

VILLAGE OF GREAT NECK
MEMORANDUM

Date: December 19, 2017

To: Village Hall Staff

From: Joe Gill, Clerk-Treasurer

Subject: Pre-Payment of Village 2018-2019 Taxes

With the likelihood of passage of Federal Tax reform some residents may be inquiring about pre-paying next year's taxes.

Taxes may only be collected after the Board of Trustees approves a Budget, levies the taxes, and issues a warrant to the Clerk-Treasurer to collect such taxes. We have no authority to collect taxes prior to that warrant being issued.

Further, even if we were to collect some amount based on last year's tax levy, we cannot make any determination that the Internal Revenue Service would allow such prepayment to be deducted.

This memo and the New York State case law addressing this issue will be posted on our website.



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
ALBANY, NEW YORK
12236

EDWARD V. REGAN
STATE COMPTROLLER

December 17, 1985

File No. 0985371

Paul V. Nowicki, Esq.
First Deputy Town Attorney
Town of Clarkstown
10 Maple Avenue
New City, New York 10956-5099

Re: Town of Clarkstown

Dear Mr. Nowicki:

This is in reply to your letter inquiring whether property owners may pay their 1986 town-county real property taxes during 1985. You inform us that the question arises because certain changes have been proposed to the federal income tax law, which would result in the loss of deductibility of real property tax payments.

Pursuant to the Real Property Tax Law, the county legislative body is required, on or before December 31, to approve the extension of taxes by each city and town and to annex to, or file with, the assessment roll a collection warrant "authorizing and directing" the town collecting officer to collect such taxes (section 904). The amount of the taxes levied becomes a lien on the property as of the first day of January of the fiscal year for which levied and remains a lien until paid (section 902). Upon receipt of the tax roll and warrant, the collecting officer must publish a notice of their receipt which sets forth the places where and days during January when taxes will be collected (section 920). The collecting officer is also required, upon receipt of the tax roll and warrant, to mail tax bills (section 922) and to receive payments of taxes at the times and places stated in the published notice of the receipt of the tax roll and warrant "and at any other time or place during usual business hours during the period of collection" (section 924). Section 924 also provides that the collecting officer may receive taxes on or before January 31st without interest.

As may be seen from the above statutory scheme, it is contemplated that taxes for the ensuing fiscal year will be levied on or before December 31st and that the town collecting officer will collect the taxes during the month of January and thereafter. Notwithstanding that, we believe that the statutory provisions are broad enough to permit the

payment of the tax during the month of December so long as the warrant has been delivered to the collecting officer. As noted, it is the collection warrant which authorizes and directs the collecting officer to collect the levied taxes. Therefore, since section 904 requires that the tax roll and warrant be delivered not later than December 31st, it may, assuming the taxes have been levied, be delivered to the collecting officer during December at any time prior to that date. Moreover, while sections 920 and 922 require the collecting officer to publish public notice of the receipt of the tax roll and warrant and to mail tax bills to residents, we do not believe that the collecting officer is prohibited by those statutes from accepting a voluntary payment of taxes prior to performing those acts. Furthermore, in our opinion, section 902 does not prohibit the acceptance of taxes prior to lien date (January 1st).

In 1907 Opns Atty Gen 310, which interpreted a substantially similar statutory antecedent of section 904, the Attorney General expressed the view that taxes levied on the town-county tax roll become legally due at the time of the delivery of the roll to the town collecting officer. Similarly, we now conclude that upon delivery of the tax roll and warrant, the collecting officer is empowered to accept the payment of taxes. Section 924 provides that a collecting officer shall receive taxes during those times stated in the published public notice of the receipt of the tax roll and warrant "and at any other time or place during usual business hours during the period of collection." Although the phrase "the period of collection" is not defined by the Real Property Tax Law, we believe it refers to the period of time during which the collecting officer is in possession of the tax roll and warrant. Therefore, we conclude that a town tax collecting officer who has received the 1986 tax roll and warrant during 1985 may accept a voluntary payment of town-county taxes during 1985 regardless of whether the notice of receipt of the tax roll and warrant has been published and the tax bills mailed.

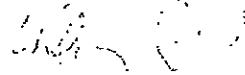
As noted, the purpose of accepting the payment of property taxes in 1985 for fiscal year 1986 is to ensure their deductibility. Any such deduction, however, would, of course, be governed by the provisions of the Internal Revenue Code. Therefore, as a member of my staff advised you, we can express no opinion as to the deductibility of taxes paid under these circumstances and suggest that you contact Mr. Peter Medina, District Director, Internal Revenue Service, 120 Church Street, New York, New York 10007 concerning this question.

Finally, we note that, during the recent extraordinary session of the legislature, both houses passed A-6. This bill, if signed by the Governor, would amend several sections of the Real Property Tax Law,

including §904. It would not, however, affect any of our conclusions herein.

We trust that this information will be of assistance to you.

Very truly yours,


Jeffrey Pohl
Associate Counsel

JP:JLK:dl
cc: John A. Costa, Esq.
Town Attorney