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MEMORANDUM

TO: Art Bassin, Town of Ancram Town Supervisor

FROM: Elena DeFio Kean

DATE: January 30, 2023

RE: Property Tax Exemption for NY Volunteer Firefighters and Ambulance Workers

BACKGROUND

On December 9, 2022, Governor Kathleen Hochul effectuated Chapter 670 of the Laws of 2022, permitting New York municipalities the option to provide a property tax exemption of up to ten percent (10%) of the assessed value of the real property to qualifying volunteer firefighters and ambulance workers (herein referred to as “volunteer emergency service workers”).

The new law amends New York Real Property Tax Law § 466-a, and repeals RPTL §§ 466-b through 466-k,¹ effectively consolidating state authorization and allowing all local municipalities to provide the aforementioned tax exemption benefits to eligible volunteer emergency service providers. RPTL § 466-a became effective December 9, 2022.

This memorandum will provide an overview of the amended law, highlight the Town’s obligations under same and answer other questions regarding the application of this new law. A copy of the new law is attached hereto. Additionally, the New York State Department of Taxation and Finance recently issued guidance in the form of Assessor Manual and Exemption Administration, which is also attached here.

¹ NY RPTL §§ 466-b, 466-c, 466-d, 466-e, 466-f, 466-g, 466-h, 466-i, 466-j and 466-k are repealed and shall take effect on, December 9, 2025, three (3) years after the effective date of this act.

ELIGIBILITY REQUIREMENTS FOR EXEMPTION

Pursuant to the amended RPTL § 466-a (2), in order to be eligible for the tax exemption, the applicant:

1. Must reside in the city, town, or village in which they serve,
 - a. The property must be the applicant's **primary residence** and used **exclusively** for residential purposes. In the event any portion of the property is not used for other purposes, the tax exemption will be prorated accordingly.
2. Must be certified by the appropriate governing authority as an enrolled member of the volunteer emergency service provider, and,
3. Must file the tax exemption application with the appropriate designated agency offering the exemption on or before the taxable status date as prescribed by the commissioner.

The governing authority is tasked with determining a procedure for applicant certification and establishing a minimum service requirement for each applicant of between two (2) and five (5) years of service as required by NY RPTL § 466-a (2)(d). As such, the Town has the discretion as to the minimum service requirement. The local law or resolution must include the minimum service requirement and procedure for certification.

Grant of Lifetime Exemption

The amended RPTL § 466-a also authorizes local governing agencies to adopt a local law, ordinance, or resolution granting enrolled and certified members with more than twenty (20) years of active service, the ten percent (10%) exemption for the remainder of their life as long as the members primary residence is located within the governing county.

Un-Remarried Spousal Exemption for Volunteer Emergency Service Worker Killed in Line of Duty

In the event a volunteer emergency service member is killed in the line of duty, the local governing authority may, at its discretion, continue to apply an exemption or reinstate a pre-existing exemption, to the surviving enrolled member's un-remarried spouse, provided that the following conditions are satisfied:

1. The governing authority certifies the individual as an un-remarried spouse of an enrolled member who has been killed in the line of duty,
2. The decedent had been an enrolled member for at least five (5) years, and
3. The decedent has been receiving the exemption prior to his or her death.

Un-Remarried Spousal Exemption for Deceased Volunteer Emergency Service Worker

In the event a volunteer emergency service worker passes away survived by an un-remarried spouse, the local governing authority may, at its discretion, continue to apply an

exemption or reinstate a pre-existing exemption to the deceased enrolled member's un-remarried spouse, provided that the following conditions are satisfied:

1. The governing authority certifies the individual as an un-remarried spouse of a deceased enrolled member,
2. The decedent had been an enrolled member for at least twenty (20) years, and
3. The decedent and un-remarried spouse had been receiving the exemption for such property prior to the date of death.

THE TOWN'S OBLIGATIONS

1) Hold a Public Hearing

RPTL § 466-a requires that the governing body hold a public hearing prior to adopting a local law, ordinance, or resolution implementing the exemption. This is true regardless of the method of adoption.

2) Adopt a Local Law, Ordinance or Resolution

RPTL § 466-a permits the governing body to adopt the exemption through either a local law, ordinance or resolution. As such, the Town has discretion in the mechanism for adoption and may utilize any of the above options. We have conferred with General Counsel for the Association of Towns and, in light of the permanent nature of the exemption and the logistical considerations of easily locating same on a future date, **it is our recommendation that the Town adopt a local law** rather than a resolution. Further, a local law is the highest form of local legislation.

3) Requirements for the Local Law

1. Conform to the requirements as set forth in RPTL § 466-a and should not vary from same;
2. Establish a minimum service requirement for each applicant of between two (2) and five (5) years of service as required by NY RPTL § 466-a (2)(d).
 - a. While the minimum service requirement is within the Town's discretion, it is recommended to proceed with the minimum service requirement of two (2) years to strengthen membership.
3. Establish a procedure for certification of the member for the exemption.
 - a. As noted above, the member must be "certified by the authority having jurisdiction for the incorporated volunteer fire company, fire department, or voluntary ambulance service as an enrolled member of such incorporated volunteer fire company, fire department or voluntary ambulance service" (RPTL § 466-a (2)(d)).
 - b. For consistency and uniformity, it is recommended that the Town create a standard form(s) to be utilized for all applicants seeking the exemption.

4) Deadlines for Compliance

If the Town already has a tax exemption for volunteer emergency service workers under one of the repealed pre-existing statutes (RPTL §§ 466-a through 466-k), the Town may continue providing said benefit, but must adopt a local law, ordinance or resolution conforming to the new Statewide exemption provisions within three years of the effective date of the law, or by **December 9, 2025**. This is the only time restriction in RPTL § 466-a (2)(d). The remaining provisions of the new law are effective as of December 9, 2022.

APPLICATION OF EXEMPTION

Q: How much is the exemption under the newly amended RPTL § 466-a?

A: RPTL § 466-a provides that a volunteer emergency services worker and spouse “residing in any county shall be exempt from taxation to the extent of *up to ten percent of the assessed value of such property . . .*” As such, the 10% is a cap and the municipality may adopt a lower percentage exemption or the cap - 10% exemption. Notably, the exemption is specific to the assessed value of such property.

Q: May two volunteer emergency service workers who jointly own property and who otherwise are eligible for the exemption, combine their exemption for a total of twenty (20%) percent exemption?

A: We have conferred with General Counsel for the Association of Towns on this issue, and the answer to this question is not clear. In light of the fact that this is a recently enacted law, there is no guidance on point. Additionally, we could not locate any case law directly addressing this issue. As such, we are guided by the opinions from the State Board of Real Property Services. However, these opinions are administrative guidance and do not carry the same weight as a holding from a court.

The most relevant opinion is from 2004, which addressed the combination of the exemption under RPTL § 466-c for Suffolk County volunteer emergency services workers. For reference, a copy of the opinion is attached hereto. The State Board of Real Property Services found that “where two qualified firefighters or ambulance workers (or one of each) own property together, they may combine their exemptions.” Pursuant to this opinion, two volunteer emergency service workers who jointly own property would be entitled to combine their exemption for a total of twenty (20%) percent exemption.

A few points for consideration. First, this is merely administrative guidance. Second, this opinion addresses RPTL § 466-c, which was recently repealed by Chapter 670 of the Laws of 2022, and may make this particular opinion obsolete. Third, there is an argument that the exemption in the recently amended § 466-a applies to the assessed value of the property and is not specifically applicable to the individual member. Notably, § 466-a provides for an exemption of up to “ten percent of *the assessed value of such property*.” Further, the guidance from the

Department of Taxation and Finance provides that “[t]he amount of exemption is limited to up to 10 percent of the assessed value of the property.”

If there is the potential for a request to combine the exemption from two members who jointly own property, we recommend either: (1) reducing the exemption to five percent (5%) to ensure that the exemption shall not exceed ten percent (10%); or (2) denying any request to combine the exemption, if presented, by asserting that the law provides for a cap for the exemption of 10% of the assessed value of the property.

If you have any questions about this new property tax exemption, please do not hesitate to contact either me at ekean@hinmanstraub.com, or my partner Kristin T. Foust, Esq. at kfoust@hinmanstraub.com.