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This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

LIBRARIES -- Taxes (authority of village to charge library district with proportionate share of tax refund)

IMPROVEMENT DISTRICTS -- Library Districts (authority of village to charge library district with proportionate share of tax refund)

REAL PROPERTY TAXES AND ASSESSMENTS -- Refunds and Chargebacks (authority of village to charge library district with proportionate share of tax refund)

VILLAGES -- Powers and Duties (authority to charge village library district with proportionate share of tax refund)

REAL PROPERTY TAX LAW, §§102(14), (16), 726(1)(b); Chapter 658 of the Laws of 1991: A village which imposes an ad valorem levy on benefited real property on behalf of a public library district created pursuant to a special act must charge to the district a proportionate amount of the tax refunds it is required to make as a result of court ordered assessment reductions.

You ask whether a village which imposes an ad valorem levy on behalf of a public library district created pursuant to a special act of the State Legislature may charge to the district a proportionate amount of the tax refunds it is required to make as a result of court ordered assessment reductions.

Insofar as here relevant, the special act in question (L 1991, ch 658) provides for the creation of a "public library district" which is coterminous with the village. The special act also provides for the library district to be governed by an elected board of trustees and for voter approval of the library district's initial budget and subsequent budgets that change the appropriation last approved by the voters (compare, Greater Poughkeepsie Library District v Town of Poughkeepsie, 81 NY2d 574, 601 NYS2d 94). The library district's annual budget must be submitted to the village for inclusion in the village budget without change. The special act also contains a section titled "Ad Valorem levy", which determines that the several lots and parcels of land within the library district were benefited by the library facilities and services existing as of the effective date of the act and authorizes the village to assess, levy and collect the amount required by the library district's budget from such lots and parcels "in the same manner and at the same time as other village charges".

Generally, village taxes are assessed, levied and collected pursuant to the Real Property Tax Law (see, Real Property Tax Law, art. 14). The Real Property Tax Law also establishes procedures for the payment of refunds of taxes and other charges required as a result of court ordered assessment reductions and small claims assessment review proceedings (see, Real Property Tax Law, §§ 726 and 734).
Section 726(1)(b) provides, in effect, that when a tax or other levy has been imposed by the board of trustees of a village, there shall be audited and paid to the petitioner or other person paying such tax or other levy in the same manner as village charges the amount paid in excess of the amount which would have been paid had the assessment been made as determined by the court, together with interest thereon as provided in section 726(2). Section 726(1)(b) also provides that "[s]o much of any tax or other levy, including interest thereon, as shall be refunded which was imposed for . . . special district purposes, shall be charged to such . . . special district" (emphasis supplied). With certain exceptions not here relevant, section 734(1) provides that refunds resulting from small claims assessment review proceedings must be made in the same manner as provided for in section 726. Therefore, the power of the village to charge a portion of a tax refund to the library district depends on whether the library district is a "special district" (see 1995 Opns State Comp No. 95-15, p 31).

The term "special district" is defined by Real Property Tax Law, §102(16) as:

a town or county improvement district, district corporation or other district established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such district or to benefit the real property within such district, and in which real property is subject to special ad valorem levies or special assessments for the purposes for which such district was established. (emphasis supplied).

The term "special ad valorem levy", in turn, is defined in Real Property Tax Law, §102(14) as:

a charge imposed upon benefited real property in the same manner and at the same time as taxes for municipal purposes to defray the cost, including operation and maintenance, of a special district improvement or service, but not including any charge imposed by or on behalf of a city or village (emphasis supplied).

Thus, if these definitions are read literally, the library district would not be a "special district" only because the "ad valorem levy" authorized by the special act is imposed "by" the village (cf. Crandall Public Library v City of Glens Falls, _____ AD2d ____, 629 NYS2d 100, holding certain properties exempt from a charge imposed on behalf of a library district because the charge is a "tax" rather than an "ad valorem levy").

The definition of "special ad valorem levy" in section 102[14] of the Real Property Tax Law appears to exclude charges imposed by a city or village in recognition of the fact that, unlike counties and towns, cities and villages are not generally authorized to establish "special districts" (cf. County Law, art. 5-A and Town Law, arts. 12 and 12-A [county and town improvement districts]; but see General Municipal Law, art. 19-A, [business improvement districts]; Town Law, art. 11-A [joint fire districts]). It is well settled, however, that "a special statute which is in conflict with a general act covering the same subject matter controls the case and repeals the general statute insofar as the special act applies, so long as no contrary intention is clearly indicated" (citation omitted; Grayson v Town of Huntington, 144 Misc 2d 1064, 545 NYS2d 633, affirmed 160 AD2d 835, 554 NYS2d 269, appeal denied 76 NY2d 714, 564 NYS2d 718; see also McKinney's Statutes, §397). Since the special act in this instance expressly authorizes the creation of a "district" and the imposition of an "ad
valorem levy" upon "benefitted" real property, we believe that the special act supersedes Real Property Tax Law, §102 to the extent section 102 would preclude the library district from being considered a "special district" solely because the ad valorem levy for the district is imposed by the village.

In support of this conclusion, we note that the Court of Appeals has characterized a library district which includes a city, as well as other similar districts, as "special library districts" (emphasis supplied; Greater Poughkeepsie Library District v Town of Poughkeepsie, supra) and likened them to "public improvement districts"(id.). We also note that section 726 of the Real Property Tax Law "reflects a 'statutory scheme applying the principle of imposing ultimate responsibility for refunds upon the political subdivision for whose benefit the tax was collected"' (City Mattress v Board of Assessment Review for the Town of Dewitt, ___ Misc 2d ___, 630 NYS2d 919) and that it is consistent with this statutory scheme to construe the term "special district" as used in section 726 as including a library district for which a village imposes an ad valorem levy.

Accordingly, it is our opinion that a village which imposes an ad valorem levy on benefited real property on behalf of a public library district created pursuant to a special act must charge to the district a proportionate amount of the tax refunds it is required to make as a result of court ordered assessment reductions.

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James J. Nolletti, Esq., Village Attorney
Village of Mamaroneck