

To Be Argued By: Alan J. Pierce
Time Requested: 15 Minutes

NEW YORK STATE COURT OF APPEALS

ST. LAWRENCE COUNTY and RENEE COLE, in her
capacity as the duly elected Treasurer for the County of St.
Lawrence,

Plaintiffs-Appellants,

vs.

CITY OF OGDENSBURG, OGDENSBURG CITY SCHOOL
DISTRICT, JEFFREY M. SKELLY, in his official capacity as
Mayor of the City of Ogdensburg, and STEPHEN JELLIE, in
his official capacity as the City Manager for the City of
Ogdensburg,

Defendants-Respondents.

CASE NO. APL-22-00118

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

Respectfully:

Counsel of Record:

Stephen D. Button, Esq.
COUNTY ATTORNEY
48 Court Street
Canton, New York 13617
Tel: 315-379-2269
Fax: 315-379-2254

Appellate Counsel:

Alan J. Pierce, Esq.
John L. Murad, Jr., Esq.
HANCOCK ESTABROOK, LLP
100 Madison St., Suite 1800
Syracuse, New York 13202
Tel: 315-565-4546
Fax: 315-565-4600

Dated: March 17, 2023

{H5037783.1}

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIESiv

PRELIMINARY STATEMENT 1

COUNTER STATEMENT OF FACTS 1

ARGUMENT

POINT I: LOCAL LAW 2 IMPAIRS THE POWERS OF THE COUNTY...4

A. Local Law 2 “Impairs The Powers” Of The County Because It “Weakens” The County’s Power Or “Ability To Act Or Not Act”4

B. Local Law 2 Weakens The County’s Legislatively Granted Control Of Its Own Budget, Workforce, And Real And Personal Property7

POINT II: LOCAL LAW 2 IS NOT AUTHORIZED BY THE RPTL.....12

A. The City’s Repeal Of Its 1994 Opting Out Law Does Not Authorize The City To Require The County To Enforce The City’s Taxes Based Solely On The Definition Of A “Tax District” In RPTL 1102(6)(b)12

B. An RPTL 1150 Agreement Is The Exclusive Mechanism By Which A City May Act To Have A County Enforce Its Real Property Taxes And Have A County Make Whole A City For Delinquent Taxes.....15

C. The City Cannot Unilaterally Require The County To “Make Whole” The City For Uncollected City Taxes.....18

CONCLUSION20

PRINTING SPECIFICATIONS STATEMENT21

TABLE OF AUTHORITIES

Page(s)

CASES

St. Lawrence Cnty. v. City of Ogdensburg,
208 AD3d 929 (3d Dep’t 2022)..... 3, passim

Matter of Town of Irondequoit v. County of Monroe,
36 NY3d 177 (2020) 13

Wambat Realty Corp. v State of New York,
41 NY2d 490 (1977) 7

STATUTES

County Law § 150-a..... 8

County Law § 204..... 8

County Law § 215..... 7, 10

County Law § 550..... 8

Municipal Home Rule Law, § 10..... 4, 6, 7, 11

RPTL 936..... Passim

RPTL 938(1) 9

RPTL 999..... 3

RPTL1102(6) Passim

RPTL 1104(2) 13

RPTL 1150..... Passim

CONSTITUTIONAL PROVISIONS

NY Const, art IX, § 2 4, 6-7

OTHER AUTHORITIES

Garner, Black’s Law Dictionary (11th Ed., 2019).....6, 7
Ops Counsel SBEA No. 100 (1972), 1972 WL 19610.....11, 14
Ops St Comp, No. 86-76 (1986), 1986 WL 31763.....11

PRELIMINARY STATEMENT

The Brief of the City of Ogdensburg (“City” or “Ogdensburg”) and its officials (“City Brief”) makes several important concessions regarding the positions of the County and the dissent in the Appellate Division on both the RPTL and constitutional issues presented in this case of first impression. In addition, the City Brief notes at least one error committed by the Appellate Division majority that ruled in its favor on the RPTL question. In summary, the City Brief fails to support the Appellate Division majority’s opinion and is completely unpersuasive in rebutting the dissent written by Presiding Justice Garry in favor of the County herein.

COUNTER STATEMENT OF FACTS

Notably, in its Brief (at 5) the City acknowledges that at all times prior to the enactment of Local Law 2 in 2021 it enforced its own real property taxes. And when RPTL article 11 was enacted in 1993, the City took the affirmative action of opting-out of article 11 to continue enforcement of its own real property taxes (“in order to continue its exclusively Charter-based enforcement scheme”). *Id.* It was only in 2021 when the City’s “collection and enforcement structure became operationally impractical in light of the City’s limited resources and administrative infrastructure,” (*id.* at 23, 5), *i.e.* too expensive and burdensome, that the City

asked the County to take over enforcement of the City's real property tax enforcement on several occasions. When the County refused the City admits that it did what no other city in the State of New York had ever done before (City Brief at 2 ["this issue is one of first impression in the State"]) and unilaterally off-loaded and transferred this expensive and burdensome duty and responsibility to the County simply by City Charter amendment without an agreement from the County under RPTL 1150.

The City attempts to enhance the burden it had in performing its own tax enforcement by lamenting that the pre-2022 Charter "required the City to collect and enforce delinquent County taxes, as well as its own taxes." *Id.* at 5. The County has never disputed, however, that the portion of Local Law 2 that requires the County to collect and enforce its own taxes is valid.

The City also asserts that its tax enforcement scheme where it enforced its own City real property taxes prior to Local Law 2, rather than having the County handle enforcement of the City's taxes, was "unique." City Brief at 4-5. That is simply not true. The County's post-argument submission to the Third Department noted the Department of Taxation and Finance website that shows the counties and

cities that opted out of the RPTL article 11 tax enforcement program. There are 22 cities listed, including Ogdensburg.¹

We also pointed out that we could only find two examples of county/city agreements under RPTL 1150 where the counties of Chautauqua and Broome agreed to undertake the enforcement of real property taxes for the cities of Jamestown and Binghamton, respectively. (R185-186) Thus, it would appear that approximately 20 other cities in New York who opted out of article 11 in 1993 – and perhaps most of the other 39 cities in New York – are enforcing their own real property taxes like Ogdensburg did before enactment of Local Law 2.²

Moreover, as Presiding Justice Garry noted in the dissent, as of 1989 – prior to the enactment of RPTL article 11 – a survey by the SBEA reflected that “[o]nly 3 of the 56 responding counties (1 did not respond) replied that they “guarantee” unpaid city taxes ***.” *St. Lawrence Cnty. v. City of Ogdensburg*, 208 AD3d 929,

¹ www.tax.ny.gov/research/property/legal/localop/1104.htm (last viewed on March 14, 2023).

² There are 62 cities in New York State. [https://simple.wikipedia.org/wiki/List_of_cities_in_New_York_\(state\)](https://simple.wikipedia.org/wiki/List_of_cities_in_New_York_(state)) Removing the 21 opt-out cities, including Ogdensburg, and Jamestown and Binghamton that have 1150 agreements with their counties, leaves 39 cities that apparently are enforcing their own real property taxes before enactment of Local Law 2.

Notably, in 1965 the Legislature enacted RPTL 999 as a special piece of legislation mandating that the City of Geneva would be legally responsible for the collection and enforcement of the County of Ontario real property taxes, making it a standout who not only did what the City and the County did before Local Law 2, but codifying it into state law.

937, n 1 (3d Dep’t 2022). Thus, before the enactment of Local Law 2 in 2021 it appears that 53 counties did not “make whole” unpaid city taxes in their counties – so once again the proof is clear that the City’s pre-Local Law 2 situation was not “unique.”

Significantly, the City admits that:

1. the dissent is correct that as part of Local Law 2 it “repealed its opt out local law” enacted in 1994 so it would continue to enforce its own taxes. City Brief at 5-6, citing “Ogdensburg City Code, former § 199-43 [available at <https://ecode360.com/8441267>] [last accessed February 9, 2023]);” and

2. Local Law 2 not only requires the County to enforce the City’s taxes, but also “requires the County to “make whole” the City for delinquent [City] taxes the County is unable to collect” [R: 133-134].” City Brief at 6.

ARGUMENT

POINT I

LOCAL LAW 2 IMPAIRS THE POWERS OF THE COUNTY

A. Local Law 2 “Impairs The Powers” Of The County Because It “Weakens” The County’s Power Or “Ability To Act Or Not Act”

Contrary to the City Brief (at 11) there is nothing “bald” or conclusory” about Presiding Justice Garry’s analysis that Local Law 2 “impairs the powers” of the County in violation of the NY Const, art. IX, § 2(d) and MHRL § 10(5). The

City’s assertion that the dissent and the County have not offered “a single, specific citation to any statutory authority from which it derives one or more ‘powers’ that the Charter Amendments supposedly ‘impair’ ” (City Brief at 11), is, to quote the City’s Brief, “incomplete and inaccurate.” *Id.* The dissent set forth a detailed and authority-based:

1. rejection of the conclusion of the majority and the trial court that Local Law 2 “did not impair any power of the County because it did not diminish, or take away, any such power” because it actually “increases the County’s tax enforcement powers with respect to delinquent City taxes,” which only the State can do, not the City; and

2. analysis that “[w]hat is increased by Local Law No. 2 are the *obligations* that the County must fulfill with its own revenue and resources. The unilateral imposition of an unfunded mandate onto the County does more than merely ‘relate to [the County’s] *** affairs’ *** or *** ‘inconvenience[]’ its ‘operations.’ ” 208 AD3d at 937 (Emphasis in original) (Citations omitted).

The City adopts the dissent’s dictionary definition of the word “impairs” as meaning “to weaken.” *Id.* at 936; City Brief at 11-13. Instead, it argues that “the dissent notably failed to undertake the other half of the analysis, that is to discern an appropriate definition of the term ‘power’ ***.” *Id.* at 12. The City then sets forth dictionary definitions of the word “power” to conclude that “the phrase

‘impair the powers of any other local government’ within article IX, § 2(d) of the Constitution and MHRL § 10(5) “means to weaken a government’s legal authority, capacity or right to do a particular thing.” *Id.* at 13.

The City’s analysis is incomplete and only partially correct. A better source of the definition of “power” in this matter than the Merriam-Webster, Cambridge, Britannica or Macmillan dictionaries is Black’s Law Dictionary. It defines “power” as follows: “1. The ability to act or not act. 2. Dominance, control, or influence over another. 3. The legal right or authorization to act or not act; the ability conferred on a person by the law to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another.” Garner, Black’s Law Dictionary (11th Ed., 2019) (Emphasis supplied) What the City and its common dictionaries leave out is the key phrase “or not act.” Under Local Law 2 the County no longer has the “power” to “not act” with respect to the City’s delinquent property taxes, but now must act.

The “power” the County previously had to “not act” on the City’s delinquent taxes has been taken away, eliminated, and certainly “weakened” by the City’s “unfunded mandate” to enforce and make whole the City for those delinquent taxes in violation of the Constitution and MHRL. This is the fatal flaw in the City’s argument, with no authority whatsoever at pages 14-18, that “what the dissent is describing is the creation of a new governmental *duty* to act, rather than the

alteration of governmental *power* or *authority* to act. This distinction is critical, inasmuch as the creation of a governmental duty and the alteration of a governmental power are necessarily separate concepts.” City Brief at 14-15. The City then asserts several dictionary definitions of the word “duty” as being separate and apart from the word “power” in Const art. IX, § 2(d) and MHRL § 10(5) and meaning “a moral or legal obligation to do something.” City Brief at 15.³ Once again, the City misses the point in its unsupported, theoretical argument that because Local Law 2 imposes a new “duty” or “legal obligation to do something” it is taking away the County’s “power” to “not act.”

B. Local Law 2 Weakens The County’s Legislatively Granted Control Of Its Own Budget, Workforce, And Real And Personal Property

In short, as the dissent correctly noted, Local Law 2 impairs the County’s “power to fully control its own affairs, such as its budget and its workforce, by weakening that power (see NY Const, art IX, § 2[c][i]; [MHRL] § 10[1][i]; *see generally Wambat Realty Corp. v State of New York*, 41 NY2d 490, 493-494 [1977]).” 208 AD3d at 937. Insofar as in Local Law 2 the City dictates to the County how it must dedicate its resources and how it must spend its money, the City *is impairing the County’s powers*. Under County Law § 215 “[t]he board of supervisors shall have the general care and control of the corporate real and

³ Black’s Law Dictionary defines “duty” as “a legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.”

personal property of the county.” *See* County Law § 150-a (Board of Supervisors and the County’s Board of Legislators are synonymous). Also, County Law § 204 provides the County Board of Legislators with the “power to establish positions of employment.” If, by transferring the tax enforcement function to the County, the City mandates the County to hire additional employees, the City has usurped a “power” directly reserved to the County by a general law. The money spent both managing the process and the number of staff assigned to handle the process are personal property of the County, as would be the case if you were talking about human resource assets of a non-municipal corporation. It cannot be said that the County still has “power” or control over its property and workforce when the City is permitted to dictate how the County spends its money and deploys its workforce.

In addition, the County Treasurer’s powers under County Law § 550 are implicated by Local Law 2 as “the county treasurer shall receive and be the custodian of all money belonging to the county or in which the county has an interest and shall keep a true account of all receipts and the expenditures in books provided by [her] at the expense of the county.” While the City claims to have switched to the RPTL article 11 process, other portions of its Charter were not changed to align with the timing of tax collections and the warrant. Specifically, Local Law 2 amended the Ogdensburg City Charter sections C-68, C-80, C-81, and C-83 (R133-134), but did not amend sections C-70 through C-78 (R124-126),

which provide the collection and lien mechanisms and timing of collections and relevy. This appears to be a violation of RPTL 938(1).⁴

In short, the City has opted in to only so much of article 11 that allows it to hand the County the delinquent tax bill and problem of enforcement, but it continues to control the manner, method, and means of collection, which is an integral part of the enforcement process.⁵ Collection and enforcement of real property taxes are intertwined: it is the right of collection that gives rise to the power to enforce and it is the objective of enforcement to collect. The City's approach under Local Law 2 is a classic "have your cake and eat it too" approach. In effect, under Local Law 2 the County's discretion under the RPTL is actively subject to the whims of the City, thereby making it impossible for the County to

⁴ The statute provides in relevant part:

Upon application of the common council of a city or the supervisor of a town, the county treasurer may extend the time for collection of taxes levied therein to a day not later than the first day of June in any year *** . An extension granted shall not extend the time provided by law for the collecting officer to pay over taxes collected during the normal tax collection period.

⁵ The City Brief (at 1, 19, 22, 25) frequently refers to the "collection and enforcement" of City real property taxes under Local Law 2, but it is undisputed that in 2022 after its effective date of 1/1/22 the City is still collecting its own taxes and that the only portion of the process that Local Law 2 actually changed was the enforcement of delinquent taxes. This was agreed to at oral argument in the Appellate Division, is admitted on page 6 of the City Brief (Local Law 2 "requires the County to "make whole" the City for delinquent [City] taxes the County is unable to collect" [R: 133-134]."), and is clear from the Record. (R8)

actually provide for the “control of the corporate real and personal property of the county.” County Law § 215.

The City’s final argument is from “a practical perspective” and for sympathy in arguing that because it is too expensive and burdensome for it to continue enforcement of its own property taxes – the “collection and enforcement structure became operationally impractical in light of the City's limited resources and administrative infrastructure,” City Brief at 23, 5 (Emphasis supplied) – it is only fair to impose this enforcement obligation on the County. It makes this argument because Ogdensburg is the only city in the County and the County “has, for decades, handled delinquent tax enforcement for every town and village in [the] County” which therefore includes “every municipality in the county except the City of Ogdensburg.” *Id.* at 17. Notably, in making this argument the expense and burden of enforcing the City’s taxes, let alone making the City whole for any uncollected taxes of City residents, becomes, according to the City, “at most, an administrative inconvenience that the County would prefer to avoid ***.” *Id.* at 18 (Emphasis supplied). The City’s argument is unfounded, meritless, and inconsistent.

If the ruling in this case were limited solely to St. Lawrence County it might be understandable why the City would make this practical argument. It admits, however, that this case will decide, for the first time in this State (City Brief at 2),

whether any city in any county in New York can adopt amendments to its local Charter or other governing document and require the county in which it resides to enforce that city's real property taxes and make the city whole for any uncollected taxes. This is not a *sui generis* situation.

Finally, the City largely ignores (*see infra* at 14) the persuasive and only administrative guidance in New York that fully supports the County and the Appellate Division dissent that a city may not lawfully amend its Charter “to require [a] county to *** enforce taxes (either the city or the county-state levy) according to procedures established by the city.” 2 Ops Counsel SBEA No. 100 (1972), 1972 WL 19610; *see* Ops St Comp, No. 86-76 (1986), 1986 WL 31763, R82-84 (“the adoption of a local law requiring the levy of unpaid electric charges would nonetheless be prohibited by Municipal Home Rule Law, § 10(5) in those instances where delinquent taxes are collected by the county ***. [T]he effect of a village local law which provides for the levy of unpaid utility charges by the county would be to require the county to guarantee their payment to the village even though it is not required to do so under the Real Property Tax Law. Under these circumstances, a village local law providing for the collection of unpaid utility charges with village taxes would impair the powers of the county and would be improper in the absence of a State statute which expressly authorizes this procedure.”) (R84)

POINT II

LOCAL LAW 2 IS NOT AUTHORIZED BY THE RPTL

In its Brief the City argues that Local Law 2 is not inconsistent with RPTL article 11 because (1) its repeal of the City's 1994 law opting out of article 11 in Local Law 2 allows rather than prohibits the City from transferring its delinquent tax enforcement authority to the County; (2) RPTL 1150 is not the exclusive mechanism by which a city and a county can agree to a delinquent tax enforcement arrangement whereby the county handles these responsibilities on a city's behalf; and (3) RPTL 936 authorizes the "make whole" portion of Local Law 2. The City is wrong on all three issues.

A. The City's Repeal Of Its 1994 Opting Out Law Does Not Authorize The City To Require The County To Enforce The City's Taxes Based Solely On The Definition Of A "Tax District" In RPTL 1102(6)(b)

The City readily admits in its Brief (at 21-24) that the dissent correctly found that it repealed its 1994 opt-out local law in Local Law 2. The City asserts this was not "by mistake," but that "it *had to* repeal the opt out local law and subject itself to the procedures of RPTL article 11 in order to *** validly transfer to the County the authority to collect and enforce delinquent City real property taxes." *Id.* at 23 (Emphasis in original).

Notably, (1) in making this argument the City acknowledges that the Appellate Division majority was wrong in holding that "[t]he City was statutorily

authorized to [amend its Charter] pursuant to RPTL 1104(2)” because the City’s “repeal[of] its article 11 opt out local law *** thus render[ed] RPTL 1104(2) inapplicable to the City.” City Brief at 23-24, n 2; and (2) the Appellate Division majority never addressed the City’s repeal of its 1994 opting out local law in Local Law 2 in 2021 that was a fundamental basis of the dissent.

The City asserts that by repealing its 1994 opt out law in Local Law 2 it became bound by and entitled to claim the benefit of RPTL article 11, and specifically the definition of “tax district” in RPTL 1102(6)(b). This definition is the sole basis upon which the City relies in arguing that Local Law 2 is not inconsistent with RPTL article 11.

The County addressed this argument in its Brief (at 34-35) and very little needs to be said here. The City’s argument runs afoul of this Court’s holding in *Matter of Town of Irondequoit v. County of Monroe*, 36 NY3d 177 (2020) and is not supported by RPTL 1102(6)(b). The language of this definition does not state or “expressly contemplate[] that a city may [unilaterally] amend its Charter to abrogate its status as an RPTL article 11 tax district and transfer to the county the authority to enforce *** delinquent city real property taxes.” City Brief at 25. This definition simply incorporates and refers to the ability of a city, under RPTL article 11, to make an agreement with the county in which it resides for the county take over the enforcement of a city’s real property taxes under RPTL 1150.

Before turning to the City’s argument regarding section 1150, we note that the City’s interpretation of Ops Counsel SBEA No. 100, 1972 WL 19610 (1972) is meritless and nonsense. At issue is this statement in the Opinion: “the city charter cannot be amended to require the county to collect and enforce taxes (either the city or the county-state levy) according to procedures established by the city. The county's collection and enforcement activities are governed by the Real Property Tax Law.” *Id.* at *2.⁶

The City asserts that it “interprets this statement to mean that a city cannot amend its charter to require a county to collect and enforce its delinquent taxes according to special procedures that the city creates outside the context of RPTL article 11, because a county is obligated to follow article 11 collection and enforcement procedures.” City Brief at 26. The problem with this “interpretation” is that there is no authority in RPLT article 11 for the City to unilaterally transfer delinquent tax enforcement authority to the County via a simple charter amendment.

⁶ The City Brief does not accurately quote the Opinion. Its Brief contains this quote: “[a] city Charter cannot be amended to require the county to collect and enforce taxes *according to procedures established by the city* [because t]he county's collection and enforcement activities are governed by the Real Property Tax Law” (1972 WL 19610 at *1 [emphasis added]).” Thus, the City Brief fails to show the words left out of the Opinion and incorrectly cites to page *1 instead of *2.

B. An RPTL 1150 Agreement Is The Exclusive Mechanism By Which A City May Act To Have A County Enforce Its Real Property Taxes And Have A County Make Whole A City For Delinquent Taxes

Together, RPTL 1102(6)(b) and 1150 provide cities in New York with a mechanism to have a county enforce its taxes and make it whole for delinquent city taxes. In section 1150 the Legislature provided a similar, but not identical, method for the enforcement of delinquent taxes for cities and counties as it did for “counties and villages (*see* RPTL 1442), counties and towns (*see* RPTL 976), [and] counties and non-city school districts (*see* RPTL 1330).” 208 AD3d at 937, n 4. Section 1150 is “the mechanism by which cities may – cooperatively – accomplish what the City seeks here.” *Id.*

Again, the City admits that section 1150 is a proper method by which a county can enforce city taxes and make whole a city for delinquent city taxes. The City then argues, however, that “there is no indication in section 1150 or anywhere else in RPTL article 11 that such an agreement is the only mechanism by which this can be accomplished ***.” City Brief at 27 (Emphasis in original). The fact that apparently no other city in New York has ever acted like Ogdensburg and unilaterally required a county to enforce and make whole city tax delinquencies speaks volumes on the lack of authority other than a section 1150 Agreement to accomplish this result.

Moreover, the City provides no other alternative mechanism in the RPTL for this transfer of the City's obligation except its continued reliance on the definition of "tax district" in RPTL 1102(6)(b). It makes the circular argument that because section 1150(1) authorizes only "tax districts *** to make agreements with one another" and Local Law 2 "abrogate[s] the City's status as a tax district *** it is submitted that the City is not even eligible to enter into a section 1150(1) agreement with the County." City Brief at 28.

The City also repeats the meritless conclusion of the trial court that "if a section 1150(1) agreement were the only way the City could transfer delinquent tax collection and enforcement authority to the County, that would render the language of RPTL 1102(6)(b) superfluous ***." *Id.* at 28-29. It does not because section 1102(6)(b) follows logically and necessarily from section 1150 and the structure of the RPTL regarding the various municipal entities that impose taxes.

RPTL articles 9 and 11 were created to govern the collection process for non-charter counties, towns, and cities who never timely opted out of article 11. Article 13 deals with school districts, article 14 deals with villages. When the Legislature crafted RPTL article 11, it understood that some cities may opt out of it, but later want its county to handle their tax collection and enforcement process. Thus, the Legislature enacted section 1150 for that very reason – RPTL 1102(6)(b) is not superfluous as it sets forth exactly what a city could do if it timely opted out

of article 11, like Ogdensburg, but later changed its mind and wanted the county to take over the collection and enforcement process in the future. The Legislature dealt similarly with other non-constitutional entities: villages. A county may voluntarily and unilaterally undertake the process of collection and enforcement of real property taxes for villages by passage of local law or resolution, but counties are not required to handle village tax collection and enforcement. It is completely voluntary and subject to an 1150 Agreement or a local law adopted by the county. Towns and school districts taxes are not voluntary for counties, which are required to handle their tax collection and enforcement with one exception, city schools district taxes. *See* RPTL 976, 1330. The City ultimately conceded this about the School District here as article 13 makes it clear it could not shift that responsibility to the County. This concession resulted in the City amending its Charter again in January 2022 to assume the School District taxes as its responsibility. *See* City Brief at 7, n 1.

In a footnote the City explores the possibility that “[t]he City would, however, be eligible to enter into an RPTL § 1150(2) agreement with the County ***.” *Id.* at 28, n 3. The City made no such argument in this case until now, neither the trial court nor the Appellate Division majority discussed or relied on it, and Westlaw contains no decisions citing or discussing the application of section 1150(2). Thus, the City’s argument has no authority to support it.

In summary, the dissent correctly found that a RPTL 1150 Agreement is the City's *only option* to have the County "make the City whole for uncollected City-levied taxes" and to "shift the responsibility to enforce those delinquent taxes to the County," 208 AD3d at 933, and that "the City's circumvention of RPTL 1150 renders Local Law No. 2 inconsistent with a general law," specifically RPTL article 11 ***." *Id.* at 935-936.

C. The City Cannot Unilaterally Require The County To "Make Whole" The City For Uncollected City Taxes

The Appellate Division majority's conclusion that the City properly required the County to "make whole" and credit the City for its delinquent taxes is dependent on its conclusion that the City is no longer a tax district under RPTL 1102(6)(b). Since this definition provision does not authorize the City to require the County to enforce the City's delinquent taxes, it does not provide a basis for the make whole provision in Local Law 2.

Thus, the majority opinion states:

By adopting Local Law No. 2, the City amended its Charter by deleting the provisions requiring the City to enforce the payment of delinquent taxes, leaving the County with that obligation under RPTL article 11. *** As a consequence of the amendment, the City is no longer a "tax district" for purposes of RPTL article 11 (*see* RPTL 1102[6]) and the County treasurer becomes the enforcing officer (*see* RPTL 1102[3][a][i]). As such, the County treasurer is statutorily required to credit the City for unpaid delinquent taxes upon the return at the end of the fiscal year (*see* RPTL 936).

208 AD3d 929, 931-932.

Contrary to the majority's opinion, since the City remains a "tax district" under RPTL 1102(6) and the County Treasurer does not become the "enforcing officer," the dissent correctly found that the County Treasurer is not statutorily required to credit the City for unpaid delinquent taxes upon the return at the end of the fiscal year under RPTL 936. *Id.* at 930-932; see County Brief at 29-31.

CONCLUSION

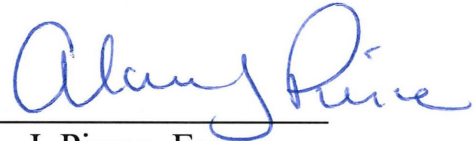
For all the foregoing reasons, and those stated in the County's Brief filed on December 26, 2022, the Order appealed from should be reversed, the City's motion to dismiss denied, and Local Law 2 declared invalid and unenforceable, together with such other and further relief as this Court deems just and reasonable.

Dated: March 17, 2023

Attorneys for Plaintiffs-Appellants

Appellate Counsel:

HANCOCK ESTABROOK, LLP



Alan J. Pierce, Esq.

John L. Murad Jr., Esq.

100 Madison St., Suite 1800

Syracuse, New York 13202

Tel: 315-565-4500

apierce@hancocklaw.com

Counsel of Record:

Stephen D. Button, Esq.

COUNTY ATTORNEY

48 Court Street

Canton, New York 13617

Tel: 315-379-2269

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(f)(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

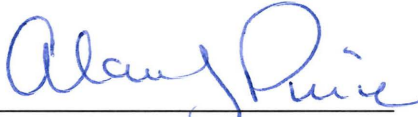
Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, and this Statement, is less than 7,000 words.

Dated: March 17, 2023

Attorneys for Plaintiffs-Appellants

HANCOCK ESTABROOK, LLP

By: 
Alan J. Pierce, Esq.

100 Madison St., Suite 1800

Syracuse, New York 13202

(315) 565-4546

apierce@hancocklaw.com