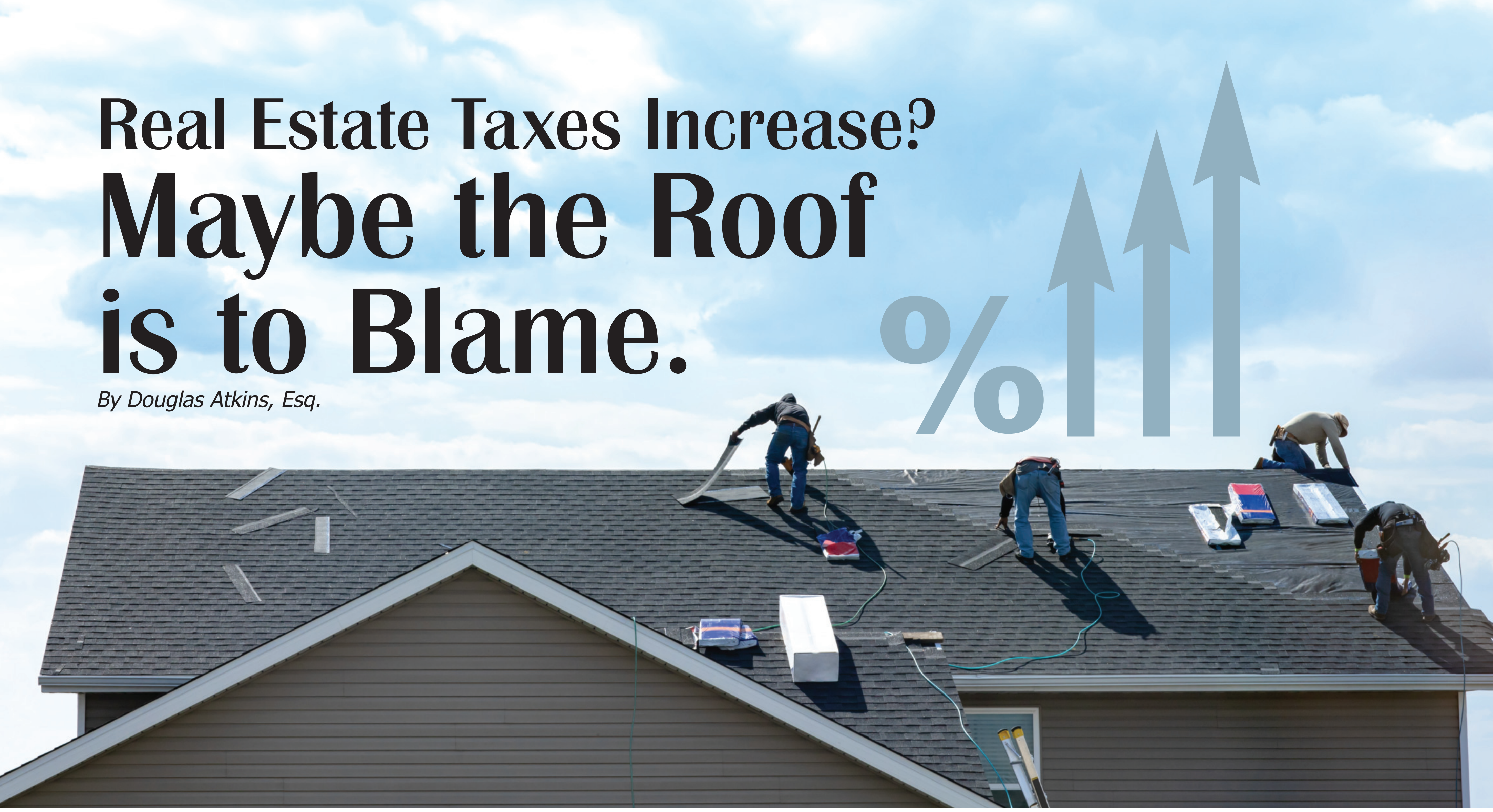
# Real Estate Taxes Increase?
# Maybe the Roof is to Blame.

*By Douglas Atkins, Esq.*




When the growth of the property tax expense outpaces rental revenue, property owners must be creative in an effort to maximize their net operating income ("NOI"). For decades, savvy property owners have been utilizing their roofs for just that. The roof can be a valuable asset in two main areas: installation of telecommunication equipment (most commonly, cellular phone antennas) and placement of solar panels. This article examines how those roof features can affect the real estate tax burden.

New York has some of the highest property taxes in the nation. Most significantly, we fund our schools and police through the property tax. Those two charges together typically comprise 75-80% of the tax bill.

The real estate tax bill is a product of the tax assessment (i.e. valuation) multiplied by the tax rate. The tax rate is purely budgetary, but the tax assessment is subjective. Simply put, a higher value property should pay higher taxes, and lower value property pays lower taxes. Pursuant to NY Real Property Tax Law §§ 301 & 302, the tax assessor values each property annually based on its use and condition. For example, when a shopping center expands by 10,000 square feet, the tax assessor is permitted to have the next tax assessment reflect that expansion. Similarly, if rents in that shopping center rise dramatically by market forces, again, the assessor is empowered to have the tax assessment follow upwards.

Roofs typically are a boring component of a real estate asset. The roof's purpose is plain: it keeps us cool and dry. It could be as simple as that, but modern technology makes roofs much more complicated.

Cellular antennas are an effective way for property owners to augment their income. The arrangement is simple: a property owner allows equipment to be installed on his roof. That equipment is used by telecom operators (e.g. Verizon) or emergency service providers (e.g. fire department) in return for payment. A threshold question is whether these installations can be assessed as real property or are they non-assessable personal property? The prevailing practice has been that cellular antennas are indeed Fixtures, which are assessable as real property. See RPTL § 102 (12).

Since cellular antennas are assessable real property, they can increase your taxes. The more interesting question is, by how much? There is no one-size-fits-all answer. In my experience, various jurisdictions arrive at disparate conclusions. For example, Jurisdiction A may calculate that the net operating income rises by 5% and thus the tax assessment must rise by 5%; whereas Jurisdiction B may take a harsher approach that an installation increases NOI by 5% today, but has the potential to increase NOI by 25% and thus the assessment should increase by 25%. Regardless of the outcome, the property owner should be prepared for a rise in the tax expense.

Similarly, solar panels can be considered Fixtures and as such, can be assessable as real property leading to a tax increase. However, this presents a much more difficult policy question for fair tax treatment. If solar panels do not increase my revenue, why should it increase my property tax? The pure mathematical answer is that if it increases the value of the real estate, then it can increase the tax assessment. Thankfully, assessing jurisdictions are not as aggressive in taxing solar panels. In fact, there are programs for payments in lieu of taxes ("PILOT"), which would exempt taxation. See RPTL § 487. Also, many assessors often overlook solar panels for tax purposes and treat them as tantamount to a non-taxable amenity.

As always, pay attention to your tax assessment notices and your tax bills. Even if you are resigned to the fact that your taxes may rise, do not get caught by surprise.

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