



LEGAL NOTES

Blustein, Shapiro, Rich & Barone, LLP

BURT J. BLUSTEIN
MICHAEL S. BLUSTEIN
RICHARD J. SHAPIRO
GARDINER S. BARONE
RITA G. RICH
JAY R. MYROW

ARTHUR SHAPIRO,
of Counsel

CAROL C. PIERCE
AUSTIN F. DUBOIS

10 MATTHEWS STREET
GOSHEN, NEW YORK 10924

PHONE: (845) 291-0011
TOLL FREE (866) 692-0011
WWW.MID-HUDSONLAW.COM

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KEY REAL PROPERTY ASSESSMENT DATES FOR NEW YORK TOWNS

By Rita G. Rich, J.D.

rrich@mid-hudsonlaw.com

It's that time of year – an opportunity to grieve your New York real property assessment. For most towns in New York, “Grievance Day” before the Town’s Board of Assessment Review is the fourth Tuesday in May; however, it could be a different date in your Town, so best to check with your Assessor’s office.

The April, 2010 edition of this newsletter included my article detailing the process for grieving your real property assessment. The article discussed an informal meeting with the Assessor, as well as researching comparable properties at Town Hall and online.

The purpose of this article is to give an overview of the applicable dates in the assessment procedure, as well as important information about the notification process when an assessment is increased from the previous year.

March 1st is the “taxable status” day. Ownership and physical condition of the property, as well as exemption status, are

reflected on that date for assessment purposes, based on the preceding July 1st, which is referred to as the “valuation date.”

May 1st is the “tentative roll” date on which the Assessor’s jurisdiction ends. As of this year, if your Town has a website, the tentative roll data will be posted to the Town’s website within ten days of May 1st, making it easier for taxpayers to keep apprised of their assessments. If your Town does not have a website, the tentative roll will be posted on the County’s website, which in Orange County is www.co.orange.ny.us. The Assessor also publishes and posts a notice that the roll is available for review at Town Hall.

If there is an increase in your assessment, the Assessor should mail a Notice of Increase to you no later than ten days prior to Grievance Day. However, the applicable NYS statute, Real Property Tax Law Section 510, is clear: “Failure to mail any such notice or failure of the owner to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on such real property.” Therefore, it is most important to follow through with appropriate inquiries concerning your assessment so that you can determine whether a complaint is warranted.

You may file a complaint on the official Form RP-524 (available at your Assessor’s office) up

to and including Grievance Day, and you have the right to attend the hearing before the Town's Board of Assessment Review, with or without an attorney. The Assessor will be present. If someone appears on your behalf, there is an authorization on the form that must be completed. The Board will make a determination, or you and the Board may enter a stipulation reducing the assessment.

On July 1st the "final roll" is established. If your final assessment is the result of a stipulation with the Board, no further judicial review is available, but if the assessed value is the Board's determination, and you disagree with it, you will have 30 days from the Assessor's filing of the final roll to petition for further review by commencing a tax certiorari proceeding under Real Property Tax Law Article 7 or a Small Claims Assessment Review ("SCAR") proceeding.

In conclusion, the law provides for several dates pertaining to Town assessments and challenges. Property owners are urged to follow them closely in order to make sure their assessments are fair. Not doing so may mean missing an opportunity to file a grievance. The Assessor's determination is presumed correct. Should a complaint to the Board of Assessment Review fail to bring a reduction, there is a 30-day window for seeking relief before a Judge, or a Hearing Officer in the case of a SCAR proceeding.

EXEMPT TRANSFERS FOR MEDICAID ELIGIBILITY PURPOSES

By Richard J. Shapiro, J.D.

rshapiro@mid-hudsonlaw.com

Under the Medicaid "look back" rules, gifts made by a nursing home resident within the five-year period preceding a Medicaid

application are scrutinized by the Department of Social Services to determine the impact of those gifts on the applicant's Medicaid eligibility. Contrary to common perception, however, not all asset transfers made during the look back period will result in the imposition of a period of Medicaid ineligibility. Rather, there exist a number of transfers that are "exempt" from the imposition of a Medicaid "penalty."

The most common exempt transfer is a gift of assets from one spouse to another. Such spouse-to-spouse gifts – regardless of the amounts transferred – are completely exempt from the imposition of any period of Medicaid ineligibility. I typically recommend the transfer of virtually all assets into the name of the "well" spouse to enable the "ill" spouse to become immediately eligible for nursing home Medicaid coverage. The only requirement in spousal cases is that the spouse residing in the nursing home cannot retain assets in excess of \$13,800. Often the only asset that will remain in the name of the nursing home resident is the bank account into which his or her Social Security and pension checks are deposited.

In addition to the exempt spousal transfers, there are a number of exempt transfers that apply to the family home. A home can be transferred *without Medicaid penalty* to any of the following:

- A spouse
- A child under the age of 21
- A blind or disabled child of any age
- A sibling who has an "equity interest" in the home (which can include payment for taxes and household expenses) and who has lived in the home for at least a year prior to the filing of the Medicaid application
- A "caretaker" child who has lived in the parent's home for at least two years prior to the filing of the Medicaid application

Besides transferring a home to a spouse, the most common exempt transfer of a residence is

to the “caretaker” child. To qualify for the exemption, the child does not need to have any credentials as a health-care provider. Rather, the child who has lived with a parent for at least the two-year period must establish to the Department of Social Service’s satisfaction that the child has provided needed assistance to the parent. Such assistance will usually include: cooking; dispensing medication; shopping for the parent; assistance with dressing, bathing, and similar daily tasks.

Another exempt transfer is the funding of a Medicaid applicant’s assets into a Supplemental Needs Trust for the *sole benefit* of disabled family member, provided that such disabled person is under the age of 65 at the time the transfer is made. This exemption is permitted under the law on public policy grounds. The federal government recognizes that absent the use of assets from a parent or grandparent to help support the disabled child or grandchild, the disabled person will likely need to rely on governmental programs to provide for their daily needs. Allowing an elderly parent’s or grandparent’s assets to fund a Supplemental Needs Trust for a younger disabled child or grandchild can help reduce that person’s reliance on public assistance. Note that upon the disabled beneficiary’s death, any assets remaining in this type of Supplemental Needs Trust must vest in the disabled beneficiary’s estate, and are therefore subject to recovery by the state to recoup the cost of public benefits paid to or for the disabled beneficiary during his or her lifetime.

RECENT DECISIONS OF NOTE

Local Judge Admits Mistake in Granting Judgment: Our Litigation Department is delighted to report that it successfully persuaded a local court to reverse itself and vacate a judgment the court had previously rendered for almost a million dollars against members of a

local partnership. We were engaged in this matter *after* the judge ruled that a former partner of the partnership was entitled to collect a significant lump sum amount as a retirement payment under the terms of the Partnership Agreement. The judge ruled that the former partner was entitled to collect the retirement payment because the former partner had “retired” from the partnership at the age of 41 to pursue another career. Feeling aggrieved by the ruling, the remaining partners sought new legal counsel for a fresh evaluation of the case. After reviewing pertinent papers, our litigation partner Gardiner S. Barone agreed to take on the matter. Mr. Barone prepared and filed a motion to reargue. In the motion to reargue, Mr. Barone asserted that the judge committed error by, *inter alia*, overlooking applicable language of the partnership agreement and by failing to take into account the fact that a person generally does not “retire” at the age of 41 years. Mr. Barone also politely highlighted the incongruous consequences of the judge’s interpretation of the Partnership Agreement. The judge agreed with Mr. Barone’s arguments, and he rendered a decision vacating the judgment he had previously entered against our new clients.

Court Denies Motion to ‘Pierce Corporate Veil’: Although the stockholders of an incorporated business are generally not liable for the debts of the corporation, there are circumstances where a judge can pierce the corporate veil and hold the stockholders *personally liable* for some or all of the debts of the corporation. Recently, a structural steel fabricator sought to hold the stockholders of a construction company personally liable to pay over \$300,000 for structural steel that was custom fabricated for an office building that was never built. In opposing the claim against our clients, who are the stockholders of the construction company, our litigation partner Gardiner S. Barone documented the legal and factual inadequacies of the papers filed against our clients. Mr. Barone argued that (a) the

fabricator's motion papers were factually insufficient and (b) its attorney was basing the claims on out-of-date law. The judge agreed with Mr. Barone and denied the motion to pierce the corporate veil, which if successful would have left the stockholders *personally liable* for the construction company's \$300,000 debt.

EDUCATIONAL WORKSHOPS

Blustein, Shapiro, Rich & Barone, LLP offers complimentary educational workshops to our clients and friends. Here's our upcoming workshop schedule:

Medicaid Planning and VA Pension Benefits – April 5, 2011 (4:00 p.m. to 6:00 p.m.)

Estate Plans That Work™ -- April 26, 2011 (3:00 p.m. to 6:00 p.m.)

To register for a workshop, call Donna at 291-0011 x.242, or register online at www.mid-hudsonlaw.com by going to the "Event Calendar" link.

All workshops will be held in the BSRB Education Center at our 10 Matthews Street location.

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