



A NEWSLETTER FROM THE LAW FIRM OF FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

Route to: Board Personnel Instruction PPS Business Other: _____

Hot Topics

Attorney Spotlight

Alternative Veterans' Tax Exemption May Now Be Applied to School Taxes

Late last year, Governor Cuomo signed an amendment to the Alternative Veterans' Tax Exemption (available under the Real Property Tax Law Section 458 -a) to grant school districts the discretion to apply the exemption to school taxes. In the past, this exemption applied only to county, city, town, and village taxes. It automatically applied to these taxes unless the local government entity passed a law to the contrary. By contrast, the amended law gives a Board of Education the complete discretion to either authorize this exemption (by public hearing and subsequent Board resolution) or take no action which, in turn, would result in the exemption not being available within the school district.

Calculating the Reductions

Here is how the Alternative Veterans' Tax Exemption works. The base exemption reduces the assessed value of qualifying individual's private, primary residence before the tax rate is applied. A veteran, the spouse of a veteran, or the un-remarried spouse of a deceased veteran may apply for the exemption. The base exemption includes three levels of benefits:

- (1) 15% of assessed value for veterans who served during a period of war;
- (2) an additional 10% (for a total of 25%) for veterans who served in a combat zone; and
- (3) an additional benefit equal to one-half of their service-connected disability rating for disabled veterans. Under this third level, a veteran

with a service-related disability could qualify to receive an additional 50% exemption on the assessment.

This base exemption, however, includes a maximum dollar limit. Under the first level, a qualifying individual would be entitled to a 15% exemption on his/her assessment up to \$12,000; under the second, an individual could receive a 25% exemption up to \$20,000; under the third, the individual could receive up to a 75% exemption up to \$60,000.

A School District may also offer additional benefits under this law, including: 1) a cooperative apartment corporations benefit, i.e., the exemption is granted to veterans who own a share in a complex of one or more residential buildings; 2) a Gold Star Parents benefit, i.e., the exemption is granted to parents of veterans who were killed in service; and 3) a benefit for exempt individuals who have relocated their primary residence within the District.

Deadline

The benefits of the amended statute are available during the 2014 tax year. In order to authorize the exemption for this year, a Board must hold a public hearing and adopt the resolution prior to March 1, 2014.

Considerations

We caution our clients not to rush to action on this issue. Superintendents and their Boards should fully review

Continued on the next page



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Colleen W. Heinrich graduated *magna cum laude* from Siena College in 1990 and received her law degree from Albany Law School in 1993. She is a member of the American Association of Trial Lawyers, the New York State Bar Association, the Women's Bar Association of the State of New York, and the Central New York Woman's Bar Association (President 2001-2002). Ms. Heinrich has performed pro bono work for the Central New York Women's Bar Association Domestic Violence Divorce Project and the Vera House. She has lectured on School Law for the National Business Institute (1998, 2003, 2005) and on Civil Litigation for the New York State Bar Association (1999). Ms. Heinrich was formerly on the Board of Directors of Legal Services of Central New York and has served as an Impartial Hearing Officer for State of New York Office of Special Education Services since 1996. Her other areas of practice include: municipal and education law and related civil litigation.

In This Issue ...

- Alternative Veterans' Tax Exemption May Now Be Applied to School Taxes
- Attorney Spotlight
- Protecting Trademarks of School District Team Names and Logos
- New Minimum Wage Law Sparks Questions about Applicability to Teacher Assistant/Aides
- Building Principal Terminated by Hearing Officer for Off-Duty Misconduct
- Upcoming Events

Hot Topics**Alternative Veterans' Tax Exemption May Now Be Applied to School Taxes**

and understand the impact of the exemption before adopting the authorization. In reaching its decision, the Board should examine the amount of property that would likely become exempt under Section 458-a as well as the amount and duration of those exemptions. Au-

thorizing the exemption may well result in a dramatic shift in the School District's tax burden to non-veterans in order to maintain the district's budget.

In these difficult financial times for school districts and community resi-

dents, this is a significant business decision and should be carefully studied.

If you need assistance or have additional questions about the foregoing, please feel free to contact us.

Intellectual Property Rights**Protecting Trademarks of School District Team Names and Logos**

Unfortunately, school districts often run into the problem of finding that non-school affiliated businesses or programs are using the school district's team name or logo. This can cause confusion in the community and could even create liability for the district in some circumstances. As such, school district should be vigilant in the protection of their team names and logos.

In discussing the use of school district team names and logos, we are really addressing a trademark, which is a word, symbol, or phrase, used to identify a particular manufacturer or seller's products or services and distinguish them from that of another. Trademarks are governed by both State and federal law. 15 U.S.C. §§1051, et seq.; New York General Business Law §§360, et seq.

Acquiring Trademark Rights

Rights to a trademark can be acquired in one of two ways: (1) by being the first to use the mark and claiming a common law trademark; or (2) by being the first to register the mark with the U.S. Patent and Trademark Office ("PTO"). 15 U.S.C. §1127(a).

In claiming rights to use a mark, the "TM" (trademark) designation is used to alert the public to a claim of a "common-law" trademark. No registration is necessary to use a "TM" symbol and use may continue even if the PTO refuses to register a mark. This common law trademark is useful, but does not pro-

vide all the rights and benefits of federal registration.

Once a mark has been federally registered with the PTO, the "®" symbol may be used on or in connection with the goods/services listed in the federal trademark registration.

Although registration with the PTO is not required for a trademark to be protected, registration does provide a number of benefits to the registering party. 15 U.S.C. §1051. Registration constitutes nationwide constructive notice to others that the trademark is owned by the party. Registration enables a party to bring an infringement suit in federal court. 15 U.S.C. §1121. Registration also allows a party to potentially recover damages, attorneys' fees, and other remedies.

Actions Designed to Prevent Trademark Infringement

If a party owns the rights to a particular trademark, that party can sue subsequent parties for trademark infringement. 15 U.S.C. §§1114, 1125. The standard used is "likelihood of confusion." To be more specific, the use of a trademark constitutes infringement if it is likely to cause consumer confusion as to the source of those goods/services or as to the sponsorship or approval of such goods.

As such, in order to protect a school district's interest and ward off any confusion due to the unauthorized use of

its logo/team name, it is our office's recommendation that the school districts take the following steps:

- Begin using "TM" on the representations of your district's logo and team name;
- Send a cease and desist letter to the non-school-sponsored sporting programs which are currently using your district's team name and/or logo without permission or licensing agreement;
- Consider whether or not it would be beneficial for your district to seek a registered the trademark with the PTO; and
- Consider enacting a Board Policy concerning the use of district trademarks.

If your district is interested in pursuing any of the above-suggested avenues to protect your school district's team names and logos and/or would like further information on this topic, please feel free to contact our offices for further guidance and assistance.

Minimum Wage**New Minimum Wage Law Sparks Questions about Applicability to Assistants/Aides**

With the recent increase in New York's minimum wage to \$8.00 per hour, we have received a number of questions from school districts and BOCES about whether certain employees are covered by the new law. Specifically, there has been a great amount of confusion regarding whether teacher assistants and teacher aides are entitled to receive the new minimum wage. The reason for the confusion appears to come from the fact that certain of these employees may be covered while others may not. As discussed in greater detail below, it is likely that teacher assistants are exempt from the minimum wage requirements while teacher aides are not.

Whether a teacher assistant or teacher aide is covered by the minimum wage law depends on whether he/she spends the majority of his/her working time actually teaching students or assisting others who teach the students. If their "primary duty" is assisting teachers rather than teaching a class, the school will be required to pay them at least the equivalent of \$8 per hour.

Although regular teachers are typically exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) and the New York State Minimum Wage Act, other school employees who work alongside teachers or occasionally teach do not qualify for any such exemptions.

Under the FLSA regulations, the special professional exemption for teachers applies to any employee with a primary duty of "teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment." 29 C.F.R. §541.303(a). The State Minimum Wage Act also excludes instructional employees from the minimum wage requirement but explicitly covers "any individual employed or permitted to work in any non-teaching capacity by a school district or board of cooperative educational services." N.Y. Labor Law §651(5).

The Commissioner of Education's regulations state that a teacher aide's job is

to assist teachers in "nonteaching duties". Also, its civil service position description makes it clear that a teacher aide does not teach. On the other hand, these rules recognize that a teaching assistant may provide "direct instructional service to students". But ultimately, exemptions must be determined on a case-by-case basis depending on an employee's "primary duty" and on an analysis of the job duties actually performed, not on any title or classification.

Thus, each district and BOCES must carefully examine what specific duties of each teacher assistant and teacher aide perform (and how much of their time is spent performing each of those duties) when they are working in a school to determine if the position's primary duty is really teaching, which is "exempt" work, or assisting a teacher, which is "nonexempt" work.

If you have any questions regarding the new minimum and/or its applicability do not hesitate to contact our offices.

Tenured Administrator Discipline**Building Principal Terminated by Hearing Officer for Off-Duty Misconduct**

In a recent Education Law §3020-a hearing, Firm Partner, Miles G. Lawlor, Esq., won an important victory for a client district seeking to discipline a building principal for widely publicized "off-duty" misconduct.

In Jerry v. Board of Ed. of City School Dist. of City of Syracuse, 35 N.Y.2d 534, 364 N.Y.S.2d 440 (1974), the New York Court of Appeals recognized that tenured educators and administrators may be disciplined for "off-duty" misconduct if: 1) the misconduct directly affects the

performance of the educator's professional responsibilities; or, 2) the misconduct becomes the subject of such "public notoriety" so as to significantly and reasonably impair the educator's ability discharge his or her job duties. In the recent 3020-a decision handled by our firm, the hearing officer cited both considerations when terminating the employment of a building principal whose out-of-school misconduct was widely reported in the local media and directly affected his ability to serve as a role model for students and staff.

In the case at issue, a middle school principal was charged with a misdemeanor sexual offense, after groping a woman in a restaurant located within the school district community. The principal's alcohol-fueled misconduct, and his arrest and related court proceedings, were widely reported in local newspapers, on television news broadcasts and on the internet. Following an investigation, the School

Continued on the next page

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Tenured Administrator Discipline**Building Principal Terminated by Hearing Officer for Off-Duty Misconduct (cont'd)**

District's Board of Education voted §3020-a disciplinary charges against the administrator in connection with his off-duty misconduct.

During subsequent §3020-a disciplinary hearings, it was argued that because the principal's misconduct took place "on personal time," it was of no legitimate concern to the district. In addition, it was argued that media coverage of the principal's arrest and arraignment was "mere publicity" and did not constitute "notoriety" for §3020-a purposes.

However, the hearing officer appointed by the New York State Education Department disagreed, finding that because the principal's misconduct took place in an establishment open to the public, it did not constitute constitutional-

ly-protected "private conduct." In addition, the hearing officer found that "multiple news reports" by local media outlets covering the principal's arrest had resulted in "such notoriety that that it significantly and reasonably impair [ed]" his ability to discharge the duties and responsibilities of a district administrator.

Importantly, the hearing officer also found that that the principal's behavior was "antithetical" to his "responsibilities and duties as a principal and administrator," which included acting as a role model for students and a representative of the district. In light of the principal having achieved a "failing grade" with regard to these important duties and responsibilities, the hearing officer found that his termination was warranted.

The hearing officer's decision, which is currently under court review, recognizes that an educator's responsibility to act in a lawful and professional manner does not end with the close of the school day. Rather, that responsibility follows teachers and administrators into the communities they serve, and requires that they act as role models and district representatives whenever they are in the public eye.

If you have a similar concern or need further information about disciplinary action of tenured employees for off-duty misconduct, please feel free to contact our office.

Upcoming Events

<u>Attorney(s)</u>	<u>Date(s)</u>	<u>Event/Program/Location</u>
Henry Sobota	3/3/14	NYSCOSS 2014 Winter Institute Sunrise Café: "Recent Developments in Personnel/Labor Relations and Do's and Don'ts for Effective Investigations of Employee Misconduct," Albany Hilton, Albany, NY
Donald Budmen Eric Wilson	3/3/14	NYSCOSS 2014 Winter Institute Skill Building Session: "When Does Student Off-Campus Misbehavior Also Become Your District's Problem?" Albany Hilton, Albany, NY
Susan Johns Joseph Shields	3/3/14	NYSCOSS 2014 Winter Institute Legal Session: "Some Modest Proposals for Realistic and Practical Reforms to Assist Your District," Albany Hilton, Albany, NY
Susan Johns	3/19/14	Annual CSE Chairpersons Technical Assistance Meeting (sponsored by Board of Cooperative Educational Services - Sole Supervisory District - Franklin-Essex-Hamilton Counties) covering "Issues of Harassment Involving Students with Disabilities" and "Implementing the New Section 504," Crowne Plaza Resort, Lake Placid, NY

Please note that "Client In-Service" programs are being provided to particular clients at their request. If you are interested in having us present a program for you, please contact us so we can schedule one to suit your needs.