

# Chapter 191

## TAXATION

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**[HISTORY: Adopted by the Board of Trustees of the Village of Pelham Manor as indicated in article histories. Amendments noted where applicable.]**

GENERAL REFERENCES

Assessments — See Ch. 6.

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ARTICLE I

Utility Tax

[Adopted 12-10-1951 by L.L. No. 1-1951]

**§ 191-1. Tax on the furnishing of utility services.**

Pursuant to the authority granted by § 138-d of the Village Law<sup>1</sup> of the State of New York, a tax equal to 1% of its gross income from and after the first day of July, 1951, is hereby imposed upon every utility doing business in the Village of Pelham Manor which is subject to the supervision of the State Department of Public Service, which has a gross income for 12 months ending May 31 in excess of \$500, except motor carriers or brokers subject to such supervision under Article 3-b of the Public Service Law,<sup>2</sup> and a tax equal to 1% of its gross operating income from and after the first day of July, 1951, is hereby imposed upon every other utility doing business in the Village of Pelham Manor which has a gross operating income for the 12 months ending May 31 in excess of \$500, which taxes shall have application only within the territorial limits of the Village of Pelham Manor, and shall be in addition to any and all other taxes and fees imposed by any other provision of law. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Pelham Manor, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

**§ 191-2. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**GROSS INCOME** — Includes receipts received in or by reason of any sale, conditional or otherwise (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in gross income), made or service rendered for ultimate consumption or use by the purchaser in the Village of Pelham Manor, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor of services or other costs, interest or discount paid, or any other expense whatsoever; also profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property (other than property of a kind which would properly

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1. Editor's Note: See now Village Law § 5-530.

2. Editor's Note: Article 3-b of the Public Service Law was repealed by L.1970, c. 267, § 5. See now Transportation Law § 240 et seq.

be included in the inventory of the taxpayer if on hand at the close of the period for which a return is made); also receipts from interest, dividends and royalties derived from sources within the Village of Pelham Manor other than such as are received from a corporation, a majority of whose voting stock is owned by the taxpaying utility, without any deduction therefrom for any expenses whatsoever, incurred in connection with the receipt thereof, and also profits from any transaction (except sales for resale and rentals) within the Village of Pelham Manor whatsoever; provided, however, that the words "gross income" shall include, in the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village of Pelham Manor, and in the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village of Pelham Manor.

**GROSS OPERATING INCOME** — Includes receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, electricity, steam, water, refrigeration, telephony, telegraphy, or in or by reason of the furnishing for such consumption or use of gas, electricity, steam, water, refrigerator, telephone or telegraph service in the Village of Pelham Manor, including cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expenses whatsoever.

**PERSON** — Persons, corporations, companies, associations, joint-stock associations, copartnerships, estates, assignee of rents, any person acting in a fiduciary capacity, or any other entity, and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or any any other means, except the state, municipalities, political and civil subdivisions of the state or municipality, and public districts.

**UTILITY** — Includes every person subject to the supervision of the State Department of Public Service, except persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, and also includes every person (whether or not such person is subject to such supervision) who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water, refrigeration, telephone or telegraph service by means of mains, pipes or wires, regardless of whether such activities are the main business of such person or are only incidental thereto, or of whether use is made of the public streets.

**§ 191-3. Utilities subject to tax required to keep records.**

Every utility subject to tax under this article shall keep such records of its business and in such form as the Village Treasurer may require, and such records shall be preserved for a period of three years, except that the Village Treasurer may consent to their destruction within that period or may require that they be kept longer.

**§ 191-4. Utilities required to file returns.**

Every utility subject to tax hereunder shall file annually, on or before the 25th day of February, a return for the 12 calendar months ending December 31, preceding such return date

or any portion thereof for which the tax imposed hereby is effective; provided, however, that in lieu of the annual return required by the foregoing provisions, any utility may file quarterly, on or before March 25, June 25, September 25 and December 25, a return for the three calendar months preceding each such return date, and in the case of the first such return, for all preceding calendar months during which the tax imposed hereby was effective. Every return shall state the gross income or gross operating income for the period covered thereby. Returns shall be filed with the Village Treasurer on a form to be furnished by him for such purpose and shall contain such other data, information or matter as he may require to be included therein. The Village Treasurer, in order to insure payment of the tax imposed, may require at any time a further or supplemental return, which shall contain any data that may be specified by him, and he may require any utility doing business in the Village of Pelham Manor to file an annual return, which shall contain any data specified by him, regardless of whether the utility is subject to tax under this article. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or of the owner or of a copartner thereof, or of a principal officer of the corporation, if such business is conducted by a corporation, to the effect that the statements contained therein are true.

**§ 191-5. Tax payable with return.**

At the time of filing a return as required by this article, each utility shall pay to the Village Treasurer the tax imposed by this article for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

**§ 191-6. Failure to submit acceptable return.**

- A. In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Village Treasurer, and if a corrected or sufficient return is not filed within 20 days after the same is required by notice from him, or if no return is made for any period, the Village Treasurer shall determine the amount of tax due from such information as he is able to obtain, and if necessary, may estimate the tax on the basis of external indices or otherwise. He shall give notice of such determination to the person liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the person against whom it is assessed shall, within 30 days after the giving of notice of such determination, apply to the Village Treasurer for a hearing, or unless the Village Treasurer of his own motion shall reduce the same. After such hearing, the Village Treasurer shall give notice of his decision to the person liable for the tax. Such decision may be reviewed by a proceeding under Article 78 of the Civil Practice Act of the State of New York if application therefor is made within 90 days after the giving of notice of such decision. An order to review such decision shall not be granted unless the amount of any tax sought to be reviewed, with interest and penalties thereon, if any, shall be first deposited with the Village Treasurer and an undertaking filed with him, in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that, if such proceeding be dismissed or the tax confirmed, the applicant will pay all costs and charges which may accrue in the prosecution of such proceeding, or at the option of the application, such undertaking may be in a sum sufficient to cover the tax, interest, penalties, costs and charges aforesaid, in which event the applicant shall not be required

to pay such tax, interest and penalties as a condition precedent to the granting of such order.

- B. Except in the case of a willfully false or fraudulent return with the intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as required by this article the tax may be assessed at any time.

#### **§ 191-7. Giving of notice.**

Any notice authorized or required under the provisions of this article may be given by mailing the same to the persons for whom it is intended, in a postpaid envelope, addressed to such person at the address given by him in the last return filed by him under this article, or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time, which is determined according to the provisions of this article by the giving of notice, shall commence to run from the date of mailing of such notice.

#### **§ 191-8. Penalties for offenses.**

Any person failing to file a return or corrected return, or to pay any tax or any portion thereof, within the time required by this article shall be subject to a penalty of 5% of the amount of tax due, plus 1% of such tax for each month of delay or fraction thereof, excepting the first month, after such return was required to be filed or such tax become due; but the Village Treasurer, for cause shown, may extend the time for filing any return, and if satisfied that the delay was excusable, may remit all or any portion of the penalty fixed by the foregoing provisions of this section.

#### **§ 191-9. Refunds.**

If, within one year from the payment of any tax or penalty, the payer thereof shall make application for a refund thereof and the Village Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Village Treasurer shall refund the amount so determined. For like cause and within the same period, a refund may be so made on the initiative of the Village Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Treasurer as hereinbefore provided unless the Village Treasurer, after a hearing as hereinbefore provided, or of his own motion, shall have reduced the tax or penalty or it shall have been established in a proceeding under Article 78 of the Civil Practice Act of the State of New York that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this article. An application for a refund, made as hereinbefore provided, shall be deemed an application for the revision of any tax or penalty complained of and the Village Treasurer may receive additional evidence with respect thereto. After making his determination, the Village Treasurer shall give notice thereof to the person interested, and he shall be entitled to an order to review such determination under said Article 78, subject to the provision hereinbefore contained relating to the granting of such an order.

**§ 191-10. Tax to be part of operating cost.**

The tax imposed by this article shall be charged against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others but shall constitute a part of the operating costs of such utility.

**§ 191-11. Action to enforce payment.**

Whenever any person shall fail to pay any tax or penalty imposed by this article, the Village Attorney shall, upon the request of the Village Treasurer, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Village Treasurer. Each such tax and penalty shall be a lien upon the property of the person liable to pay the same, in the same manner and to the same extent that the tax and penalty imposed by the § 186-a of the Tax Law is made a lien.

**§ 191-12. Village Treasurer to make rules; subpoena.**

In the administration of this article the Village Treasurer shall have power to make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of his powers and the performance of his duties, and to prescribe the form of blanks, reports and other records relating to the administration and enforcement of the tax, to take testimony and proofs, under oath, with reference to any matter within the line of his official duty under this article, and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

**§ 191-13. Disclosure of information; penalty.**

- A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Village Treasurer, or any agent, clerk or employee of the Village of Pelham Manor to divulge or make known in any manner the amount of gross income or gross operating income, or any particulars set forth or disclosed in any return under this article. The officer charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Village of Pelham Manor in an action or proceeding under the provisions of this article, or on behalf of the State Tax Commission in an action or proceeding under the provisions of the Tax Law of the State of New York, or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the publication of delinquent lists showing the names of persons who have failed to pay their taxes at the time and in the manner provided for by this article together with any relevant information which in the opinion of the Village Treasurer may assist in the collection of such delinquent taxes;

or the inspection by the Village Attorney or other legal representatives of the Village of Pelham Manor of the return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action has been instructed in accordance with the provisions of this article.

- B. Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both, and if the offender be an officer, agent, clerk or employee of the Village of Pelham Manor he shall be dismissed from office, and shall be incapable of holding any office or employment in the Village of Pelham Manor for a period of five years thereafter.
- C. Notwithstanding any provisions of this article the Village Treasurer may exchange with the chief fiscal officer of any city or any other village in the State of New York information contained in returns filed under this article, provided such city or other village grants similar privileges to the Village of Pelham Manor, and provided such information is to be used for tax purposes only, and the Village Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

**§ 191-14. Disposition of taxes and penalties.**

All taxes and penalties received by the Village Treasurer under this article shall be paid into the treasury of the Village and shall be credited to and deposited in the general fund of the Village.

**ARTICLE II**

**Business Exemption**

[Adopted 12-13-1976 by L.L. No. 11-1976]

**§ 191-15. Exemption reduced.**

As provided in Subdivision 7 of § 485-b of the Real Property Tax Law, the exemption table set forth in Subdivision 2(a) of that section shall be and hereby is amended to read as follows:

Year of Exemption	Percentage of Exemption
1	0
2	0
3	0
4	0
5	0
6	0
7	0
8	0
9	0
10	0

**§ 191-16. Referendum.**

This article is subject to a referendum on petition pursuant to the provisions of § 24 of the Municipal Home Rule Law.

ARTICLE III  
**Real Estate Exemption**  
[Adopted 9-24-1984 by L.L. No. 2-1984]

**§ 191-17. Purpose.**

The purpose of this article is to provide that no real estate tax exemption shall be granted by the Village of Pelham Manor by reason of § 458-a of the Real Property Tax Law.

**§ 191-18. No exemption granted.**

Pursuant to Subdivision 4 of § 458-a of the Real Property Tax Law, no exemption provided for by § 458-a of the Real Property Tax Law shall be granted with respect to real estate taxes levied by the Village of Pelham Manor.

ARTICLE IV  
**Veterans Exemption**  
[Adopted 7-12-1999 by L.L. No. 1-1999]

**§ 191-19. Findings; purpose.**

The Board of Trustees of the Village of Pelham Manor finds as follows:

- A. The total assessed value of real property for which exemptions have been granted pursuant to § 458 of the Real Property Tax Law has increased as the result of revaluation.
- B. A material change in level of assessment, as provided in Title 2 of Article 12 of the Real Property Tax Law has been, or will be, certified for the assessment roll pursuant to the rules of the State Board.
- C. By reason of the revaluation, the value of an exemption pursuant to § 458 of the Real Property Tax Law has been effectively diminished.
- D. In order to avoid any effective diminution in the real property tax exemption granted pursuant to § 458 of the Real Property Tax Law it is necessary for the amount of that exemption to be increased in proportion to the increase in the level of assessment.

**§ 191-20. Exemption increased.**

The Assessor is hereby directed to increase the amount of the exemption granted pursuant to § 458 of the Real Property Tax Law by multiplying the amount of such exemption by the change in level of assessment factor. If the Assessor receives the certification after the

completion, verification and filing of the final assessment roll, the Assessor shall certify the amount of exemption as recomputed pursuant to this section to the local officers having custody and control of the roll, and such local officers are hereby directed and authorized to enter the recomputed exemption certified by the Assessor on the roll.

**§ 191-21. Applicability.**

This article shall take effect immediately upon filing with the Secretary of State and shall apply to any assessment roll having a taxable status date of June 1, 1999, or later.

ARTICLE V

**Alternative Veterans Exemption; Gold Star Parents Exemption**

[Adopted 3-24-2003 by L.L. No. 2-2003]

**§ 191-22. Statutory authority; exemption granted.**

In accordance with the provisions of Real Property Tax Law § 458-a, the Village of Pelham Manor hereby adopts the maximum alternative veterans tax exemption permitted under § 458-a(2)(d)(ii) of the Real Property Tax Law, as the same may from time to time be amended.

**§ 191-23. Definitions, restrictions and requirements.**

All definitions, restrictions and requirements of Real Property Tax Law § 458-a, as it may from time to time be amended, shall apply to the implementation of this article.

**§ 191-24. Gold Star Parents Exemption.**

For the purpose of this article, the Village hereby adopts the provisions of § 458-a(7)(b) of the Real Property Tax Law.

ARTICLE VI

**Cold War Veterans Exemption**

[Adopted 3-22-2010 by L.L. No. 2-2010]

**§ 191-25. Purpose.**

The purpose of this article is to grant Cold War veterans who meet the requirements set forth in § 458-b of the New York State Real Property Tax Law with a real property tax exemption.

**§ 191-26. Definitions.**

As used in this article, the following terms shall have the meaning indicated:

**ACTIVE DUTY** — Full-time duty in the United States Armed Forces, other than active duty for training.

**ARMED FORCES** — The United States Army, Navy, Marine Corps, Air Force, and Coast Guard.

**COLD WAR VETERAN** — A person, male or female, who served on active duty in the United States Armed Forces during the time period from September 2, 1945, to December 26, 1991, was discharged or released therefrom under honorable conditions and satisfies any other requirements set forth in § 458-b(1)(a) of the New York State Real Property Tax Law.

**LATEST CLASS RATIO** — The latest final class ratio established by the New York State Board of Real Property Tax Services pursuant to Title 1 of Article 12 of the New York State Real Property Tax Law for use in a special assessing unit as defined in § 1801 of the New York State Real Property Tax Law.

**LATEST STATE EQUALIZATION RATE** — The latest final equalization rate established by the New York State Board of Real Property Tax Services pursuant to Article 12 of the New York State Real Property Tax Law. The New York State Board of Real Property Tax Services shall establish a special equalization rate if it finds that there has been a material change in the level of assessment since the establishment of the latest state equalization rate, but in no event shall such special equalization rate exceed 100. In the event that the state equalization rate exceeds 100, then the state equalization rate shall be 100 for the purposes of this article. Where a special equalization rate is established for purposes of this article, the Assessor is directed and authorized to recompute the Cold War veterans exemption on the assessment roll by applying such special equalization rate instead of the latest state equalization rate applied in the previous year and to make the appropriate corrections on the assessment roll, notwithstanding the fact that such Assessor may receive the special equalization rate after the completion, verification and filing of such final assessment roll. In the event that the Assessor does not have custody of the roll when such recomputation is accomplished, the Assessor shall certify such recomputation to the local officers having custody and control of such roll, and such local officers are hereby directed and authorized to enter the recomputed Cold War veterans exemption certified by the Assessor on such roll.

**QUALIFIED OWNER** — A Cold War veteran, the spouse of a Cold War veteran or the unremarried surviving spouse of a deceased Cold War veteran. Where property is owned by more than one qualified owner, the exemption to which each is entitled may be combined. Where a veteran is also the unremarried surviving spouse of a veteran, such person may also receive any exemption to which the deceased spouse was entitled.

**QUALIFIED RESIDENTIAL REAL PROPERTY** — Property owned by a qualified owner which is used exclusively for residential purposes; provided, however, that in the event that any portion of such property is not used exclusively for residential purposes, but is used for other purposes, such portion shall be subject to taxation, and only the remaining portion used exclusively for residential purposes shall be subject to the exemption provided by this article. Such property shall be the primary residence of the Cold War veteran or the unremarried surviving spouse of a Cold War veteran, unless the Cold War veteran or unremarried surviving spouse is absent from the property due to medical reasons or institutionalization subject to such time limitations, if any, as are set forth in § 458-b(1)(f) of the New York State Real Property Tax Law.

**SERVICE CONNECTED** — With respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty on active military, naval or air service.

**§ 191-27. Amount of exemption; limitations.**

- A. Qualifying residential real property shall be exempt from taxation to the extent of 15% of the assessed value of such property; provided, however, that such exemption shall not exceed \$54,000 or the product of \$54,000 multiplied by the latest state equalization rate for the assessing unit or, in the case of a special assessing unit, the latest class ratio, whichever is less.
- B. In addition to the exemption provided by Subsection A of this section, where the Cold War veteran received a compensation rating from the United States Veterans Affairs or from the United States Department of Defense because of a service-related disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property multiplied by 50% of the Cold War veteran disability rating; provided, however, that such exemption shall not exceed \$180,000 or the product of \$180,00 multiplied by the latest state equalization rate for the assessing unit or, in the case of a special assessing unit, the latest class ratio, whichever is less.
- C. If a Cold War veteran receives either a veterans exemption authorized by § 458 of the Real Property Tax Law, or an alternative veterans exemption authorized by § 458-a of the Real Property Tax Law, the Cold War veteran shall not be eligible to receive an exemption under this article.

**§ 191-28. Property held in trust.**

The provisions of this article shall apply to any real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption pursuant to this article, were such person or persons the owner or owners of such real property.

**§ 191-29. Cooperative apartments.**

- A. For the purposes of this article, title to the portion of real property owned by a cooperative apartment corporation in which a stockholder of such corporation resides ("tenant stockholder") and which is represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in the stockholder.
- B. Provided that all other eligibility criteria of this article are met by a tenant stockholder, that proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant stockholder to such real property owned by such cooperative apartment corporation in which such tenant stockholder resides shall be subject to exemption from taxation

pursuant to this article, and any exemption so granted shall be credited by the appropriate taxing authority against the assessed valuation of such real property. The reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant stockholder.

- C. Notwithstanding Subsection B of this section, a tenant stockholder who resides in a dwelling that is subject to the provisions of either Article II, IV, V or XI of the Private Housing Finance Law shall not be eligible for an exemption pursuant to this section.

#### **§ 191-30. Applicability.**

This article shall apply to assessment rolls based on taxable status dates occurring on or after the effective date of this article.

#### **§ 191-31. Duration of exemption.**

The exemption provided by § 191-27A of this article shall be granted for a period of 10 years. The commencement of such ten-year period shall be governed pursuant to this section. Where a qualified owner owns qualifying residential real property on the effective date of this article, or such other date as may be set forth in § 458-b(2)(c) of the New York State Real Property Tax Law, such ten-year period shall be measured from the assessment roll prepared pursuant to the first taxable status date occurring on or after the effective date of this article, or such other date as may be set forth in § 458-b(2)(c) of the New York State Real Property Tax Law. Where a qualified owner does not own qualifying residential real property on the effective date of this article, or such other date as may be set forth in § 458-b(2)(c) of the New York State Real Property Tax Law, such ten-year period shall be measured from the assessment roll prepared pursuant to the first taxable status date occurring at least 60 days after the date of purchase of qualifying residential real property; provided, however, that should the veteran apply for and be granted an exemption on the assessment roll prepared pursuant to a taxable status date occurring within 60 days after the date of purchase of residential real property, such ten-year period shall be measured from the first assessment roll in which the exemption occurs. If, before the expiration of such ten-year period, such exempt property is sold and replaced with other residential real property, such exemption may be granted pursuant to this section for the unexpired portion of the ten-year exemption period.

#### **§ 191-32. Application for exemption.**

Application for exemption shall be made by the owner, or all of the owners, of the property on a form prescribed by the state board. The owner or owners shall file the completed form in the Assessor's office on or before the first appropriate taxable status date. The exemption shall continue in full force and effect for all appropriate subsequent tax years, and the owner or owners of the property shall not be required to refile each year. Applicants shall be required to refile on or before the appropriate taxable status date if the percentage of disability percentage increases or decreases or may refile if other changes have occurred which affect qualification for an increased or decreased amount of exemption. Any applicant convicted of willfully

making any false statement in the application for such exemption shall be subject to the penalties prescribed in the penal law.