

Town of North Salem

Agricultural Exemptions

APRIL 2019



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Town of North Salem

Audit Objective

Determine whether the Town Assessor (Assessor) is properly administering agricultural real property tax exemptions.

Key Findings

The Assessor:

- Granted four woodland exemptions for rented agricultural parcels with \$40,028 in assessed value that did not meet the woodland eligibility requirement.
- Granted three agricultural exemptions with assessed values of \$543,390. Two of these exemptions lacked proper documentation and the remaining one was granted even though the 10-year exemption term had expired in 2013.
- Did not grant an exemption credit totaling \$2,168 in assessed value on one property because the exemption amount was incorrectly calculated.

Key Recommendations

- Ensure property owners submit an initial or renewal application, when required, with proper supporting documentation and meet eligibility requirements before granting exemptions.
- Review all previously granted agricultural structures exemptions on an annual basis to verify that the 10-year exemption term has not expired.

Town officials agreed with our recommendations and have initiated or indicated they planned to initiate corrective action.

Background

The Town of North Salem is located in Westchester County. The Town Board (Board) is the legislative body responsible for overseeing operations and is composed of four Board members and the Supervisor. The Board is responsible for the general management and control of financial affairs.

The Board appoints the Assessor who is responsible for granting and tracking real property tax exemptions within Town boundaries. The Assessor determines the assessed values of properties for the assessment roll, which is then used to create the tax bills for the following year's tax rolls. The Assessor must retain documentation that properties are eligible for exemptions.

Quick Facts

| | |
|--|-----------------|
| Population | 5,201 |
| Number of Agricultural Exemptions | 91 |
| Agricultural Assessment Value | \$176.5 million |
| Agricultural Exemptions Assessment Value | \$84.6 million |

Audit Period

January 1, 2017 - December 31, 2017

Agricultural Exemptions

All real property in New York is subject to taxation unless specific legal provisions grant it exempt status. Real property tax exemptions are granted on the basis of many different criteria, including the property's use, the owner's ability to pay taxes, the desire of the State and local governments to encourage certain economic or social activities and other such considerations. Certain exemptions provide full relief from taxation (wholly exempt property) while others reduce the taxes by varying degrees (partially exempt property).

Some exemptions apply to taxes levied for County, Town and School District purposes, whereas others pertain only to some of these. While some exemptions are mandated by State law, others are subject to local option and/or local determination of eligibility criteria. Granted exemptions reduce the taxable assessed value of a property and, therefore, the owner's tax payment. To ensure the Town's real property tax levy is fair and equitable, it is important that the Assessor determine every exemption is properly granted.

We audited the administration of the agricultural real property tax exemptions for the town. We reviewed the exemptions listed on the 2017 assessment roll, which was used to create the tax bills for the 2018 tax roll.

How Do Assessors Properly Administer Agricultural Exemptions?

To properly administer agricultural real property tax exemptions,¹ assessors need to ensure property owners submit completed applications with proper supporting documentation and meet eligibility requirements. The agricultural exemption under New York State Agriculture and Markets Law (Agriculture and Markets Law),² generally requires land used in agricultural production to have an average annual gross sales value of \$10,000 in the preceding two years for seven or more acres of land, or \$50,000 or more annual gross sales value for less than seven acres of land.

The agricultural exemption amount is calculated based on the assessed value of the eligible land in excess of the agricultural assessment. Agricultural assessment values are established annually by the NYS Office of Real Property Tax Services using a capitalized value of production methodology. Property owners may also lease acreage to eligible farmers and receive an agricultural exemption.

If the rented land does not independently satisfy the gross sales value requirement, the rented land must be used in agricultural production under a written rental arrangement of five or more years in conjunction with land which

¹ Refer to New York State Agriculture and Markets Law (Agriculture and Markets Law), Section 305 and New York State Real Property Tax Law (Real Property Tax Law), Section 483.

² Agriculture and Markets Law, Section 305

is eligible for an agricultural assessment. The property owner must substantiate the existence of the term of the rental agreement by providing the assessor with either a copy of the lease or Form RP-305-c, Agricultural Assessment Written Lease Affidavit for Rented Land.

In addition, up to 50 acres of farm woodland, that is part of land which qualifies for an agricultural assessment, is eligible for an agricultural assessment per eligible tax parcel. There are two circumstances in which a rented parcel with farm woodland would qualify for exemption.

- One instance would be where an entire farm operation is being rented under a turnkey agreement.³
- The other instance would be if the rented parcel could be demonstrated as independently qualifying for the agricultural exemption based on the \$10,000 threshold of gross sales, with a maximum of \$2,000 of sales from woodland products.

Pursuant to New York State Real Property Tax Law (Real Property Tax Law),⁴ certain newly constructed or reconstructed agricultural structures or buildings are allowed a 10-year property tax exemption from any increase in the property's assessed value resulting from the improvement where the structure or building is essential to the operation of lands actively devoted to agricultural or horticultural use.

Furthermore, property owners receiving exemptions pursuant to Agriculture and Markets Law,⁵ are required to file a renewal form each year certifying the property remains eligible for the exemption and the operation continues to meet the income requirements.

The Assessor Granted Ineligible Exemptions

We reviewed 50 properties with assessment values totaling approximately \$101.5 million that were granted property tax exemptions totaling approximately \$33.2 million for 2017.⁶ We determined that eight properties (16 percent) with assessment values totaling approximately \$15.8 million had exemptions totaling approximately \$5 million for which \$583,418 of the exemption amount was not properly granted. For example:

- The Assessor granted exemptions totaling \$40,028 in assessed value on four rented parcels with farm woodland that did not meet the legal requirements

³ Turnkey agreement means the rental agricultural land is ready to be used and no additional improvement is required by the renter.

⁴ Real Property Tax Law, Section 483

⁵ Agriculture and Markets Law, Section 305

⁶ Refer to Appendix B for information on our sampling methodology.

due to the Assessor's incorrect application of the law.⁷ However, based on a recent seminar, which she attended in June of 2018, she was made aware of the two previously discussed circumstances when a leased property with farm woodland would qualify for the exemption.

- The Assessor granted three exemptions totaling \$543,390 of assessed value for which the exemptions either lacked a renewal application, lease agreement/lease affidavit or exemption had expired in 2013. The Assessor told us that a renewal application was submitted for multiple properties, but the property owner forgot to add one property number. For the missing lease agreement, the property owner submitted only a letter stating that there was a lease, but the lease was not included with the application on file with the Assessor. The Assessor told us that the agricultural structure application for the expired exemption was submitted in 2003 and reached the 10-year term in 2013 and should have been removed in 2014 but was not.

Furthermore, we found that the Assessor did not grant a farm woodland (5.42 acres) exemption credit totaling \$2,168 in assessed value to one property when she calculated the exemption amount.

As a result of these discrepancies (based on 2018 real property tax rate), County residents' real property tax liabilities increased by \$1,875, Town residents' tax liabilities increased by \$2,606 and North Salem School District (School District) residents' tax liabilities increased by \$11,984 for the 2018 fiscal year. In addition, because the Assessor did not grant an exemption to one property owner for 2018, this individual owner lost a minor reduction of County, Town and School District tax reductions for 2018.

What Do We Recommend?

The Assessor should:

1. Ensure property owners submit an initial or renewal application with proper supporting documentation and meet eligibility requirements before granting exemptions.
2. Review all previously granted agricultural structure exemptions on an annual basis to verify that the 10-year exemption term has not expired.
3. Review her exemption calculations to ensure they were properly done.

⁷ Agriculture and Markets Law, Section 305

Appendix A: Response From Town Officials



TOWN OF NORTH SALEM

Delancey Hall
266 Titicus Road
North Salem, N.Y. 10560

Office of the Supervisor

March 26, 2019

Office of the New York State Comptroller
Newburgh Regional Office
Tenneh Blamah, Chief Examiner
33 Airport Center Dr., Suite 103
New Windsor, NY 12553-4725

Re: Town of North Salem response to Response to Draft Audit
Agricultural Exemptions – 2018M-194

Dear Ms. Blamah:

This letter is in response to the North Salem Draft Audit report on Agricultural Exemptions. This response will also cover the mandated Corrective Action Plan (CAP).

POSITION ON AUDIT FINDINGS:

North Salem has over 50% of the Agricultural Exemptions in Westchester County and as such making sure our exemption paperwork is 100% accurate is very important to us. As such we would like to thank your personnel for the professional manner in which they conducted the audit and we appreciate the discussion and your findings which will allow us to perform at a higher level in the future. We thoroughly enjoyed working with them. They were professional, respectful and very diligent with the management of our files.

We agree that this process was helpful in guiding the Town's Assessor and it will insure a more accurate and standardized implementation when granting Agricultural Exemptions in the future.

Additionally we agree with and appreciate the findings brought to our attention in your report. It is our intention to work to analyze each application given the audit input and grant them only when all specifications outlined are realized.

The Agricultural Exemption is a complex exemption to administer. Real Property Tax Law guidelines on the subject are not easy to interpret with certain items of the law allowing an "interpretation by the Assessor" which will continue to cause inconsistencies between municipalities.

Our Assessor, Karen Futia, attends most every class and seminar available on the topic to improve the implementation process and she makes it a point to continue to educate herself in these matters. The laws change frequently and as the subject evolves interpretations of the

regulations and new *Opinions of Counsel* become available. An exemption properly granted or denied in a previous year could possibly have a different conclusion today. In these classes our Assessor will often find that the instructors might not agree on exactly how things are implemented which provides some interesting Q&A sessions following most classes.

Although we do not find anything incorrect in your report, we wanted to state that four of the six properties that you found fault with were rented/leased land and were entitled to an Agricultural Exemption. The inconsistencies found were on the amount of the exemption granted where there were specific questionable characteristic on portions of the land, specifically a "woodlot exemption", which are allowed when associated with certain agricultural exemptions. These properties may or may not have been eligible for that portion of the exemption. Documentation should have been provided by the lot owner or requested by the Town and had that been done it may have been available showing the woodlot exemption was approvable. This discrepancy was noted in 2017 by our Assessor after she attended a class and was being addressed by her.

In terms of the nuances of New York's Agricultural Exemptions, in our discussions we feel the Ag Exemption laws are complex and we humbly suggest that if possible more training should be available which would benefit your inspectors and Assessors throughout the State. Although not within your *'bailiwick'*, sections of the law should also be redone to support more consistent assessments on properties throughout the State. Too many things are at the Assessor's discretion.

We welcome the audit process but also need to express that Assessor's are required to have training and continuing education. The exemption applications in most cases are not as simple as yes/no and in the case of the Agricultural Exemptions, there are many variations that can make a property eligible and all with different documentation requirements. We do find it troublesome that in 2012 the New York State Department of Taxation and Finance reduced the number of required continuing educations required for Assessors from 24 to 12. Assessment and Exemptions are not stagnant and therefore require constant examining.

Corrective Action Plan

Audit Recommendation: Ensure property owners submit an initial or renewal application, when required, with proper supporting documentation and meet eligibility requirements before granting exemptions.

Corrective Plan: The Agricultural Assessment Decision Chart (attached) will be used for decisions in granting the exemption. The original first time applicant is required to submit documentation, therefore, we will insure that the property is entitled to receive an agricultural assessment. In most cases, renewal applications are not required to submit supporting documentation unless requested or dependent on reason for approval. The supporting documentation will be tracked in each file to assure that requirements are documented.

Audit Recommendation: Review all previously granted agricultural structures exemptions on an annual basis to verify that the 10-year exemption term has not expired.

Corrective Plan: A report showing all agricultural building exemptions will be printed each year on or before taxable status date and application date will be reviewed.

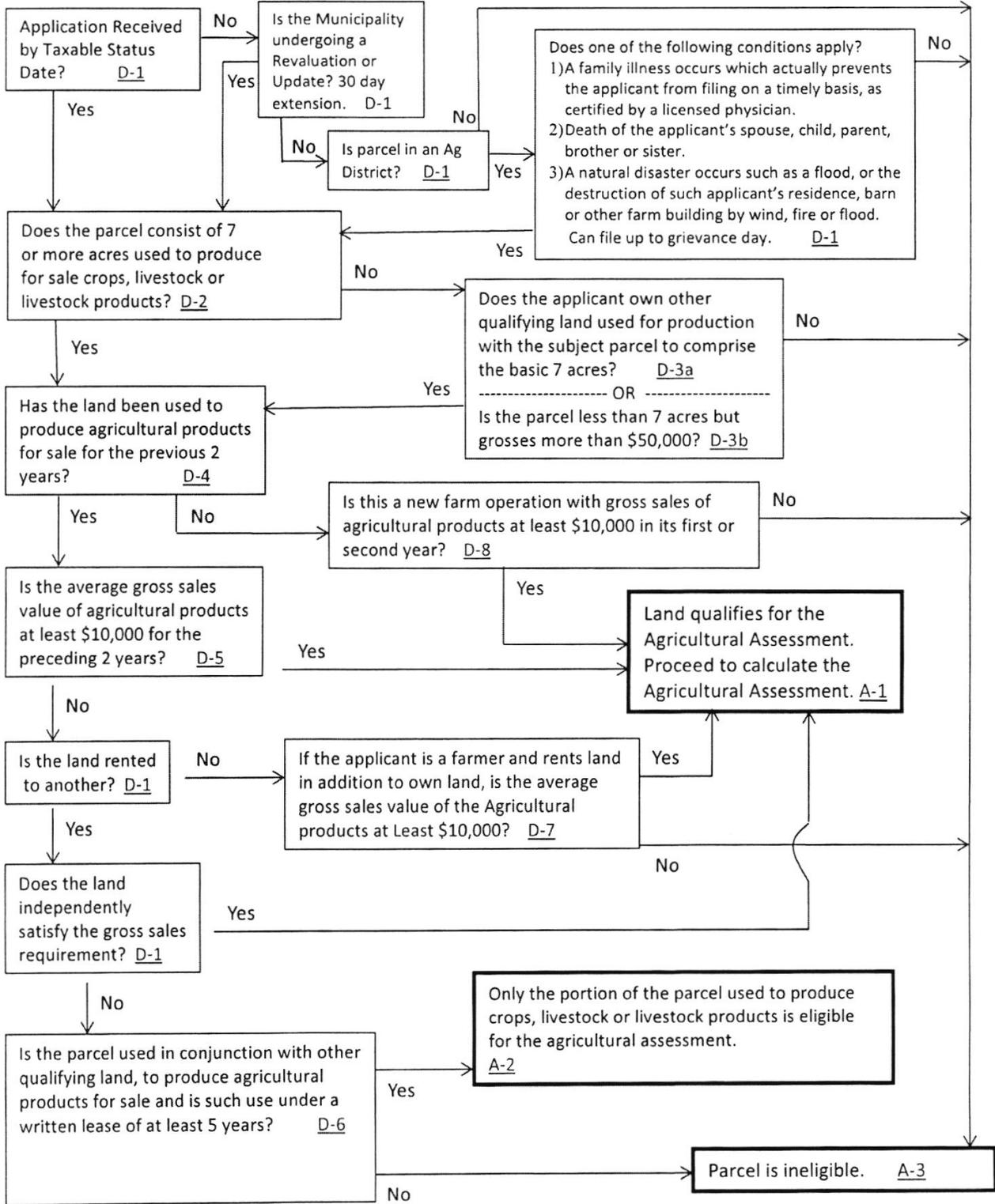
We have also switched assessment software. While our former software had a "tickler file update" to make sure that we followed up on all expiring permits, our new software which is now replacing New York State's assessment software as it was selected in the recent State bid, does not. Our software vendor has told us that they will be adding that functionality into the State version of their software.

Again, we thank you for your time and valuable expertise. And we look forward to our next audit!

Sincerely,

Warren J Lucas
Supervisor, Town of North Salem
266 Titicus Road
North Salem, NY 10560

DETERMINING ELIGIBILITY FOR AGRICULTURAL ASSESSMENT



Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed the Assessor to gain an understanding of the town agricultural real property tax exemptions process and record keeping requirements.
- We randomly selected 50 of 91 properties with an agricultural exemption totaling \$33.2 million in assessed value for further testing. We reviewed the original application⁸ to determine whether all required documentation was submitted. This included a soil survey from the Soil and Water Conservation District, if available. We reviewed any income support to determine whether the farmer met the minimum requirements. If applicable, we also determined whether the property had a current Agricultural exemption renewal form on file. If the property was leased to another farmer, we determined whether there was a current lease or a Written Lease Affidavit form on file. If the application was for an agricultural structure exemption, we reviewed the application submission date to determine if the 10-year exemption term was expired. We then recalculated selected exemptions with available supporting documentation to determine whether the property received the proper exemption amount. We then calculated the tax dollar effect of any exceptions found based on 2018 real property tax rate.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, Responding to an OSC Audit Report, which you received with the draft audit report. We encourage the Town Board to make the CAP available for public review in the Town Clerk's office.

⁸ www.tax.ny.gov/pdf/current_forms/orpts/rp305_fill_in.pdf

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/localgov/costsavings/index.htm

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/localgov/planbudget/index.htm

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/localgov/finreporting/index.htm

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

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110 State Street, 12th Floor, Albany, New York 12236

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www.osc.state.ny.us/localgov/index.htm

Local Government and School Accountability Help Line: (866) 321-8503

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