Robert B. Bernstein, Esq.
48 Old Colony Road
Hartsdale, New York 10530
(914) 522-8126

May 11, 2007

VIA FACSIMILE AND FIRST CLASS MAIL

Stephen J. Harrison
Associate Attorney
State of New York
Office of Real Property Services
16 Sheridan Avenue
Albany, New York 12210-2714

Dear Mr. Harrison:

I am writing on behalf of the Edgemont Community Council ("ECC"), an umbrella organization of all eight civic associations from the Edgemont School District in the Town of Greenburgh, in Westchester County, with a question concerning the volunteer firefighters and volunteer ambulance workers exemption for Westchester County and the municipalities therein (Real Property Tax Law, § 466-d, as added by L. 2003, c. 142). I am an attorney, and president-elect of the council. Edgemont has about 8,000 residents.

Section 466-d(1) is a local option exemption, which we understand authorizes but does not obligate the Town of Greenburgh to grant the exemption for town, part-town and certain special district taxation. The question is whether Section 466-d(1) would permit the Town to exercise its discretion under Section 466-d(1) to grant the exemption only for the volunteer fire protection districts for which it is the governing body, or whether, if it grants the exemption, it is legally required to grant it for town and part town taxes as well.

The question arises because, as explained in your March 1, 2007 letter to Edye P. McCarthy, Assessor, Town of Greenburgh, a copy of which is enclosed, the Town of Greenburgh is a hybrid municipality with some fire districts that would be eligible for the exemption and some with more than five paid professionals that would not be eligible. As a result, if the town were to grant the exemption across the board with respect to all property taxes under its jurisdiction, the cost of funding the exemption for town and part town taxes would fall in part on taxpayers from fire districts with paid professionals who would not benefit from the exemption at all.

On May 23, 2007, the Greenburgh Town Board will be holding a public hearing on whether to grant the exemption.

Edgemont is co-terminous with the Greenville Fire District, which has more than 30 paid professionals (as well as more than 30 volunteers) and is thus not eligible for the exemption. At our monthly meeting on May 7, 2007, the ECC passed two resolutions. The first asks the

Greenburgh Town Board to reject the exemption. The second asks, in the alternative, that the exemption be granted, but that it apply to only those fire protection district taxes in fire protection districts in which the town is the governing body – all of which happen to be all-volunteer – and that it not cover town and part-town taxes.

I discussed the resolution with Ms. McCarthy, the town's assessor, who advised us that she was uncertain whether the town had legal authority under Section 466-d(1) to grant the exemption for only some municipal taxes, in this case, fire protection district taxes, and not others, i.e., town and part-town taxes. She was under the impression that the decision whether to grant the exemption was an all-or-nothing choice. We believe that would be an unreasonable interpretation of the statute.

We believe that if the legislation were construed as requiring all municipal property taxes under a town's jurisdiction to be covered if the exemption were granted, hybrid municipalities like Greenburgh would be forced to choose between two competing state policies, i.e., the need, on one hand, to provide financial incentives to encourage, reward and retain qualified volunteer firefighters in all-volunteer fire districts, against, on the other hand, the state mandate, at least in Westchester County, not to further burden already financially burdened taxpayers in fire protection districts with paid professionals with having to pay for it. We do not think it is reasonable to construe Section 466-d(1) as forcing municipalities to have to make that choice.

Furthermore, if the legislature intended this to be an all-or-nothing exemption covering all general municipal property taxes, we believe it would have said so. Instead, by itemizing the specific categories of general municipal taxation that might be covered as a local taxing authority deems appropriate, i.e., town, part town and special district, we believe it is reasonable to construe the statute as leaving to the sound discretion of the local municipality the decision not only whether to grant the exemption, but also, if granted, which of the specific property taxes under its control would be eligible for it.

Finally, we do not believe the amounts of money involved here are de minimus. Greenburgh is the state's fourth largest town having a population of 90,000. Ms. McCarthy told me she does not know how many volunteer firefighters who own real property in unincorporated areas of Greenburgh and would therefore be subject to both town and part town taxation, are actually eligible for the exemption, and would take it. Therefore, the actual financial impact is unknown.

However, circumstances suggest that the impact is substantial. Thus, we understand that effective this year, volunteer firefighters with only one year of service are entitled to a personal income tax credit in New York of $200. We would have thought that this alternative benefit would more than satisfy volunteer firefighters in hybrid municipalities like Greenburgh, and thereby lessen the pressure to adopt the property tax exemption. But we are informed that volunteer firefighters from the town's all-volunteer fire districts feel otherwise. That suggests to us that the amounts in question are not de minimus..

We would very much appreciate your views on this matter.

By copying Ms. McCarthy on this letter, we expect town officials will be notified that an opinion will be forthcoming. We especially hope an opinion can be rendered in time for the May 23, 2007 hearing so that we may inform the town government whether the ECC's proposed alternative resolution would be lawful under Section 466-d(1).

Your assistance in this matter is greatly appreciated.

Sincerely,

Robert B. Bernstein

cc: Edye P. McCarthy
Assessor, Town of Greenburgh

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COPY

DONALD C. DEWITT
EXECUTIVE DIRECTOR

JAMES J. O'KEEFFE
ACTING COUNSEL

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF REAL PROPERTY SERVICES
16 SHERIDAN AVENUE
ALBANY, NEW YORK 12210-2714

TEL. (518) 474-8821
FAX (518) 474-3657
Website: http://www.orps.state.ny.us

March 1, 2007

Ms. Edye P. McCarthy
Assessor, Town of Greenburgh
177 Hillside Ave.
Greenburgh, NY 10607

Dear Ms. McCarthy:

This is in reply to your February 28, 2007 inquiry concerning the volunteer firefighters and volunteer ambulance workers exemption for Westchester County and the municipalities therein (Real Property Tax Law, §466-d as added by L.2003, c.142). You note that your Town consists of six villages and an unincorporated area, that the unincorporated area has three districts which all have more than five paid firefighters, and that the villages, which have adopted the exemption, have their own fire departments. You ask, given these facts, whether your Town may adopt the exemption. If so, and a firefighter lives in the unincorporated part of the Town but serves in a village, may that firefighter receive the exemption? Last, you ask if each of the three fire districts is eligible or if the unincorporated area is to be treated as one area.

As is true of most local option exemptions, section 466-d(1) authorizes the governing boards of the County and the cities, towns, villages, and (effective January 1, 2007) school districts therein to adopt the exemption for their own taxing purposes. The partial (i.e., 10%) exemption applies to taxes and special ad valorem levies, but not special assessments. So, for example, a decision by a village within the County to grant the exemption will affect only village taxes; Town adoption of the exemption will affect Town taxes and Town special ad valorem levies, etc.

As we have previously discussed, unique among all of the many volunteer firefighters/ambulance workers exemptions which have been enacted to date, generally on a county-by-county basis, are the provisions of section 466-d(2)(e):

> (e) (i) for volunteer firefighters, the area served by the volunteer fire company does not encompass any area served by a fire company having five or more professional firefighters.

> (ii) for volunteer ambulance workers, the area served by the volunteer ambulance company does not encompass any area served by an ambulance company having five or more professional ambulance workers.

The precise legislative intent behind this provision is not entirely clear, but the memorandum in support of the bill (S.4141-B) later enacted as chapter 142 of the Laws of 2003 provides at least some guidance. Under "justification" for the bill, Senator Leibell's memo states, in part:

> Many communities in Westchester County benefit greatly from the existence of volunteer fire and ambulance companies and would be faced with the financial burden of a paid department or dangerous reduction of services without them. The volunteer firefighters and members of volunteer ambulance corps perform an invaluable service to their communities without compensation and deserve some recognition for their service to the community.

It seems reasonably clear then that the sponsor's intent was to offer the exemption within those areas of Westchester County served by volunteers while withholding it from those areas served by five or more paid emergency personnel.

In our opinion, the most reasonable way to interpret the provision in question is to examine the areas served by each volunteer company. If that area is served by fewer than five paid emergency personnel, the exemption may be granted to members of a company that serves that area.

In answer to your specific questions, I assume that there are areas of Greenburgh that are served by companies having both more than five and fewer than five paid personnel. If so, in our opinion, an exemption may be granted to otherwise qualifying members of one of the former companies, but not to the latter. As to your second question, the statute requires that "the applicant reside in the city, town or village which is served by" the company of which he or she is a member (§466-d(2)(a)). If the volunteer's village company provides service to the unincorporated area of the Town where the volunteer resides, he or she might receive the exemption, otherwise not. However, since you state that the unincorporated areas are all served by companies having more than five paid firefighters, no exemption may be allowed therein. Lastly, as indicated above, the provisions of section 466-d(2)(e) address "areas" within a municipality granting the exemption, so, again in our opinion, the service area of each company is to be examined individually in determining exemption eligibility.

Very truly yours,

Stephen J. Harrison
Associate Attorney

FAX TRANSMITTAL FORM

NEW YORK STATE
OFFICE OF REAL PROPERTY SERVICES
OFFICE OF COUNSEL
16 SHERIDAN AVENUE
ALBANY, NEW YORK 12210-2714

FAX #(518) 474-3657

TO: ROBERT BERNSTEIN, ESQ.

FROM:
Stephen J. Harrison

Associate Attorney

DATE: 5/10/07

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MESSAGE: COPY OF MY 3/1/07 LETTER TO EDWARD P. McCARTHY

IF THERE ARE ANY PROBLEMS RECEIVING
THIS TRANSMISSION, PLEASE CALL (518) 474-8821