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April 1, 2009

Mr. William P. Sivecz
Assessor, Town of Alden
Town Hall
3311 Wende Road
Alden, New York 14004

Dear Mr. Sivecz:

This is in reply to your e-mail of March 3, 2009, concerning the imposition of certain charges upon "land used primarily for agricultural production within an agricultural district" (Agriculture and Markets Law [AML], §305[5]).¹

You state that the Town is in the process of creating a town water district that would involve "significant agricultural land (some with agricultural land exemptions and others with 'hobby farm' status)." You also state that the new water district would be "funded through a combination of unit charges, frontage charges and assessment charges."²

You ask the following questions:

1. How does an assessor determine which land is used primarily for agricultural production?
2. May an assessor take into consideration the landowner's purported farm income when identifying land used primarily for agricultural production?

¹ You also refer to my letter of February 18, 2009, to Dr. Robert Somers of the State Department of Agriculture and Markets, regarding AML, §305[5].

² We assume for the purposes of this letter that the three part charge you describe would be a special assessment that would be intended to assess each parcel within the water district based upon proportionate or relative benefit (Town Law, §202[3]).

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3. Is it required that land used primarily for agricultural production within an agricultural district produce a crop, livestock or livestock product for sale?
4. In what circumstances would land qualify as "land used primarily for agricultural production within an agricultural district" for purposes of AML, §305[5], but not be eligible to receive an agricultural assessment?
5. Is the owner of "land used primarily for agricultural production within an agricultural district" required by AML, §305[5], to notify the assessor of his or her intention to continue farming?
6. Is the owner of "land used primarily for agricultural district within an agricultural district" subject to making a payment when his or her land is no longer so used?
7. What entry should an assessor make on the assessment roll using the RPS Version 4 computer software program to indicate the AML, §305[5] partial exemption?
8. The following additional question was asked by Town Attorney Jennifer L. Strong in her letter of March 16, 2009: must an applicant use a form prepared by the State Board in order to apply for the partial tax exemption afforded by AML, §305[5]?

Purpose of Agricultural Districts Law

AML, §305[5], is part of the Agricultural Districts Law (AML, Article 25-AA, §300 et seq.). The Legislature has declared the purpose of the Agricultural Districts Law to be providing "a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance" (emphasis added) (AML, §300).

Questions Nos. 1, 2 and 3

In 11 Op.Counsel SBRPS No. 26, we stated regarding RPTL, §483,³ that:

Whether a farm is commercial is a question of the taxpayer's intent. No single factor ... is determinative.

We also stated in the aforementioned opinion that:

A taxpayer's declaration of intent to be profit-oriented is a factor to be considered but is not conclusive. Other

³ We have previously opined that there is an "obvious relationship between section 483 of the RPTL [Real Property Tax Law] and the Agricultural Districts Law ..." (10 Op.Counsel SBRPS No. 82).

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facts from which the taxpayer's intentions may be inferred include the existence of sales, actual profits or losses in prior years, the amount of the taxpayer's investment, and the amount of labor the taxpayer puts into the farm. ...

We are of a similar opinion vis-à-vis the Agricultural Districts Law. Accordingly, a property owner who seeks the partial tax exemption afforded by AML, §305[5], has the burden of proving that his purported agricultural land is used by a bona fide, for-profit, commercial farm to produce crops, livestock or livestock products for sale (see, New York Botanical Garden v. Assessors of the Town of Washington, 55 N.Y. 328, 434 N.E.2d 703, 449 N.Y.S.2d 467 [1982]). Therefore, the assessor may ask the landowner to identify what portions of his or her land are so used (Question No. 1); provide proof of farm income and investment associated with such land (Question No. 2); and document the proceeds of sales derived from crops, livestock and livestock products produced by such land (Question No. 3).

Question No. 4

As stated in my letter of February 18, 2009, to Dr. Robert Somers of the State Department of Agriculture and Markets (see, footnote no. 1), "land used primarily for agricultural production located within an agricultural district" may qualify for partial tax exemption pursuant to AML, §305[5], but may not have the minimum acreage and/or gross sales value necessary so as to qualify for an agricultural assessment (AML, §§301[4], 305[1][a]).

Questions Nos. 5 and 6

AML, §305[5], does not provide that a landowner must annually notify the assessor of his or her intention to continue commercial farming of land that in a previous year received partial tax exemption pursuant to §305[5]. Section 305[5] also does not impose an obligation upon a landowner to make a conversion payment when his or her land, which received a partial tax exemption in a prior year, is no longer used for commercial farming.

Questions Nos. 7 and 8

ORPS has not issued an exemption application for AML, §305[5]. However, RPS Version 4 does provide an element of flexibility in the entry of special district charges that other assessors appear to have found useful in this situation.

We will discuss the creation of a new form for this partial exemption when we do our annual review of forms after the legislative

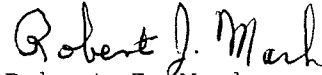
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session. Until a form or an RPS application is available, we recommend that assessors permit landowners to present appropriate proof that some or all of their land within an agricultural district is "used primarily for agricultural production" and, therefore, is entitled to receive the AML, §305[5] partial exemption.

Very truly yours,



Robert J. Mark
Senior Attorney

cc: Jennifer L. Strong, Esq.
Town Attorney, Town of Alden

Robert Somers, Ph.D. ✓
State Dept. of Agriculture and Markets

John Rusnica, Esq.
State Dept. of Agriculture and Markets