. The general law is that to receive an exemption, the applicant organization must own its real property as of such date (Simple School for Girls v. Boyland, 308 N.Y. 318, 126 N.E.2d 254 (1955); Young Israel of Far Rockaway, Inc. v. City of New York, 33 A.D.2d 561, 305 N.Y.S.2d 432 (2d Dept., 1969)). In that it would waive that requirement and forgive taxes levied on an assessment roll based upon a purchase date subsequent to taxable status date, this bill would provide yet another specific parcel exception to the general rule. As you know, we have routinely opposed such bills, questioning both their public policy and their constitutionality (as contrary to N.Y. Const., Art. 3, §17 and Art. 16, §1).

The policy of assessing according to condition and ownership as of a fixed taxable status date has a long history.³ We have stated:

The reason for this is to achieve a degree of stability and certainty in the tax structure, inasmuch as the budgetary requirements of local municipalities are predicated on the assessment roll. The taxable status date serves as a cutoff date to fix the value of all assessable real property as of one certain date and cannot be construed to embrace a shifting period (3 Op.Counsel SBEA No. 108).

Here, the 1999-00 school and 2000 County and town taxes were premised and levied on the tax base which existed on January 2, 1999, as of which date the property in question was presumably owned by a taxable entity. Bills of this type, which effectively and retroactively reconfigure the tax base as of a later date, undermine local fiscal stability. Despite the codification of the Real Property Tax Law and constitutional strictures, in at least one respect, the Pratt (supra) court might well find that little has changed.

² In fact, this agency has never prescribed an application form for section 410 purposes.

³ A date certain (then July 1) was added to what was then section 9 of the Tax Law by L.1916, c.323, apparently at the behest of the State Tax Commission, which found "the fixing of such a date [to be] necessary" (1915 Report of the State Tax Commission, p.25).

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S6927

THOMAS G. GRIFFEN
EXECUTIVE DIRECTOR

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EXECUTIVE DEPARTMENT
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