Written Public Comments Submitted to the Department of Finance

Rules Relating to Request for Review Process and Clerical Error Administrative Review Process

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If you would like to review the original submission of any comment, including attachments, please email dofrules@finance.nyc.gov

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November 21, 2024

NYC Department of Finance
Legal Affairs Division
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Attn.: Timothy Byrne
Email: DOFRules@Finance.nyc.gov

Re: Comments on Proposed Amendment of the Rules Relating to Request for Review Process and Clerical Error Administrative Review Process

Dear Mr. Byrne:

Tener Consulting Services is a tax consulting firm assisting real property owners with tax and valuation matters. As a firm representing a broad range of commercial and residential owners, we are deeply concerned with the repercussions of the proposed changes to the Request for Review process and the Clerical Error Administrative Review process.

The proposed amendments will significantly alter both the scope of eligible errors and the process by which property owners may address those errors. While the purported goal of the amendments is to streamline operations and prevent repeated challenges across various forums, the proposed amendments, taken in their totality, will render the clerical error process meaningless and force owners to pursue litigation to address legitimate errors. A procedure apart from litigation is necessary, particularly where there exists a tax system as complex as New York City's and recent changes to the Department of Finance's own system (PTS) are challenging for taxpayers to navigate. While the goal of transparency is a laudable one, we are concerned that the implementation of these changes will have the practical result of increased ambiguity and a perhaps unintended departure from fairness for the taxpayer and accuracy for the Department of Finance.

The introduction of a requirement that a taxpayer receives no Tax Commission determination effectively forces taxpayers to forego Tax Commission hearings in order to pursue clerical error corrections.

The proposed amendment to subdivision (a) of § 53-01 of Title 19 of the Rules of the City of New York limits the instances in which the Department of Finance will act on taxpayer-initiated clerical error correction submissions, introducing an interplay between Tax Commission appeal proceedings that did not previously exist. Further, the Department of Finance will not correct any error where an

applicant "received a determination." A determination, according 21 RCNY § 4-01(a)(3) or (4) includes: "confirmation of the assessment following review" and "an offer or determination to correct the assessment." This requirement would force taxpayers to decide between pursuing a clerical error correction or a Tax Commission hearing. If the bases for a clerical error correction and a Tax Commission appeal are wholly distinct, such interplay seems to have no rationale other than to bar taxpayers from pursuing an appeal.

Practically speaking, because Finance's timeline to respond to Clerical Error Corrections may lag for several months and in some cases, years; as a result of these changes, taxpayers will be faced with the difficult choice to attempt to correct an error with the Department of Finance or proceed to have a Tax Commission hearing. Unless the Department of Finance is required to respond to a Clerical Error request prior to a scheduled Tax Commission hearing, the impact of proposed change is to deprive taxpayers of a hearing.

Further, where there are discrepancies of fact, the Tax Commission may view such a discrepancy as a defect to a taxpayer's application and confirm the property's assessment after a hearing. In such an instance, the error may have a prejudicial effect on valuation determinations at the Tax Commission, creating a circular situation whereby the error cannot be corrected due to the determination and the assessment challenge will be dismissed due to the error.

Additionally, the requirement that a taxpayer not receive a "determination" does not appear to be limited to a particular tax year. If a taxpayer forgoes a hearing in a tax year so that Finance may review a clerical error correction application, but receives no determination from the Department of Finance in that year, and the following year files an application for correction and has a Tax Commission hearing to address a valuation matter on two years (i.e. the current and the prior year for which a clerical error correction was filed), will a determination pursuant to 21 RCNY § 4-01(a)(3) or (4) then preclude Finance from correcting an error? Is a taxpayer forced to forgo Tax Commission hearings (to avoid determinations) until such time Finance reviews its clerical error correction? In our experience, this review can take several years. It appears that this provision would preclude taxpayers from settling any future tax year until such time as Finance corrects the error in question.

Thus, if a taxpayer has both an error that must be corrected and a valuation issue, the only possible outcome is to force the taxpayer to litigation for a resolution. Otherwise the taxpayer is held hostage indefinitely, denying the taxpayer's right to relief, defeating the core function of the Tax Commission and ultimately increasing the likelihood that property errors are left uncorrected in perpetuity, leading to an inaccurate assessment roll.

The proposed elimination of the enumerated grounds for Clerical Error Corrections hurts both taxpayers and the Department of Finance.

The enumerated grounds for the filing of a Clerical Error Correction set forth in § 53-02(a) and (b) are clear for both the taxpayer and the Department of Finance. As such, the rules protect both the City and the taxpayer. Eliminating this section and replacing it with correcting only those errors that are "purely ministerial in nature" does not improve clarity, rather the change creates significant

questions as to what comprises a legitimate basis for a clerical error correction. This change seems completely contrary to the purported rationale.

Section 53-02 in its current form sets forth two categories for Clerical Error Correction. § 53-02(a) provides for correction of Clerical Errors which are defined to include the failure to process a partial exemption and the correction as a result of computer programming or inputting error. In its current form § 53-02(b) enumerates fourteen grounds that are "Errors in Description." The proposed § 53-02(a) limits Finance to "correct any assessment or tax that is erroneous due to a clerical error that is purely ministerial in nature." While "ministerial" may be cited in case law, it is demonstrably less clear than the current version of the rules which explicitly outlines permissive grounds for clerical error correction filings. This ambiguity will surely lead to more, not less, challenges to real property assessments in improper forums.

Additionally, if the reason to eliminate these grounds for correction is that Finance will no longer consider applications for some or any of these reasons, the question becomes where may taxpayers go to correct these legitimate issues? The current "errors in description" as enumerated in § 53-02(b) are almost entirely outside of the purview of the Tax Commission. And thus, once again, the repercussions of this change can lead to only one result – additional taxpayer-initiated litigation.

The proposed requirement that discrepancies are resolved based solely on Finance's own records removes essential sources of information from Finance's consideration.

The rule's proposal that corrections may be made only in cases that "can be unambiguously resolved by reference to documents or information posted on the website of the Department of Finance," is a counter-productive requirement. The Department of Finance does not have dispositive records in many cases. As a simple example, consider a tax lot where an improvement is not removed from the assessment roll by January 5th. In this case, the dispositive information (i.e. a signed off demolition permit dated prior to January 5th) will be found in the records of the Buildings Department, not the Finance Department.

If vacant land is valued as developable, when it is actually wetlands, the dispositive records are with the New York State Department of Environmental Conservation.

Further, there may be other instances where Finance's records are inaccurate and can reasonably be correct with information provided by the taxpayer.

By ignoring external sources, this change increases the risk of errors, delays, and inaccurate assessments—consequences that unfairly burden taxpayers. Further, the imposition of this limitation impinges upon Finance's ability to improve the accuracy of its own records.

The proposed limitations restricting current owners' ability to challenge prior period errors may have significant prejudicial effects in certain contexts where historical assessments are the basis for future exemptions or abatements.

The proposed amendment of 19 RCNY § 53-01(1)(a) restricting the filing of a clerical error correction to tax years that the filer owned the property (or is an otherwise "qualified filer") is problematic in certain contexts where a property's historical assessments have significant import for present values, for example, where a property has been erroneously excluded from a protected tax class in a prior year, that re-calculation may have significant impact on the property's current value. Another example of where this may have prejudicial effect is where a particular tax year is the base year for future exemptions or abatements (i.e. 421-a). This change may preclude a developer from correcting a prior tax year that is critical to the future benefit calculation. If the purpose of this change is to prevent current owners from receiving historical refunds or credits, it should not also limit owners from correcting an error that affects future assessments and / or tax benefits. Correcting an error in these situations is not a "windfall," rather, the correction is just and critical for the reliability of the tax roll and the proper functioning of the City's taxation system.

The proposal to shorten the window to file a clerical error correction forecloses the possibility of resolving many potential errors.

We are also concerned about the changes to § 53-01(3)(a) which narrow the time period to the "current tax year and the two preceding years." Often, the types of changes that are addressed via the clerical error correction process are those that are difficult to spot in the current tax year and indeed may not exist until later, for example as further discussed below, where an error occurs in a Finance pseudo-history. The six-year window to correct errors is not one that produces "windfalls" but rather is appropriate, particularly in instances where the issue is complex and emerges over the course of several tax years.

The examples set forth below illustrate why a functioning clerical error process is critical both for taxpayers and the Department of Finance.

Below we have outlined real situations where a functioning clerical error procedure is necessary to resolve critical mistakes of fact. These corrections would now be wholly precluded according to the current proposed rules.

In one instance, an error was made in the creation of a newly created property's tax history. The tax lot at issue was created out of the apportionment of a super lot which yielded several new tax lots over the course of three years. The error occurred in a tax year four years prior to the lot's creation, a year critical to the calculation of the property's 421-a exemption. The error, if left uncorrected, would result in the developer paying tens of millions of dollars in additional taxes, making the affordable housing development unfeasible.

During this series of mergers and apportionments, the building value from one lot was applied incorrectly to the subject tax lot. Under current rules, this is a clerical error clearly specified in § 53-02(b)(7), however, according to the proposed amendments to the rules, this error would be uncorrectable. Not only would the developer be precluded based on the timing restrictions, they did

not own the property for the tax year containing the error, nor was any Tax Commission appeal filed in those years – the lot in question did not exist and the parent lot was wholly exempt at the time.

In another case, a clerical error correction was required to correct an improper building value on the final assessment roll. The property in question was a commercial building under construction in a progress assessment year. In order to resolve this error, the taxpayer had to provide information to substantiate the commencement of construction and that the building was not ready for occupancy by April 15th. The necessary documentation included extensive information from the Department of Buildings. Under the current proposal, it is unclear that such an error would be "ministerial" and further, the limitation of correction based only on Finance's records would prohibit the resolution of the mistake. Additionally, in the same case, because the correction was processed after the final assessment roll was released, the subsequent tentative assessment roll processed the prior year's building increase as an equalization increase. As a result, the taxable assessment did not reflect the value of the improvements and was significantly lower than was warranted in a tax year critical for computation of ICAP benefits. This error was also addressed through the clerical error process. The explicit authorization for Finance to correct this type of error is presently set forth in § 53-02(b)(2) and § 53-02(b)(11). The repeal of this section makes it unclear if this type of error would be addressed by Finance going forward.

In conclusion, we are deeply concerned that while the spirit of the proposed changes may be well-intended, ultimately the changes create outcomes that are adverse to taxpayer rights. The changes fail to improve clarity and leave substantial going-forward questions, which will in turn create additional burden on the courts, fundamentally undermining the integrity of the tax assessment process.

Thank you for your consideration of these points.

Sincerely,

Tener Consulting Services

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November 21, 2024

Re: 2024 RG 098

New York City Department of Finance

On behalf of The Real Estate Tax Review Bar Association, I write to you in response to the request for comments on the proposed rule changes put forward by the New York City Department of Finance regarding taxpayer-initiated requests for review and the requests for corrections of errors.

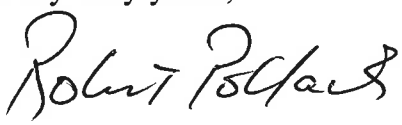
Our Bar Association objects to the section of the proposed rules that would preclude taxpayers who have filed Tax Commission applications pursuant to Section 163 of the New York City Charter from asking the Department of Finance to correct errors. Section 5 of the proposed rule change states that Subdivision (a) of Section 53-01 of Title 19 of the Rules of the City of New York will be amended to read that

> "the Department of Finance will not correct an error for which an owner or other qualified filer:
> (A) Filed an application for correction of an assessment with the Tax Commission pursuant to Section 163 of the Charter in connection with such property and received a determination described in 21 RCNY § 4-01(a)(3) or (4) or determination described in 21 RCNY § 4-01(a)(2) where such determination was based on a substantive defect; or
> (B) Sought judicial review of the assessment or taxation of such property and received a decision on the merits or entered into a settlement agreement."

The plain language of this section would preclude a taxpayer from taking a Tax Commission hearing as any determination made by a Tax Commission hearing officer (even one confirming the current assessment) would result in the Department of Finance declining to correct a prior error. The taxpayer's right to the review of their assessment is enshrined throughout New York law. Since 1938, the New York State Constitution has affirmed that "the legislature shall provide for the supervision, review and equalization of

assessments for the purposes of taxation." NY State Constitution, Article XVI, §2. The legislature has codified this Constitutional right within the Real Property Tax Law as well as the relevant Chapters of the New York City Charter. This Bar Association opposes any attempt to curtail or chill a taxpayer's right to seek assessment review by means of an administrative rule change.

Very truly yours,



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November 21, 2024

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RE: Comments on Proposed Rules Related to Requests for Review and Clerical Error Review

Dear Mr. Byrne:

I am writing in response to the request for comments on the proposed rule changes put forward by the New York City Department of Finance regarding taxpayer-initiated requests for review (RFR) and clerical error review (CER).

I am a Partner at the firm Herman Katz LLP. Our firm focuses on real property tax issues and I have personally worked on NYC matters for more than a decade. I also currently serve as the Chair of the Condemnation and Tax Certiorari Committee of the New York City Bar Association. However, this letter is submitted in my personal capacity as a practitioner familiar with both this area of law and the operations of the New York City Department of Finance as well as other relevant agencies (e.g. the New York City Tax Commission).

While colleagues of mine at other firms have multiple specific concerns about the proposed rules that I believe are well founded, I have a specific objection to the section of the proposed rules that would preclude taxpayers who have filed Tax Commission applications pursuant to Section 163 of the New York City Charter from asking the Department of Finance to correct errors. Section 5 of the proposed rule change states that Subdivision (a) of Section 53-01 of Title 19 of the Rules of the City of New York will be amended to read that:

> the Department of Finance will not correct an error for which an owner or other qualified filer:
> (A) Filed an application for correction of an assessment with the Tax Commission pursuant to Section 163 of the Charter in connection with such property and received a determination described in 21 RCNY § 4-01(a)(3) or (4) or determination described in 21 RCNY § 4-01(a)(2) where such determination was based on a substantive defect; or
> (B) Sought judicial review of the assessment or taxation of such property and received a decision on the merits or entered into a settlement agreement.

The plain language of this section appears to be designed to preclude a taxpayer from taking a Tax Commission hearing as any determination made by a Tax Commission hearing officer (even one confirming the current assessment) would result in the Department of Finance declining to correct a prior error.

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The taxpayer's right to the review of their assessment is enshrined throughout New York law. Since 1938, the New York State Constitution has affirmed that "the legislature shall provide for the supervision, **review** and equalization of assessments for the purposes of taxation." NY State Constitution, Article XVI, §2, emphasis added. The legislature has codified this Constitutional right within the Real Property Tax Law as well as the relevant Chapters of the New York City Charter. This attempt to foreclose, through the administrative rule process, the ability of a taxpayer to either seek a correction of errors or seek relief at the Tax Commission[1] is unconstitutional.

While the goal of having an efficient assessment system is laudable, it cannot be accomplished at the expense of the constitutional rights of taxpayers. For these reasons, and for others put forward by my colleagues, I urge the Department of Finance to either scrap these proposed rule changes or make major revisions to the proposals.

Sincerely,

Warren M. Dubitsky

[1] This is especially frustrating when the errors that can be addressed through the current RFR and CER processes are ones the Tax Commission will specifically decline to address (e.g., square footage issues, apartment unit number issues, etc.).

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Honorable Office of the Mayor, City Council members and Department of Finance Officers;

I am a partner at the law firm of Sonnenschein, Sherman & Deutsch, LLP. We are a firm that has been practicing in the field of tax certiorari since 1957. When Irving Sonnenschein, who started our firm, began working in this field in 1941, he thought, "Why should I learn this field, the City will fix this soon enough". Well, it is now eighty (80) years later and the City still has not corrected many of the errors that we, on behalf of our client taxpayers, are still discovering.

We represent individual property owners/taxpayers, as well as both small and large rental property owners of both residential and commercial properties. The largest part of our practice is representing cooperatives and condominiums, both large and small, encompassing tens of thousands of taxpayers.

When we are retained by a new cooperative or condominium, we attempt to have them retain an architect to determine the correct gross building area ("GBA") of the property. This is extremely meaningful since cooperatives and condominiums are not, themselves, income producing properties. By statute, the Department of Finance ("DOF") must impute income to them based on the income per square foot ("PSF") of comparable rental buildings, therefore, the GBA of the property is a key component in the assessment valuation equation. In several instances, it was easy to evaluate that the DOF's GBA was overstated by just multiplying the lot square footage times the number of floors. Some of these buildings have been cooperatives since the 1980's, so they have been overtaxed, and have paid taxes it shouldn't have had to, based on the assessment valuation methodology in use, for in many instances 40+ years. As a result of this, obtaining a rightful refund, based on the DOF's adopting a lowered square footage, thereby altering the original calculations as to value, is not a "windfall" to the shareholder taxpayers. It is a small and very overdue, return of the "windfall" the City had been reaping for 40 years.

We submitted numerous Clerical Error Reviews ("CER") in 2016 when the current Notice of Rule Making went into effect. One of the earliest responses was two years later. However, there are still several where we have not yet received any response to date. Under the proposed rule, DOF would have us forego attending a Tax Commission hearing or a pre-trial conference with the NYC Law Department, while we wait for DOF to return what is only a small portion of the overpayment of taxes. In other cases, DOF has corrected some of the overpayments by the correct amount based on the current rule, yet due to DOF computer problems, some years were left off or processed incorrectly. The proposed new rule as written could prevent the taxpayer seeking a Tax Commission review due to the outstanding CER, despite the fact that the GBA has been corrected or the fact that the outstanding refund owed to the taxpayer, for a past year, has no bearing on the current Tax Commission proceeding.

I note in particular one of the most egregious cases of a GBA discrepancy based on percentage was a Flushing Queens new condominium, where the DOF stated that the GBA was 32,397 SF and the condominium's declaration, a document the City had in its records, indicated the square footage was 16,542 (we note that the Declaration of Condominium must be submitted to the DOF in order to apportion for the submission of lots).

The condominium's architect measured the building and determined the GBA was approximately 19,600 SF and the DOF adopted 19,603 SF as its revised figure, a reduction of almost 40%. Where is the "windfall" to the taxpayers who have been paying taxes based on assessment valuations using a methodology that included a variable (square footage), which was almost 40% greater than it actually was?

We believe that there is no reason to restrict further taxpayer's rights to corrct property tax assessment errors based on a mistake of fact.

DOF should immediately review, and if necessary, inspect the property to make sure the architect's figures and measurements are correct and make the correction expeditiously, not wait as many as eight (8) years to address the issues, especially if DOF's delays are going to prevent Tax Commission review, and force the taxpayer to choose which proceeding to pursue.

With respect to the RFR process, we submitted several to DOF this year together with an architect's report, in order for them to determine the correct square footage of the property, by the closing of the tax roll so that we could obtain a meaningful Tax Commission hearing. To date, we understand that there are hundreds of RFR's that have recommendations for corrections but have been held up by the final reviewer. It is now late November, approximately 6 months after the tax rolls closed and seven (7) and one-half months after the RFR submission deadline. These factual issues should be determined not later than the final roll so that the taxpayer can get a substantive hearing on the corrected facts. The RFR procedure should not be an either or choice. It should be both so that each taxpayer gets a fair and meaningful hearing based on the correct facts of their case.

The proposed amendment would put the taxpayer in a catch-22 in which incorrect DOF data leads to a negative determination on the merits, and this negative determination leads to a dismissal of a CER based on the proposed new rule.

Very truly yours,

Sonnenschein, Sherman & Deutsch, LLP

By: Martin J. Friedman

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November 21, 2024

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Re: Comments on Amendment of the Rules Relating to Request for Review Process and Clerical Error Administrative Review Process
Ref. No.: 2024 RG 098

Dear Mr. Byrne:

We are writing you today to address the Department of Finance's ("DOF") proposed Amendment of the Rules Relating to Request for Review Process and Clerical Error Administrative Review Process (hereinafter the "Proposed Amendment"). New York State courts have identified that "The ultimate goal of property valuation in any tax proceeding is to arrive at a fair and realistic value of the property involved." *See, Matter of Better World Real Estate Group v. New York City Department of Finance,* 122 A.D.3d 27 (N.Y. App. Div. 2nd Dept. 2014), *Citing, Matter of Great Atl. & Pac. Tea Co. v. Kiernan,* 42 AD2d 236, 242 (N.Y. 1977).

It is our opinion that DOF overlooked or misapprehended this jurisprudence when it drafted the Proposed Amendments since the application of the Proposed Amendments will neuter the Request for Review ("RFR") and Clerical Error Administrative Review Process ("CER") leaving the limited scope of assessment errors covered by the current RFR and CER processes up to the courts to resolve through the lengthy judicial process of Article 7 of the Real Property Tax Law which cannot provide a contemporaneous correction of an assessment error covered by the RFR and CER process. It is just and appropriate that DOF is identified as the party to correct the erroneous entry on the tax roll. In the following paragraphs we

identify three issues which we believe undermine the ultimate goal of property valuation in arriving at fair and realistic values of impacted properties.

Point I:

The Proposed Amendment's Limitations on Evidence.

The Proposed Amendment restricts the evidence upon which DOF can rely in both the RFR and CER processes to that which can unambiguously resolved through documents or information on the DOF website. It is unjust to assess real property based upon an error in description. DOF cannot arrive at a fair and realistic value of the property in cases where DOF's description of the property is incorrect. The core rationale of the Proposed Amendment is flawed in that no error in description will ever be corrected if the only evidence relied upon is the erroneous description contained in DOF's documentation or website.

This language is so restrictive that it annihilates the RFR and CER process all together for any errors in description of the property. We believe this language renders the Proposed Amendment unconstitutional since it eliminates a taxpayer's rights without the benefit of going through the legislative process.

Point II:

The Proposed Amendment's Limitation of Taxpayers' Remedies.

The Proposed Amendment states that RFR and CER applications will not be entertained by DOF when an owner or other qualified filer filed an application for correction of an assessment with the Tax Commission in connection with such property and received a determination on the merits, or sought judicial review of the assessment of the property and received a decision on the merits. As a matter of policy the Tax Commission will only review the assessment of real property as it is described by the DOF and any errors in the description of the property must be addressed by DOF. Thus, the Tax Commission will not correct an error in description. Additionally, the Tax Commission may confirm the assessment of a property if the information stated in the Tax Commission application does not match DOF's information for the property. Therefore, the Proposed Amendment's limitation serves only as a measure to prevent a taxpayer from having Tax Commission review of their assessment. Rather, the taxpayer will be forced to wait for a determination from any RFR or CER filed with DOF or judicial review.

Historically, the DOF has not placed a timeframe on when a taxpayer can anticipate the response to a RFR or CER that has been filed. Further, there is great variation in the timeline for DOF to respond. While some RFR and CERs are responded to within a number of months, others have no response for several years. Therefore a taxpayer filing an RFR or CER would be forced to forgo a Tax Commission hearing and the potential for immediate relief relating to the assessment of the property, in order to avoid a determination on the merits. The focus of this clause is not aligned with the ultimate goal of arriving at a fair and realistic value. Rather it serves as an impediment on taxpayers rights.

Point III:

The Proposed Amendment does not Address Key Elements Relating to Timing.

The Proposed Amendment does not establish a timeframe in which DOF is responsible to address a RFR or CER application filed by a taxpayer. Under the existing RFR and CER processes there is no timeframe within which a taxpayer can expect the DOF to respond. As a result and as stated above, some CER applications remain open and unanswered after more than a year. In these situations a taxpayer is not afforded the opportunity to pay tax based upon a fair and realistic value because an error that has been brought to DOF's attention simply has not been addressed. As a matter of equity and fairness a taxpayer should be entitled to notice from DOF as to their determination of an RFR or CER application by a date certain.

The Proposed Amendment similarly does not address any CER applications that are currently open and have not been responded to by DOF. It would be inequitable and unjust for DOF to use the Proposed Amendment against a duly filed prior CER that DOF did not respond to. In fact, it would result in a windfall for DOF if DOF were able to use the Proposed Amendment to sever years of liability on previously filed CER applications by claiming the Proposed Amendment's 1-year liability rule now applies.

In conclusion we hope that you feel compelled to take a second look at the Proposed Amendment through the lens of New York State jurisprudence and the ultimate goal of property valuation in a tax proceeding is to arrive at a fair and realistic value of the property involved and revise the Proposed Amendment accordingly.

Respectfully submitted,

Goldberg Weprin Finkel Goldstein LLP

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Honorable Office of the Mayor, City Council Members, and Department of Finance Officers:

Erroneous and unlawful property tax assessments impose unjust and unbearable burdens on property owners, tenants, families, employees, and other stakeholders. As we write this letter opposing the New York City Department of Finance's ("DOF") unlawful attempt to diminish property owners' rights to correct property tax assessment errors, property owners throughout the City are facing defaults, foreclosures, and downgrades at the highest rates in recent history. The DOF should prioritize proposals that enhance assessment accuracy and transparency; however, the current "Proposed Amendment" undermines these goals.

DOF's Proposed Amendment introduces a series of pitfalls, mines, and traps designed to disqualify virtually all property owners from exercising their statutorily provided rights under New York City Administrative Code ("NYC Admin. Code") § 11-206. The DOF is charged with the dual mandate of assessing accurately, and raising property tax revenue. The author of this proposal shows a complete disregard for the former while prioritizing the latter. NYC Admin. Code § 11-206 provides for a simple—and what should be a universally supported—proposition: that if a property owner pays an excessive amount of tax due to a DOF error, that property owner should be made whole.

Our law office, in conjunction with the Condemnation & Tax Certiorari Committee of the New York City Bar Association, unequivocally opposes the Proposed Amendment. We further contend that the scalding harm that would befall property owners from this contemplated rule change should raise alarm within the Office of the Mayor and City Council concerning the status and trajectory of property tax administration in New York City. We therefore request a meeting between the Office of the Mayor, the City Council, and the Bar Association to discuss those issues that are ailing property owners, and changes that should be made to bring about more accurate and fair property tax assessment.

THE NEW YORK CITY DEPARTMENT OF FINANCE

DOF is charged with the dual mandate of raising tax revenue and valuing properties fairly for taxation. The conflict of interest here is evident and it is brought about due to DOF's competing goals.

In 2002, the New York State Assembly recognized this conflict of interest within DOF and recommended the creation of a new independent agency apart from DOF to administer the annual reassessment of properties within the City, but DOF rejected this proposition (*See Preliminary Report of the Joint Task Force Charged with Eliminating Corruption in the Real Property Assessment Unit of the New York City Department of Finance*, annexed hereto as **Exhibit A**; see page 6). The report states that fiscal constraints within the City complicates matters because "…it causes assessors to think of themselves as revenue generators instead of as public servants responsible for setting an accurate value for properties." (*Id.* at page 26)

This conflict of interest undermines the principles of impartiality and fairness. If DOF were as concerned about valuing properties fairly as it is with raising tax revenue, then the Proposed Amendment would not be before us.

LEGAL REQUIREMENT TO VALUE BASED ON USE AND CONDITION AS OF THE TAX STATUS DATE

The law commands that all parcels in the City of New York be valued annually based upon their use and condition as of the January 5th tax status date. See New York Real Property Tax Law ("RPTL") § 302(1). The NYC Admin. Code § 11-207 mandates that the City's assessors "shall revalue, reassess, or update the assessment… during each assessment cycle, *irrespective of whether such parcel was personally examined during each assessment cycle*" (emphasis added). NYC Charter § 1506 defines "assessment" as "a determination by the assessors of (a) the taxable status of real *property as of the taxable status date*" (emphasis added). The courts have held that not valuing a property based on its condition and use on the taxable status day is "counter to the *statutory proscription* that assessments be made *according to the condition and ownership* of the property as it presently exists" (emphases added). (*Estate of Goldman v Commr. of Fin.*, 203 AD2d 20, 21 [1st Dept 1994]).

ERRONEOUS ASSESSMENT DATA RENDERS TAX COMMISSION REVIEW MOOT

Responsibility for maintaining accurate descriptive information upon which assessments are made falls upon DOF, and only DOF. This fact appears to have escaped the author of the Proposed Amendment. When reviewing a property tax assessment, the Tax Commission of the City of New York ("Tax Commission") relies exclusively on the data maintained by DOF. This fact is irrefutable and clearly stated on the Tax Commission webpage, whereupon it reads "If any of the above information listed on the Notice of Property Value is incorrect, **you must contact Finance (not the Tax Commission)** and request that the information be corrected" (*emphasis added*, annexed hereto as **Exhibit B**).[1] This webpage specifically reads (*emphasis added*):

> The Notice of Property Value issued by the NYC Department of Finance includes:
>
> 1. A description of your property including:
>   a. the size of any improvements in square feet,
>   b. the size of the land in square feet,
>   c. the number of residential units (e.g. apartments), the number of nonresidential units (e.g. stores, offices or other commercial space), and the number of floors.
> 2. The name of the property owner.
> 3. The street address.
> 4. The estimated market value of the property.
>
> **If any of the above information listed on the Notice of Property Value is incorrect, you must contact Finance (not the Tax Commission) and request that the information be corrected.**
>
> (https://www.nyc.gov/site/taxcommission/about/challenging-notice-of-property-value.page)

[1] https://www.nyc.gov/site/taxcommission/about/challenging-notice-of-property-value.page

THE PROPOSED AMENDMENT WOULD DISQUALIFY PROPERTY OWNERS THAT NYC ADMIN. CODE § 11-206 IS INTENDED TO HELP

An inaccurate DOF description of a parcel, whether it is of the floor area, the use, the number of units, or the physical condition (to name a few categories), will result in either a confirmation or an inadequate offer, as enumerated in the Rules of the City of New York ("RCNY"), Title 21, § 4-01(a)(2), § 4-01(a)(3), or § 4-01(a)(4).

Suppose a Tax Commission applicant disagrees with DOF inventory data or physical attributes. In that case, the Tax Commission hearing officers will advise the applicant that DOF is the proper agency for the correction of this type of error. The applicant will then receive a determination as described in 21 RCNY § 4-01(a)(2), § 4-01(a)(3), or § 4-01(a)(4).

The Proposed Amendment to 19 RCNY § 53-5 (found on pages 7 and 8 of the Notice of Public Hearing) would put the property owner in a Catch-22 situation whereby erroneous DOF data leads to a negative determination as described in 21 RCNY § 4-01(a)(2), § 4-01(a)(3), or § 4-01(a)(4), and a negative determination as described in 21 RCNY § 4-01(a)(2), § 4-01(a)(3), or § 4-01(a)(4) then leads to a denial of NYC Admin. Code § 11-206 jurisdiction, under the Proposed Amendment's new 19 RCNY § 53-5.

The author of the proposed new 19 RCNY § 53-5 seems to think that the Tax Commission performs its own independent research and inspection into the descriptive data maintained by DOF, but this is incorrect.

The Proposed Amendment would make an applicant's rights under NYC Admin. Code § 11-206 dependent upon the actions (or inactions) of the Tax Commission—an agency which is separate and apart from DOF. The New York State Court of Appeals has already found that it is unlawful for a local government agency (DOF in this case) to supplement the statutory conditions for maintaining a legislatively provided proceeding, and that doing so violates the home rule provision in the State Constitution (*Fifth Ave. Off. Ctr. Co. v City of Mount Vernon*, 89 NY2d 735, 743 [1997]; *see also 749 Broadway Realty Corp. v Boyland*, 3 NY2d 737 [1957]).

DOF IS PUSHING THEIR RESPONSIBILITIES ONTO AN OVERWHELMED LAW DEPARTMENT TAX AND BANKRUPTCY DIVISION

As previously stated, the DOF is responsible for assessing parcels based on their use and condition as of the tax status date, January 5 of each tax year. When the DOF fails in this responsibility, property owners must seek an administrative appeal with the Tax Commission. When a clerical or descriptive error by the DOF renders an assessment uncorrectable by the Tax Commission, property owners are relegated to administrative appeals under NYC Admin. Code § 11-206 or adversarial litigation involving the Law Department's Tax and Bankruptcy Division ("Law Department") and the Courts. All of this arises from the DOF's failure to perform its responsibilities correctly in the first place.

The term "windfall benefits" (as written in the Notice of Hearing, page 4) is a mischaracterization and a misrepresentation of the facts. Property owners never receive more than they are entitled to. Title 19 of the RCNY §§ 53-01 and 53-02 (as it currently stands) enables property owners to recover only six years of erroneous assessments; the DOF retains the remainder of its unwarranted gains. Very often, property owners only notice DOF's errors long after they occur. These errors may impact abatements or exemptions relied on by trusting purchasers. Cutting off corrections as of the date of purchase, as indicated in the Proposed Amendment to 19 RCNY § 53-3, would crystalize DOF errors and permanently harm new buyers. Property owners do not receive a "windfall" of punitive damages for suffering through DOF over-assessment. However, now that the DOF has raised the issue, perhaps they should.

Even though the Law Department's client in a RPTL Article 7 proceeding is the DOF, which is charged with the dual mandate of assessing accurately and raising property tax revenue, the Law Department focuses solely on the latter, with little regard for the former. It is well known that DOF's current assessments have failed to account for post-COVID changes in the real estate market (office and retail assessments are back to their pre-COVID highs, while properties are selling at discounts of 30% to 70% of their pre-COVID values). The Tax Commission cannot resolve all issues, they specialize in situations that fit neatly into their rubric, therefore, more cases have been piled onto the Law Department.

RPTL § 700(3) provides for expedited assessment review proceedings for property owners, but this statute has become little more than the punchline of a joke. At court conferences, members

of the City's Law Department constantly express that they are understaffed and unable to manage the current caseload. They state that petitioners should "wait in line" behind other property owners with cases dating back many years. If the author of the Proposed Amendment seeks to assign even more responsibility for assessment correction and additional cases to the Law Department, the City must simultaneously arrange for increased staffing, additional judges, and reduced durations for the resolution of RPTL Article 7 proceedings. Furthermore, for RPTL Article 7 proceedings to be fair and meaningful to property owners, DOF must remeasure the Tax Class 2 and Tax Class 4 Class Ratios based upon market values—something they are required to do annually, but have not done since 1985.

DOF'S PROPOSED AMENDMENT CONSTITUTES AN *ULTRA VIRES* ACT

The precursor statute to NYC Admin. Code § 11-206 is derived from Chapter 592 of the Laws of New York, 1915, which was passed by the 138th New York State legislative session.

NYC Admin. Code § 11-206 and the subsequently passed 19 RCNY §§ 53-01 and 53-02 are derived from RPTL Article 5, which applies to jurisdictions outside of New York City (annexed hereto as **Exhibit C**). The 2016 Notice of Rule Making (annexed hereto as **Exhibit D**) sets forth § 53-02, which reads (*emphasis added*):

> "Clerical errors and Errors in Description
>
> (a) Clerical Errors. The Commissioner of Finance may correct any assessment or tax that is erroneous due to a clerical error as defined in subdivision 2 of section 550 of the Real Property Tax Law. Clerical error will include but not be limited to the following…"

In the case of *Matter of Better World Real Estate Group v NY City Dept. of Fin.*, a decision which holds that RPTL Article 7 is not the exclusive means by which a taxpayer may challenge an assessment that is erroneous due to a clerical error, the court looked to Title 3 of RPTL Article 5 for illustrative purposes in order to determine what a "clerical error" or "error of description" actually is. (122 AD3d 27, at 37-38 [2d Dept 2014]). In that matter, the court found "acceptance of the respondents' view that RPTL article 7 is the sole vehicle for challenging a real property tax

assessment ***would render Administrative Code § 11-206 superfluous and meaningless***." (Emphasis added).

While the author of the Proposed Amendment tries to present NYC Administrative Code § 11-206 as if it is an archaic relic of the past, this legislative enactment and its 2016 rules merely provide NYC property owners with protections equivalent to property owners outside of NYC. If the Mayor is adopting a "City of Yes" policy, why is its largest and most influential administrative agency proposing a "City of No" amendment that would curtail the rights of property owners?

CONCLUSION

The Proposed Amendment would undoubtedly be found unlawful in court on account of the above-referenced reasons. Amid challenging times for property owners, it is disconcerting that DOF seeks additional means to extract tax revenue while restricting property owners' ability to secure fair and accurate assessments. Property owners in the City of New York need increased access to the courts and administrative agencies to ensure accurate assessment; not decreased access. As written in *McCulloch v. Maryland*, 4 Wheat. 316, 431 (1819), "The power to tax involves the power to destroy." In 2016, DOF took some steps forward concerning implementing transparency and accountability into DOF's assessment process by enacting Title 19 of the RCNY §§ 53-01 and 53-02. These rules helped property owners correct errors made by DOF, and progressed the City towards a more fair and reliable assessment system. The Proposed Amendment is a complete about-face. Instead of increasing DOF staffing, assessment accuracy, and assessor accountability, DOF is skirting responsibility and burdening property owners with the permanence of DOF errors. The Proposed Amendment helps no one but the tax collector and damages property owners, tenants, families, employees, and other stakeholders.

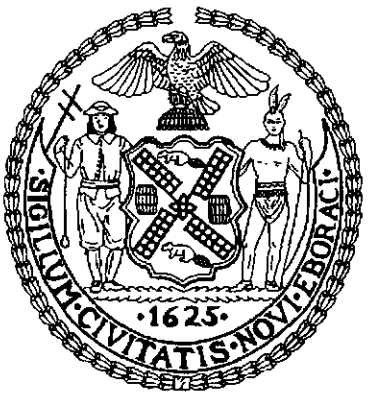
Very truly yours,

Lawrence J. Berger, P.C.

Law Offices of Lawrence J. Berger, P.C.

Exhibit “A”

Preliminary Report of the Joint Task Force charged with eliminating corruption in the Real Property Assessment Unit of the New York City Department of Finance



PRELIMINARY REPORT

of the Joint Task Force
charged with eliminating corruption
in the Real Property Assessment Unit
of the New York City Department of Finance

August 2002

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Commissioner
NYC Department of Investigation

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NYC Department of Finance

PRELIMINARY REPORT OF THE JOINT TASK FORCE CHARGED WITH ELIMINATING CORRUPTION IN THE REAL PROPERTY ASSESSMENT UNIT OF THE NEW YORK CITY DEPARTMENT OF FINANCE

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I. INTRODUCTION

On February 25, 2002, eighteen current or former New York City Tax Assessors employed by the New York City Department of Finance (DOF), Property Division, Real Property Assessments Unit were arrested on federal racketeering, bribery and mail fraud charges. A joint investigation by the New York City Department of Investigation (DOI), the U.S. Attorney for the Southern District of New York and the Federal Bureau of Investigation revealed that the assessors accepted more than $10 million in bribes over a thirty-five year period to change the assessed values of almost 600 properties. The scheme is estimated to have cost New York City approximately $40 million annually since tax year 1997/1998 and an undetermined amount in previous years.

Assessors are responsible for determining the market value of all real property in connection with the assessment of real property taxes. Property values are updated annually so that values reflect current market conditions. In the current fiscal year, DOF estimated market value of almost $600 billion and billable assessments of $93.3 billion. For Fiscal Year 2002, the City collected approximately $8.5 billion dollars in property taxes – based on a levy of about $9.3 billion. The property tax is the City's single largest source of revenue.

In response to the arrests, the Commissioners of DOI and DOF took several steps. Chief among these was establishing a joint Anti-Corruption Task Force (the Task Force) charged with examining the property assessment function at DOF and developing recommendations to eliminate the potential for future corruption in this area. The Task Force brought together key staff from DOI's Inspector General's Office for the Department of Finance and other DOI units knowledgeable about the specific allegations in the indictments and corruption vulnerability assessments. It also brought together key DOF staff knowledgeable about the real property assessment process and the operational and technological systems that support the assessment function. This report sets forth the Task Force's preliminary findings and recommendations.

The assessment process is not well understood by the public. There is a widespread perception -- especially in light of the recent arrests -- that property assessment is the exclusive domain of a small cadre of "expert assessors" who rely primarily on their own subjective judgments to arrive at assessment values. In preparing its observations and recommendations, the Task Force was cognizant of a variety of comments from elected officials, industry groups and the media calling for the City to demystify the property assessment process and make it more objective.

First and foremost, DOF must eliminate corruption risks in the Real Property Assessment Unit and see to it that the way it estimates values is transparent and easy to understand. This Preliminary Report contains 23 specific recommendations to accomplish these goals. These recommendations

are largely within the City's control and, for the most part, can be implemented immediately or in the near future. These recommendations are organized as follows:

A. Improving the Quality of Data Used in the Assessment Process
B. Improving Agency Operations
C. Improving Oversight and Integrity Controls
D. Making Better Use of Technology
E. Improving Public Awareness

In addition, the report includes 12 recommendations that require further analysis, external cooperation and input from the real estate, appraisal, and legal communities; unions; elected officials; and, most importantly, the public. One such recommendation seeks a new system for categorizing properties based on widely available income and expense information rather than individualized information submitted by owners. Ultimately, the goal is to simplify the way the Department does assessments, which will further improve the transparency of the process for property owners, the real estate industry and the public at large.

The report also recommends that the City set an agenda for labor/management cooperation that seeks to redefine the assessor job descriptions, implement a new assignment rotation system and re-evaluate professional credentials for assessors. The report recommends that the City undertake a review of best practices, including how to reassess properties that have been assessed corruptly and how assessments are done elsewhere, with an emphasis on sources of data and property classifications.

The Task Force further recommends that the City undertake a review of the appellate process governing real property assessments in other jurisdictions, with an emphasis on comparing the respective roles and standards of review employed by the Tax Commission and the State Courts pursuant to Article 7 proceedings. Such a review would determine whether the appeals process could be made fairer, more efficient and consistent with the standard of review employed in other appellate processes.

Next the report recommends that the City review the complexity of the legal framework supporting the Property Tax with a view towards demystifying the process and promoting public awareness.

The Task Force recommends that the City adopt seven of the eight recommendations contained in the recent report of the New York State Assembly on Assessor Practices and Assessment Administration in New York City. Four of the Assembly's recommendations are similar to ones proposed by the Task Force; though not identified specifically in text, their similarity is footnoted where applicable. Three of the Assembly's recommendations, which do not overlap with the Task Force's, are discussed individually.

The Task Force does not support the State Assembly's call for the creation of a new City agency to handle assessment, as it believes that the reforms set forth in this report would enable DOF both to improve the handling of assessments and to safeguard the integrity of the process.

Next Steps

In the next several months, the Task Force will schedule working group meetings with the assessors union, property owners, tenants, the legal community, elected officials, other government agencies and members of the general public to discuss the recommendations contained in this Preliminary Report. The ultimate goal will be to publish a final report in early 2003 that includes public comments and legislative recommendations.

In the interim, Finance will continue to make important changes, including filling the 15 vacancies created by the arrests last February, sharing DOF's assessment guidelines with the public and improving the public notices it sends. Over the fall, Finance will test new technology and set up new assessment districts. By taking these steps, Finance will ensure that the January 2003 assessment roll is accurate and fair.

The property tax is too important to the City's fiscal health to tolerate the kind of illegal activity that was revealed by the assessor arrests. The Task Force is committed to making sure that the public's trust in the property tax is never violated again.

II. BACKGROUND: UNDERSTANDING THE CORRUPTION RISKS IN NEW YORK CITY'S ASSESSMENT PROCESS

Property Classes

Pursuant to Section 1802 of the New York State Real Property Tax Law, real property in New York City -- which currently includes 983,831 properties -- is divided into four main tax classes.

- Tax Class 1 consists primarily of 1-3 family homes, certain condominiums and residentially zoned vacant land in Manhattan north of 110th Street and the other four boroughs. There are currently 691,348 Tax Class 1 properties in the City.

- Tax Class 2 consists of all residential buildings that are not in Tax Class 1. The class consists primarily of rental, cooperative and condominium apartment buildings with more than 10 units. There are currently 183,392 Tax Class 2 properties representing 1.4 million residential units in the City.

- Tax Class 3 consists of utilities such as telephone lines and poles, boilers and cables. There are currently 5,110 Tax Class 3 properties in the City.

- Tax Class 4 consists primarily of hotels, office buildings, stores, factories, warehouses, garages and certain vacant land. There are currently 103,904 Tax Class 4 properties in the City.

Valuation Methods

The purpose of the property assessment process is to determine full market value for all properties, which is defined as the price an informed buyer would pay an informed seller for a particular property in an "arms-length" sale. There are three methods for valuing real estate -- sales, cost and income.

- The sales approach assumes a property's value is the amount that it or a comparable property would sell for. This approach is most useful when a number of similar properties have been sold in the market.

- The cost approach assumes a property's value is the cost of constructing it. This approach is particularly useful in valuing new construction or unique properties such as utility pipelines and museums.

- The income approach assumes a property's value is equal to the income that the property can generate after providing the owner with a reasonable rate of return. This approach is used to value income producing properties such as office and apartment buildings.

What Went Wrong

Commercial Properties -- Office and Apartment Buildings

Properties in Classes 2 and 4 pay a substantial amount of the property tax burden. In Fiscal Year 2002 these properties paid $7.6 billion, more than 80 percent of the $9.3 billion property tax levy.

Class 2 and 4 properties are valued using the income approach. The income approach requires assessors to estimate three variables: income, expenses, and a capitalization rate, which is the rate of return an investor would reasonably expect. For cooperatives and condominiums the process is more complicated because Section 581 of the New York State Real Property Tax Law requires that these properties be valued as rent-regulated properties even though most people think about the values of these properties based on sales prices.

There is a high degree of subjectivity in the valuation process for these properties; thus, opportunities for corruption abound. The assessor could manipulate all three variables -- use a lower income estimate, higher expenses and an above average capitalization rate -- and the resulting value would be substantially lower. In addition, the assessor could manipulate the building characteristics including square footage. For cooperatives and condominiums, the assessor could also base the assessment on a low-valued, rent regulated property.

The key to good assessments is good data. However, the data currently available to assessors, particularly data required to assess income-producing properties and co-ops and condominiums cannot be shared publicly and are not adequate. Therefore, it is very difficult to explain how DOF establishes its values.

Real Property Income and Expense Statements

In 1986, the City enacted Title 11, Chapter 2, Section 11-208.1 of the Administrative Code of the City of New York requiring owners of income producing properties to provide DOF with income and expense information. Owners must submit Real Property Income and Expense Statements (RPIEs) annually and the law requires that DOF keep the information submitted secret.

As a result, the process by its very nature precludes DOF from providing sufficient information to the public on how it arrives at values. In addition, since DOF must base its assessments on the owners RPIEs, two similar buildings rarely have the same value. To make the process more transparent, nothing DOF does in the valuation process should be based on information that cannot be freely shared publicly.

RPIEs Are Problematic in Other Respects

- DOF only relies on the information from the RPIEs in limited instances because the information is stale and assessors often think owners have an economic interest in understating the income and overstating the expenses associated with their properties.

- The income and expense information is property-specific, making it very difficult for owners to compare their values to each other. Two buildings next to each other could have vastly different values based on the income and expense information they submit.

- The information contained in the RPIEs lags the assessment process by two years. For example, for the assessment year 2002/03, the most recent RPIE will be for the year 2000. Thus, the information contained in the RPIE has to be updated by the assessors, a process that requires subjective judgment and could be vulnerable to corruption. (See Appendix, which describes the RPIE timeline for the 2002 assessment cycle.)

- Property owners often do not submit RPIEs within the time period prescribed by law. Of the 45,000 properties required to file RPIEs in 2000, only 27,000 properties filed -- a non-compliance rate of 40 percent. The Department of Finance has not used its legal authority to compel the production of income and expense records from owners failing to file. In addition, the Department has not imposed the legally authorized penalties -- up to 5 percent of assessed value -- for failing to submit RPIEs. However, owners who do not submit RPIEs are denied a hearing before the Tax Commission.

- RPIEs are filed on paper, making it difficult to capture needed information in a timely fashion and to ensure that data is not being manipulated.

III. 23 SHORT–TERM RECOMMENDATIONS

A. Improve the Quality of Data Used in the Assessment Process

1) DOF should use non-secret, reliable, objective, independent, publicly available data to determine values instead of individualized income and expense statements submitted by property owners.

These might include:

- **Industry data,** such as
    - Cushman and Wakefield "Property Trends", which provides office vacancy and office market income and expense data by neighborhood
    - Jones Lang LaSalle, which also provides office vacancy and office market income and expense data
    - Trends, which provides hotel expense ratios
    - Julien Studley, which also provides office vacancies and office market income by neighborhood

- **Capitalization rates,** such as
    - KORPACZ, published by Price Waterhouse Coopers, which includes interest rates, equity rates and capitalization rates.
    - Barrons, which provides mortgage ratios
    - American Council of Life Insurances, which provides data on rates of return and financing levels

- **Information from government entities such as the**
    - New York City Buildings Department, which collects building dimensions including square footage for all New York City properties
    - New York State Division of Housing and Community Renewal, which collects rent roll information for rent-regulated apartments
    - New York City Department of Housing Preservation and Development, which through various vehicles, including the Housing Development Corporation, provides financing for housing
    - Rent Guidelines Board
    - New York City Housing Authority
    - City Planning Department
    - Economic Development Corporation

The Task Force understands that independent industry data does not currently exist to support the assessment of certain types of properties, such as warehouses, garages and stores. However, most of these properties are not required to file RPIEs because they are owner occupied. In addition, given rent regulations, apartment buildings must be valued using actual income and expense data.

Nevertheless, there is sufficient publicly available industry data that would support better, more consistent and more predictable assessments for a great

number of New York City properties. If DOF continues to rely on RPIEs, owners should be required to file this information electronically and the secrecy provision should be repealed.

2) **DOF should be required to provide the public with information about how values are determined including how income and expenses are estimated and capitalization rates are derived. DOF also should provide aggregate data about sales prices.**

B. Improve Agency Operations

3) **DOF should redesign the assessors' work process to eliminate opportunities for inappropriate contacts with property owners and their representatives.**

Contact between assessors and property owners or their representatives has been conducive to influence and/or corruption. Assessors who speak repeatedly with property owners or frequently visit particular properties may develop relationships with those property owners or their representatives. Over time, these relationships present the opportunity for owners or their representatives to influence the outcome of assessments and for corrupt situations to develop. To avoid this, it is necessary to limit the assessors' contacts with property owners and their representatives. The work process should be redesigned to eliminate -- to the extent possible -- opportunities for relationships to develop between assessors and owners/owner's representatives.

Specifically:

- **DOF should prohibit assessors from personally meeting with property owners or their representatives.** Owners and their representatives should no longer be able to request that they speak with "their assessor."

- **Owners and their representatives should request follow-up inspections in writing to the Assessor-in-Charge of the Borough.**

- **DOF should document all such requests in the assessment records.**

- **DOF should not permit assessors who originate assessments to return for follow-up work.** Sending a different assessor reduces opportunities for inappropriate relationships to develop and provides for an independent second opinion where there is disagreement with the original valuation.

4) DOF should implement a comprehensive field time accountability system.

Managers do not have an effective means to determine where field assessors are at any point in the day. Currently, DOF relies on a "Beep-and-Meet" system, whereby supervisors from time-to-time page assessors working on location and direct them to meet the supervisor at a specified location. DOF also requires assessors to fill out planned and actual field reports, which are lacking in that they do not include actual time of arrival and departure for each location.

DOF should:

- **Institute more detailed daily time logs that specify the time of arrival and departure from all locations visited.**
- **Direct supervisors to review work schedules more closely and distribute workloads more evenly.**
- **Utilize state-of-the-art technology.**

5) DOF should assign different individuals to perform the data collection and analysis functions.

Currently, the same assessor collects and analyses the data. A dishonest assessor could have an incentive to distort information. Data collection and data analyses are discrete functions that should be performed by different individuals with sufficient knowledge of the assessment process. Allowing one assessor to control this entire process fails to provide important checks and balances. The assessor that does the data collection should not be the same assessor that determines the value of the property. Separating these functions will improve the integrity of the process.

6) DOF managers should perform random reviews of assessments.

Prior to the publication of the tentative real property tax roll, DOF should convene a panel of managers -- for example, the Deputy Commissioner, Chief Assessor, Deputy Chief Assessor, and others -- to randomly review district assessor's valuations. Each assessor would be required to explain, in detail, the rationale for any assessment. The parcels reviewed must be selected at random to ensure that increases as well as decreases -- regardless of size -- as well as unchanged values are included. This would preclude opportunities for assessors to tailor valuations to "fall under the radar."

C. Improve Oversight and Integrity Controls

The Department of Finance's ability to prevent corruption in the Assessment Area -- as well as in other field operations, including Audit, Revenue Operations, and the Sheriff's Office -- is hampered by the lack of independent oversight capacity to review/audit exception reports, fieldwork products and the whereabouts of personnel on field assignments.

DOF currently has a Department Advocate's Office within the Administration Division, which investigates allegations of employee misconduct and makes referrals for disciplinary proceedings. This office does not currently have sufficient resources to proactively identify corrupt employees.

DOF also has an Internal Audit Unit responsible for developing and carrying out a systematic review of internal control weaknesses throughout the Department. However, this unit also does not currently have sufficient staff to implement an effective internal audit program.

The City's overall ability to prevent corruption would be enhanced if it increased DOI's limited resources for proactive anti-corruption activities.

7) DOF should enhance and expand the Department Advocate's Office.

DOF should provide the Department Advocate's Office with sufficient resources to perform its current disciplinary functions and also work closely with DOF's Inspector General's Office -- following DOI's protocols -- to conduct field investigations, integrity testing and double checking. Specifically, resources are needed to allow the Department Advocate's Office to:

- **Conduct investigations in response to referrals from the Inspector General (IG) and report findings to the IG** or the appropriate office within DOF for follow-up.

- **Conduct investigations to ensure that assessors accurately report the time they work.**

- **Follow-up on findings of the Internal Audit Unit that indicate patterns of misconduct, and/or training weakness,** which do not necessarily rise to the level of criminality.

- **Respond to complaints from the public regarding actions of assessors, auditors and other DOF field agents.**

- **Work closely with the Inspector General to randomly conduct integrity testing of assessors, auditors and other field personnel.**

- **Conduct double check reviews of field inspections, assessments, and audits.**

- **Investigate allegations of employee misconduct and make referrals for disciplinary proceedings.**

- **Initiate hearings and other appropriate disciplinary action as warranted.**

- **Monitor and review compliance with DOF and City rules.**

- **Coordinate with the Office of Training and Special Programs to ensure that DOF personnel receive adequate training.**

The Department Advocate's Office would not conduct independent criminal investigations. Any allegations or patterns of criminality would be reported to the Inspector General's Office for DOF immediately.

8) DOF should enhance and expand the current Internal Audit Unit.

The Department's Internal Audit Unit does not have adequate supervision and staff resources to conduct annual assessments of internal control weaknesses. Nor can it maintain a rigorous enough internal audit program to effectively monitor and report on internal control weaknesses. For example, the most recent internal audit covering aspects of the property assessment function was completed in 1996.

- **DOF should recruit an Audit Director as well as an Electronic Data Processing (EDP) Auditor and other qualified auditors at both the experienced and entry levels.** In the past, recruitment and retention of qualified personnel for these positions has been a problem for DOF. The Internal Audit Unit should continue to report directly to the Commissioner of Finance or her designee.

- **The Internal Audit Unit should cooperate and coordinate with the DOF Inspector General's Office and the Department Advocate's Office.** The Director of the Internal Audit Group, in consultation with the Commissioner of Finance, would be responsible for developing an effective annual assessment of internal control weaknesses as well as developing and implementing an effective annual audit plan.

9) **DOF should require assessors to complete financial disclosure forms.**[1]

All assessors -- regardless of salary -- should be required to fill out financial disclosure forms and submit them to DOI and the Conflict of Interest Board annually.

10) **The large City agencies that benefit from DOI's anti-corruption activities should be required to allocate additional staff to DOI to maintain and expand this important function.** The recent investigation has highlighted the need for vigorous, creative and proactive anti-corruption initiatives from DOI that could only come from a revitalized and fully staffed corruption prevention unit.

D. Make Better Use of Technology – Improving the Systems that Support the Assessment Process

Two primary information technology systems support the property assessment function: the Computer Assisted Mass Appraisal (CAMA) system and the Real Property Assessment Division (RPAD) system.

The CAMA system, developed in 1992 through a contract with the Cole-Layer-Trimble Company, maintains a database of physical, economic and valuation information for each parcel of property and assists the assessors in valuing the parcels using cost, sales and income methods of valuation.

Since properties in New York City are assessed at a percent of value and are subject to other complex rules, the RPAD system, originally developed in the early 1980s, is programmed with legally mandated formulas to arrive at assessments used for tax purposes. RPAD also is the repository for property sales dating back to the 1970s. In addition, RPAD is used to calculate exemption and abatement values. The system also maintains information about assessment protests filed with the Tax Commission.

There are several weaknesses in these systems as they currently exist that should be addressed immediately.

11) **DOF should program the CAMA system to support the production of values for commercial properties in order to reduce subjective discretion in valuing commercial properties.**

Commercial valuations are currently done manually outside of the CAMA system, which gives assessors wide latitude for subjective discretion in arriving at

[1] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

values for commercial properties. There is a subsystem within CAMA that can accommodate commercial valuations, but it is not fully functional.

Specifically, DOF must:

- **Add certain value components to the system, e.g., income, expense, capitalization rate or gross income multiplier, in order to accommodate commercial valuations; and**

- **Secure these changes with uneditable codes so that any change by an assessor would require a code change.** DOF should produce reports of such code changes and related reason codes, which should be reviewed by supervisors and oversight units.

12) Assessors should record field observations on handheld computers.

Currently, an assessor records the result of field observations by hand in a manner of his/her choosing. Handwritten data recorded in the field are transferred to other paper documents -- Property Valuation Documents (PVDs) -- and eventually entered into CAMA by the assessor, an assistant or supervisor. Multiple transfers of data are not only inefficient but subject to repeated errors and data manipulation.

- **A state-of-the-art handheld, user-friendly computerized device for recording the results of fieldwork would greatly reduce errors and data manipulation** and facilitate automated transfer of information to the CAMA system.

- **Handhelds could also provide real-time monitoring of the data collector's physical location and daily activities** through the inclusion of global positioning system (GPS) technology.

- **Handhelds could be equipped with cameras for capturing images of properties,** and they could incorporate workflow assignments, with standardized fill-in worksheets and Geographic Information System (GIS) routing of the tasks to be performed.

- **Property characteristics could be downloaded to handhelds for field confirmation.**

Currently, individual assessors retain custody of the Property Valuation Documents (PVDs) even after the valuation is completed. Although supervisors may have access, no standardized central storage or file management system exists. Allowing the assessor to maintain control of these documents presents corruption and quality control risks. If this information were captured electronically, there would be no reason to maintain paper records.

13) **DOF should store all records supporting property assessments centrally.** Centralized storage of files will reduce integrity risks and will afford management better control and access to these important documents.

DOF also should maintain a digital library of all property assessment records so managers can access them remotely.

14) **DOF should improve the password, User ID protection and other security standards on the CAMA and RPAD systems.**

The password protection and User ID process for the CAMA and RPAD systems are not adequate.

Specifically, DOF should:

- **Make CAMA's passwords expire and be a minimum of six characters composed of letters and numbers, in accordance with City standards.**
- **Properly format RPAD's passwords.**
- **Systematically delete or revoke inactive User Ids.**
- **Conduct annual reviews of users, their associated IDs and access rights.**

DOF has no security policy regarding control over access to and the dissemination of information within the CAMA and RPAD systems. Nor is there a consistent set of rules for controlling and limiting access to the input of data.

DOF must develop stringent security standards.

15) **DOF should program the CAMA system to produce an efficient and reliable audit trail of all changes entered into the system.**

It is questionable whether the CAMA system is able to produce a trail for audit purposes of changes to property values or characteristics. An audit trail is an essential tool for managers and oversight groups to monitor changes as a means of preventing corruption. CAMA's ability to perform this function should be improved.

16) DOF should improve CAMA system controls to prevent tampering.

The CAMA system provides too much latitude for assessors and other employees to change data. DOF should undertake a complete review of each user's authority to enter changes into the CAMA system. Also, DOF should program tighter controls into the system to prevent data tampering.

17) DOF must improve the reporting capability of the CAMA and RPAD systems.

A number of currently produced reports are never used, primarily due to the volume of their data. Moreover, production of reports generally depends on a few knowledgeable and competent individuals. This is due in part to complexities in the underlying data structures of CAMA and RPAD and the interdependencies of the data.

- **DOF should review the reports generated by the CAMA and RPAD systems in light of current requirements.**

- **DOF should build a data warehouse and employ user-oriented analysis and reporting tools.** This would support the development of new and useful reports for management and audit purposes -- for example, a graphical representation of the assessment changes by auditor or by district.

- **DOF should train staff as appropriate to use the data warehouse to produce reports.**

18) DOF should improve the user interface for the CAMA system.

From the user's perspective, the CAMA system has several deficiencies. There are, for example, too many unused screens and too many codes, which impedes the user's ability to access information efficiently.

DOF should design a new graphical interface (front-end) to make the system more user-friendly.

19) DOF should perform regular audits of the CAMA and RPAD computer codes.

DOF currently does not perform audits of the computer codes that exist in CAMA and RPAD. Such audits are important to prevent corruption on the part of computer programmers.

DOF should obtain applicable software in order to conduct such audits.

20) DOF should assign management responsibility for the CAMA system to its Management Information System (MIS) Division.

DOF's Management Information Systems (MIS) Division has direct responsibility for managing DOF's key Information Technology Systems that support revenue collections. MIS is responsible for ensuring that system security standards are uniformly maintained throughout the agency. Responsibility for CAMA, which resides within the Property Division, should be moved to the MIS Division.

21) DOF should consider using Business Intelligence (BI) software to highlight areas for management and oversight review.

There are automated tools available, commonly referred to as Business Intelligence (BI) software, which have the ability to uncover patterns and relationships not readily apparent in a normal review process. DOF currently uses BI software in the audit process to select likely audit candidates. BI is also used in the health care field to expose fraudulent claims. DOF should explore the feasibility of utilizing BI software to uncover patterns that could reveal fraud in the assessment process.

E. Improve Public Awareness

22) DOF should better inform the public about the assessment process.[2]

The public should be better educated about how DOF determines property assessments.

- **DOF should modify its Notice of Assessment (Flak Notice), as it has its real estate bills, to more clearly explain how the values are determined.** This notice would contain all the elements, rule-based and discretionary, which were used to determine the market value and assessment.

- **DOF also should publish guidelines that explain how various factors are used to determine assessments.** This data should be published like any proposed regulatory change, under the City Administrative Procedure Act (CAPA), in the City Record with a 30-day period set aside for public comment. DOF should consider all evidence provided in the course of this process in determining whether a change in its assessment guidelines is warranted.

[2] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

23) DOF should widely disseminate its policies, including the one that limits contact with assessors, to industry groups and the public.

For example, the Department of Finance's policy regarding limitations on contact with assessors should be sent to industry and special interest groups such as the Real Estate Board of New York (REBNY), the Rent Stabilization Association (RSA) and the Tax Certiorari Bar. This will inform the industry that owners and their representatives are not permitted to contact assessors directly, and should instead go through the Assessor-in-Charge of the Borough. This notification should also be placed on DOF's website and in other written material.

IV. 12 RECOMMENDATIONS REQUIRING EXTERNAL COOPERATION

A. Set an Agenda for Labor/Management Cooperation

1) DOF should redefine assessor job descriptions and reevaluate the district rating criteria.

Current job specifications and district ratings reduce flexibility in rotation of personnel. Assessors may be City Assessors at assignment levels I, II, IIIa, IIIb or IV. Job specifications establish the types of properties and districts that assessors at each assignment level ("tier") may assess. In addition to assessor assignment levels, each of the City's 124 districts is also rated, requiring an assessor at a particular assignment level ("tier") to be assigned to a district with a corresponding rating. The current district ratings and job specifications hamper management's flexibility to change assignments and to rotate assessors to different districts as needed.

Redefining the job descriptions and re-evaluating the district rating criteria would increase DOF's flexibility to make necessary changes and rotations in assessor assignments.

2) DOF should recruit technologically sophisticated individuals for its team responsible for valuing residential properties using the sales approach.

3) DOF should implement a new assignment rotation system.

The current borough and district assignment rotation system is not sufficient to prevent corruption. Assessors are now required to rotate districts every three years. In addition, the current rotation system is too limited to offer a meaningful opportunity for assessors to move to varied districts and develop a wide range of assessment skills over the course of their careers. Assessors, for example, should be able to assess properties regardless of the office to which they are assigned.

- **Increasing the frequency and the distance of the district rotations will prevent the development of relationships between assessors and property owners or their representatives that could foster opportunities for corruption.**

- **Increasing and enhancing the rotation system could give management greater flexibility in varying assessor assignments, and improve job satisfaction and productivity.**

In addition, with technology, valuation need not be location based and the district rotation system can be overhauled. Assessors in Queens will be able to value properties in Manhattan or Brooklyn. Most important is that values by property type (office building, warehouse, factory, apartment building) are rational and consistent within boroughs and citywide.

4) DOF should re-evaluate the professional credentials required for the assessor positions and offer training and support[3].

The Department of Finance should seek to attract and retain the best-qualified, career-focused employees.

DOF should:

- **Require assessors to have a strong background in statistics and data analysis.** Professional and educational credentials for City Assessors should be re-evaluated to meet this standard.
- **Require current employees in the assessor titles to meet new standards within a specified period of time – and DOF should provide ongoing training.**
- **Explore ways to increase staff development and educational opportunities for assessors in partnership with colleges and universities, including the City University of New York.**
- **Develop an anti-corruption training curriculum** in consultation with DOI and coordinated through the Department of Finance's training unit and the Inspector General's Office.
- **As recommended by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration, the City should seek State reimbursement for assessor training.**

[3] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

B. Setting an agenda for discussions with the real estate industry and the public.

DOF should seek the input of the real estate industry and the public in a concerted initiative to arrive at a more fair and equitable process for assessing property that will assure objectivity and restore public trust in the City's property assessment process.

5) **With the real estate industry's input and support, DOF should develop a new system for categorizing properties based on objective criteria that are widely available.**

Pursuant to Chapter 58 of the New York City Charter, DOF has the legal authority to promulgate rules describing how buildings are classified. To make the assessment process more transparent, objective and less vulnerable to corruption, DOF should consider developing a new property classification system based on location, size, age, condition, and other pertinent factors so that all similar properties are grouped in the same category. For example, Cushman & Wakefield, which publishes industry data, currently defines three classes of commercial properties:

- Class A: Buildings that meet three or more of the following criteria: centrally located, professionally managed and maintained; attract high-quality tenants and command upper-tier rental rates. Structures are modern or have been modernized to successfully compete with newer buildings.

- Class B: Buildings with less than three of the above criteria. In addition, the current or prospective tenants must be office space users.

- Class C: Buildings competing for tenants requiring functional space at rents below average.

It may be necessary to break these or similar categories down into sub-categories in order to adequately represent the diversity of properties in the City.

6) **DOF should support legislation to make sales prices public information[4].**

Unfortunately, DOF cannot share sales price information with the public. Like relying on secret income and expense statements, prohibiting DOF from

[4] This proposal is similar to one made by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration.

disclosing sales prices makes it difficult for DOF to explain to the public how it values property.[5]

C. Research Best Practices

7) **The City should examine how other jurisdictions are able to reassess properties that may have been initially assessed based on corrupt practices.**

Based on such review, DOF should advise whether the rules in New York City should be changed.

8) **The City should conduct an extensive review of how assessments are done elsewhere in the country, with emphasis on sources of data and property classifications.**

The availability of this information will assist DOF as it seeks to improve the assessment process in New York City.

9) **The City should review the process governing appeals of real property assessments in New York City and elsewhere – including the role of the Tax Commission and Article 7 proceedings – to determine if it can be made fairer and more efficient.**

The Tax Commission

The Tax Commission, established pursuant to Chapter 7, Section 153 of the New York City Charter, now provides a second administrative procedure for property owners to contest assessments on the grounds that the assessment is excessive, unequal or unlawful or that the property has been misclassified. The Tax Commission performs *de novo* assessments of property (i.e. the assessment done at the DOF level is disregarded) based on information that may be more current than that which was available to DOF at the time of the original assessment.

Chapter 7, Section 164 (b) of the New York City Charter limits the discretion of the Tax Commission to either maintaining or lowering the original assessment.

- **The City should examine whether the Tax Commission, an appellate forum, should replace the *de novo* standard of review**

[5] This year the Assembly and the Senate passed legislation that authorizes the City to share sales price information with the Office of Real Property Services (ORPS) like all other assessing jurisdictions in New York State. ORPS would be authorized to release the information to the public. The bill is awaiting the Governor's signature.

with one that determines whether DOF's assessment is supported by the record.

- **To the extent that the Tax Commission finds that DOF's assessment is too high or low based on the record, the Tax Commission should have the ability to adjust it accordingly.**

- **To the extent that the City recommends that the Tax Commission continue to use the standard of *de novo* review, it should examine expanding the Tax Commission's discretion to enable it to *increase* as well as maintain or lower original assessments.** The narrow range of discretion currently afforded the Tax Commission is unfair to the City.

- **The City should consider proposing legislation that would impose penalties for filing "frivolous" claims before the Tax Commission.**

- Article 7 Filings

Title 1 of Article 7 of the Real Property Tax Law provides property owners with a judicial forum for review of their assessments. Under Article 7, the State Supreme Court may review or correct on the merits any determination of the Tax Commission. Thus, property owners who dispute their assessments are entitled to yet a third de novo review of the factual basis for their assessment. This is an exception to the modern practice whereby Courts will not upset administrative determinations unless they are arbitrary or capricious.

The Law Department is charged with defending the City in Article 7 proceedings. To avoid protracted litigation and limit the City's liability for substantial refunds, the Law Department settles many cases prior to a full judicial determination.

Property owners may file for a judicial review under Article 7 even though they have not fully exhausted their administrative remedies. For example, a property owner need only file an Application for Correction of Assessment to the Tax Commission before seeking an Article 7 review. There is no requirement for a Tax Commission hearing to have taken place as a prerequisite for property owners to obtain an Article 7 review.

- **The Tax Commission should be required to conduct a hearing on every claim brought before it before an Article 7 judicial review can be brought.** As a result, property owners would be required to fully exhaust all administrative remedies in order to obtain standing for an Article 7 review. Accordingly, the Law Department would then only be required to defend cases that have been decided at the administrative level.

- **Both the taxpayer and the City should have the right to appeal a Tax Commission determination to the Appellate Division.** Court review should be limited to determining whether the record supported the Tax Commission's decision.

10) The City should review the legal framework supporting the property tax.

Twenty years ago, the State adopted S-7000A, which established the legal framework for New York City's assessment system.[6] The law has been amended several times since enactment and each change has added a new layer of complexity. This complexity makes it virtually impossible for DOF to explain what it does to the public. Helping the public understand how DOF values property will be an important tool in combating corruption. The public can help police assessor practices if they understand how DOF determines values and how assessments work. For example,

- Property in New York City must be assessed at a percentage of value not market value (fractional assessments). Property in Class 1 is assessed at 8 percent and all other classes are assessed at 45 percent of value.

- Property in New York City is divided into four classes and each class is supposed to be assessed at a uniform percentage of market value -- all Class 1 properties should be assessed at 8 percent of value. However, other legally mandated rules make it difficult to maintain uniformity within each class.

- Assessment increases for Class 1 properties are limited to 6 percent per year and 20 percent over five years regardless of changes in the market. This often means that assessments continue to increase when values are decreasing. For some properties within Class 2, assessment increases are limited to 8 percent per year and 30 percent over five years.

- Changes in property values are required to be phased-in over a five-year period, which requires the use of complex formulas to compute "transitional assessments."

- The percent of the property tax levy allocated to each class of property is restricted by law (class shares). Commercial property owners bear a far greater share of the tax burden than they represent in market value.

[6] New York City and Nassau County are the only jurisdictions in New York State with the four class assessment system created by S-7000A.

- The tax rate freeze that has been policy for the last 12 years further complicates matters because it causes assessors to think of themselves as revenue generators instead of as public servants responsible for setting an accurate value for properties. This may lead assessors to overstate values and resist reducing values when the real estate market is declining.

- Co-ops and condominiums, which are essentially single family residences, are required to be assessed as income-producing properties (Class 2) subject to rent regulation. The derived values bear no relationship to the market values for these properties.

- Utility properties are isolated in a class that has far fewer properties now then it had when the law was originally enacted. As a result, utilities pass the tax burden to each other and then on to consumers.

- DOF cannot release sales information to the public to support its assessments, even though other jurisdictions in New York State can.

This complexity contributes to the public's perception that the property tax in New York City is mystifying and suspicious.

Simplified tax laws will demystify the process and promote awareness and responsible self-monitoring on the part of property owners to efficiently bring to light evidence of unequal treatment.

11) **As recommended by the New York State Assembly in its recent report on New York City Assessor Practices and Assessment Administration, the City should determine whether new legislation is needed to insure that it is able to pursue civil actions to recover tax revenue lost as a result of corruption in the assessment process.**

12) **Also, as recommended by the New York State Assembly, the City should explore the feasibility of getting the State to lift the current cap of $500,000 on State Aid for maintaining updated assessment valuations and assessment rolls.**

APPENDIX – The RPIE Timeline for the 2002 Assessment Cycle

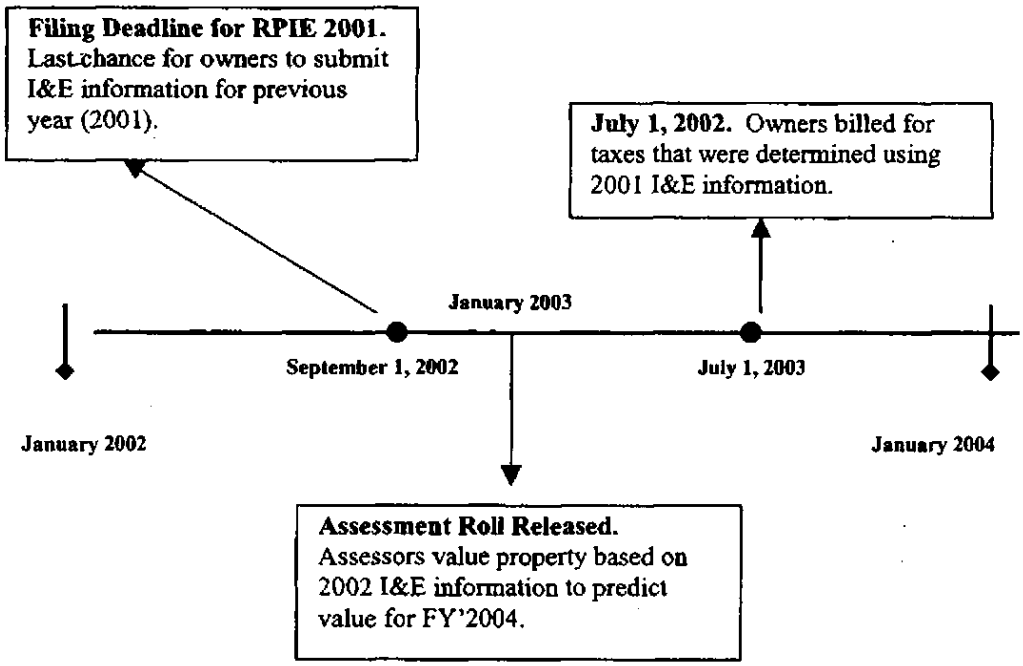

Exhibit “B”

Printout from the Tax Commission’s website

Menu

Translate This Page

NYC Tax Commission

Search

Challenging Notice of Property Valuation

Select

- About the President
- Staff of the Tax Commission
- Challenging Notice of Property Valuation

Attend a NOPV Outreach Session- You can find dates and times on the Department of Finance's website at:

https://www.nyc.gov/site/finance/property/notice-of-property-value.page

Challenges Related to the Notice of Property Value

The Department of Finance and the Tax Commission are separate agencies. The Department of Finance (Finance) annually values all parcels of real property in the City.

The Tax Commission is an independent agency created to provide property owners with an independent review of the assessed value of their property, tax class, and exemption status determined by the Department of Finance.

Property owners receive a Notice of Property Value from Finance on or about January 15th which includes assessment information applicable to the tax year that begins July 1st and runs thought June 30 of the following calendar year. Copies of the Notice of Property Value can also be downloaded from the Finance website.

The Notice of Property Value issued by the NYC Department of Finance includes:

1. A description of your property including:
    a. the size of any improvements in square feet,
    b. the size of the land in square feet,
    c. the number of residential units (e.g. apartments), the number of nonresidential units (e.g. stores, offices or other commercial space), and the number of floors.
2. The name of the property owner.
3. The street address.
4. The estimated market value of the property.

If any of the above information listed on the Notice of Property Value is incorrect, you must contact Finance (not the Tax Commission) and request that the information be corrected. Please visit:

NOPV Assistance Provided by Finance

Note that filing a request for review with finance related to any of the items listed above is not a substitute for timely filing completed Tax Commission Application For Correction.

The Notice of Property Value also includes:

5. The tentative Assessed Value of the property, determined by Finance.
6. The Tax Class of the property, determined by Finance.
7. Information about applicable tax exemptions (STAR, senior citizen, veteran's, disability, clergy, J51, 421A or nonprofit).

A property owner that believes Finance's determination of the Assessed Value and/or Tax Class for their property is incorrect, can appeal to the Tax Commission.

Similarly, if an exemption is incorrectly listed on your Notice of Property Value, or if you applied for an exemption that does not appear on the Notice, or if the Department of Finance sent you a Notice that an exemption has been denied, removed or reduced, you can apply to the Tax Commission for a review of the exemption status.

How To Get Tax Commission Review

YOU MUST:

1. **Complete and timely file an Application for Correction. All applications and instructions are available on this website**. Be sure to use the correct form:

- TC108 For Valuation Claims For All Tax Class 1 Properties
- TC101 For Valuation Claims For Tax Class 2 Or 4 Properties, Other Than Condominium Units
- TC109 For Valuation Claims For Condo Units In Tax Class 2 Or 4
- TC106 For Claims Relating To Tax Classification And Nonprofit And Commercial (e.g., J51, 421-A) Exemptions

NOTE: If you are filing Form TC106, you must include all valuation claims on that form.

The following forms will be available after March 15, 2024:

- TC106A – Senior and Disabled person exemptions
- TC106CV – Clergy or Veteran's exemptions
- TC106S – STAR or Enhanced STAR exemptions
- TC600PE-Personal Exemption Appeals

2. **You must file your application by the deadline. The Tax Commission must RECEIVE your application by the applicable deadline. DEADLINES CANNOT BE EXTENDED.** The filing deadlines are:

- March 1st: For Tax Class Two, Three and Four properties.
- March 15th: For Tax Class One properties

Note: The filing deadline for the personal exemption forms is MAY 31st, but if you want the Tax Commission to review the assessed value also, you must separately file the application form for the value claim by the March 1st, or March 15th deadline.

Note also: If you are requesting a change in the tax class, the deadline that applies is the deadline for the tax class on the Notice of Property Value, not the tax class you are asking for.

DEADLINE EXCEPTIONs: If you receive a *Revised* Notice of Property Value dated after February 1st that *increases (not decreases)* the assessed value or *reduces or removes* an exemption, the deadline to file an application with the Tax Commission is *20 calendar days* after the date of the revised notice, *not* the March 1 or March 15 deadlines noted above.

If the Finance Department sends you a decision about a personal exemption which is dated after May 1, you must file within 30 calendar days of the date on the notice, *not* the March 1 or March 15 deadlines

noted above.

3. **You may file your completed application in person or by mail. Applications are considered filed when they are received at the Tax Commission. Applications mailed to the Tax Commission that are received after the applicable deadline will not be considered. DEADLINES CANNOT BE EXTENDED.**

The Tax Commission

One Centre Street, Room 2400

New York 10007

Alternatively, you can file your application at a Department of Finance Business Center location:

- Bronx - 3030 Third Avenue (East 156th Street): Business Centre 2nd Floor
- Manhattan - 66 John Street (William Street): Business Center 2nd Floor
- Brooklyn - 210 Joralemon Street Business Center
- Queens - 144-06 94th Avenue (Sutphin Blvd): Business Center 1st Floor
- Staten Island - 350 St. Marks Place (Hyatt St.): Business Center 1st Floor

3. **Applications filed with the Tax Commission will often require additional information that must be provided on other Tax Commission forms and filed with the Application. Read and follow all instructions carefully beginning with the instructions provided on the TC600s.**

For example, if the property is income-producing (e.g., rental property) a statement of income and expenses must be filed on the CORRECT form.

TC201 is used for rental properties

TC203 – is used for cooperatives and condominiums (if the condo board is the applicant)

If the assessed value of the property is $5 million or more, an accountant’s statement on Form TC309 is required.

Exhibit “C”

RPTL §§ 550, 554, & 556

NY CLS RPTL § 550

Current through 2024 released Chapters 1-456

New York Consolidated Laws Service > Real Property Tax Law (Arts. 1 — 20) > Article 5 Assessment Procedure (Titles 1 — 5) > Title 3 Correction of Assessment Rolls and Tax Rolls (§§ 550 — 559)

§ 550. Definitions

When used in this title:

1. "Assessment roll" means the assessment roll as it exists from the time of its tentative completion to the time of the annexation of a warrant for the collection of taxes.

2. "Clerical error" means:

(a) an incorrect entry of assessed valuation on an assessment roll or on a tax roll which, because of a mistake in transcription, does not conform to the entry for the same parcel which appears on the property record card, field book or other final work product of the assessor, or the final verified statement of the board of assessment review; or

(b) an entry which is a mathematical error present in the computation of a partial exemption; or

(c) an incorrect entry of assessed valuation on an assessment roll or on a tax roll for a parcel which, except for a failure on the part of the assessor to act on a partial exemption, would be eligible for such partial exemption; or

(d) an entry which is a mathematical error present in the computation or extension of the tax; or

(e) an entry on a tax roll which is incorrect by reason of a mistake in the determination or transcription of a special assessment or other charge based on units of service provided by a special district; or

(f) a duplicate entry on an assessment roll or on a tax roll of the description or assessed valuation, or both, of an entire single parcel; or

(g) an entry on an assessment or tax roll which is incorrect by reason of an arithmetical mistake by the assessor appearing on the property record card, field book or other final work product of the assessor; or

(h) an incorrect entry on a tax roll of a relevied school tax or relevied village tax which has been previously paid; or

(i) an entry on a tax roll which is incorrect by reason of a mistake in the transcription of a relevied school tax or relevied village tax; or

(j) an incorrect entry of assessed valuation on an assessment roll or a tax roll due to an assessor's failure to utilize the required assessment method pursuant to section five hundred eighty-one-a of this article in the valuation of qualifying real property.

3. "Error in essential fact" means:

(a) an incorrect entry on the taxable portion of the assessment roll, or the tax roll, or both, of the assessed valuation of an improvement to real property which was destroyed or removed prior to taxable status date for such assessment roll; or

(b) an incorrect entry on the taxable portion of the assessment roll, or the tax roll, or both, of the assessed valuation of an improvement to real property which was not in existence or which was present on a different parcel; or

(c) an incorrect entry of acreage on the taxable portion of the assessment roll, or the tax roll, or both, which acreage was considered by the assessor in the valuation of the parcel and which resulted in an incorrect assessed valuation, where such acreage is shown to be incorrect on a survey submitted by the applicant; or

(d) the omission of the value of an improvement present on real property prior to taxable status date; or

(e) an incorrect entry of a partial exemption on an assessment roll for a parcel which is not eligible for such partial exemption; provided that the exemption has not been renounced pursuant to section four hundred ninety-six of this chapter; or

(f) an entry pursuant to article nineteen of this chapter on an assessment or tax roll which is incorrect by reason of a misclassification of property which is exclusively used for either residential or non-residential purposes.

4. "Improvement" means real property as defined in paragraph (b) of subdivision twelve of section one hundred two of this chapter, and which has been separately described and valued on the property record card, field book or other final work product of the assessor.

4-a. "Omission" or "omitted real property" means a parcel wholly omitted from the assessment roll or tax roll, taxable real property entered on the roll as wholly exempt real property, or an error in essential fact as defined in paragraph (d) of subdivision three of this section. An omission shall also include taxable real property for which no school district or special district tax was levied because of a failure to include the property within the appropriate taxing district. An "omission" or "omitted real property" shall not include real property assessed pursuant to subdivisions two through five of section five hundred of this article.

5. "Tax levying body" means the governing board of a municipal corporation which annexes a warrant for the collection of taxes to a final assessment roll.

6. "Tax roll" means a final assessment roll upon which taxes have been extended and to which a warrant has been annexed.

7. "Unlawful entry" means:

(a) an entry on the taxable portion of the assessment roll or the tax roll, or both, of the assessed valuation of real property which, except for the provisions of section four hundred ninety of this chapter, is wholly exempt from taxation; or

(b) an entry on an assessment roll or a tax roll, or both, of the assessed valuation of real property which is entirely outside the boundaries of the assessing unit, the school district or the special district in which the real property is designated as being located, but not an entry on an assessment roll or a tax roll, or both, of the assessed valuation of real property assessed pursuant to subdivisions two through five of section five hundred of this article; or

(c) an entry of assessed valuation on an assessment roll or on a tax roll, or both, which has been made by a person or body without the authority to make such entry; or

(d) an entry of assessed valuation of state land subject to taxation on an assessment roll or on a tax roll, or both, which exceeds the assessment of such land approved by the commissioner; or

(e) an entry of assessed valuation of a special franchise on an assessment roll or on a tax roll, or both, which exceeds the final assessment thereof as determined by the commissioner pursuant to subdivision one of section six hundred six of this chapter, or the full value of that special franchise as determined by the commissioner pursuant to subdivision two of section six hundred six of this

chapter adjusted by the final state equalization rate established by the commissioner for the assessment roll upon which that value appears.

History

Add, L 1974, ch 177, § 4, eff Sept 1, 1974; amd, L 1975, ch 124, §§ 2, 3, eff May 27, 1975; L 1976, ch 634, § 1; L 1978, ch 390, §§ 1, 2, eff June 19, 1978; L 1980, ch 753, §§ 1, 2; L 1981, ch 36, § 1; L 1988, ch 160, §§ 2–7, eff Jan 1, 1989; L 1990, ch 529, § 11, eff July 18, 1990; L 1992, ch 316, § 12, eff Nov 1, 1992; L 2000, ch 144, § 4, eff July 11, 2000; L 2005, ch 743, § 1, eff Oct 18, 2005; L 2007, ch 348, § 6, eff July 18, 2007; L 2010, ch 56, § 1 (Part W), eff June 22, 2010; L 2011, ch 58, § 4 (Part N), eff March 31, 2011; L 2014, ch 409, § 1, effective October 21, 2014.

End of Document

NY CLS RPTL § 554

Current through 2024 released Chapters 1-456

New York Consolidated Laws Service > Real Property Tax Law (Arts. 1 — 20) > Article 5 Assessment Procedure (Titles 1 — 5) > Title 3 Correction of Assessment Rolls and Tax Rolls (§§ 550 — 559)

§ 554. Correction of errors on tax rolls

1. The appropriate tax levying body may correct a clerical error, an unlawful entry, or an error in essential fact other than an error in essential fact as defined in paragraph (d) of subdivision three of section five hundred fifty of this title in accordance with the provisions of this section.

2. Whenever it appears to an owner of real property, or any person who would be entitled to file a complaint pursuant to section five hundred twenty-four of this chapter, that a clerical error, an unlawful entry or error in essential fact described in subdivision one of this section is present on the tax roll in regard to his real property, such owner or other person, may, at any time prior to the expiration of the warrant, file an application in duplicate with the county director of real property tax services for the correction of such error.

3. The application for correction of a clerical error, an unlawful entry or error in essential fact pursuant to this section shall be on a form and shall contain such information as prescribed by the commissioner, including any available proof that such error occurred, and shall be available in the offices of all collecting officers and in the office of the county director. For an error in essential fact, the application for correction shall include a copy of the property record card, field book, or other final work product upon which the incorrect assessment was based and a copy of any existing municipal record which substantiates the occurrence of the error. For an unlawful entry as defined in paragraph (a) of subdivision seven of section five hundred fifty of this title, the application for correction shall include a statement by the assessor or by a majority of a board of assessors substantiating that the assessor or assessors have obtained proof that the parcel which is the subject of the application should have been granted tax exempt status; the failure to include such statement shall render the application null and void and shall bar the tax levying body from ordering correction of the tax roll pursuant to this section.

4.

(a) The county director, within ten days of the receipt of an application filed pursuant to this section, shall investigate the circumstances of the claimed clerical error, unlawful entry or error in essential fact to determine whether the error exists, and on such investigation he may require and shall receive from any officer, employee, department, board, bureau, office or other instrumentality of the appropriate municipal corporation such facilities, assistance and data as will enable him to properly consummate his studies and investigations hereunder.

(b) Upon completion of such investigation the county director shall immediately transmit a written report of such investigation and his or her recommendation for action thereon, together with both copies of the application, to the tax levying body. If the same alleged error also appears on a current assessment roll, the county director shall also file a copy of such report and recommendation with the appropriate assessor and board of assessment review who shall consider the same to be the equivalent of a petition for correction filed with such board pursuant to section five hundred fifty-three of this title.

5. The tax levying body, at a regular or special meeting, upon the presentation of an application filed pursuant to this section and the written report described by subdivision four of this section, shall:

(a) examine the application and report to determine whether the claimed clerical error, unlawful entry or error in essential fact exists;

(b) reject an application where it is determined that the claimed clerical error, unlawful entry or error in essential fact does not exist by making a notation on the application and the copy thereof that the application is rejected and the reasons for the rejection;

(c) approve an application where it is determined that the claimed clerical error, unlawful entry or error in essential fact does exist by making a notation on the application and the copy thereof that the application is approved and by entering thereon the correct extension of taxes;

(d) make an order setting forth the corrected taxes and directing the officer having jurisdiction of the tax roll to correct such roll;

(e) transmit immediately to the officer having jurisdiction of the tax roll the order and all applications that have been approved;

(f) mail an application that has been rejected to the applicant;

(g) mail a notice of approval of an application that has been approved to the applicant;

(h) file with the records of the tax levying body the copies of all applications.

6. The officer having jurisdiction of the tax roll, upon receipt of the order described in subdivision five of this section, shall immediately correct the tax roll as directed by the order and shall collect the corrected taxes as determined by the tax levying body. The order and approved applications shall be annexed to the tax roll and warrant, or filed therewith in accordance with section fifteen hundred eighty-four of this chapter, by the officer having jurisdiction of the roll and shall become a part thereof.

7.

(a) An applicant who files his application with the county director within the period when taxes may be paid without interest, may, if his application is approved, pay the corrected tax as determined by the tax levying body without interest if payment is made within eight days of the date on which the notice of approval is mailed pursuant to paragraph (g) of subdivision five of this section.

(b) An applicant other than one described in paragraph (a) of this subdivision shall pay interest as prescribed by law on the corrected tax; provided, however, that no additional interest shall be imposed if the corrected amount of the tax is paid within eight days of the date on which the notice of approval is mailed pursuant to paragraph (g) of subdivision five of this section, unless such eight day period would end after the expiration of the warrant, in which case the period for paying the corrected tax without additional interest shall end upon the expiration of the warrant.

8. The powers and duties imposed by this section upon the county director of real property tax services shall be performed by such officer for tax levies for county, city, town, special district and school district purposes except that (a) in the case of counties having the power to assess real property for tax purposes such powers and duties shall be performed by the chief assessing officer or the chairman of the county board of assessors and, (b) in the case of villages, for village tax purposes, such powers and duties shall be performed by the village assessor or the chairman of the village board of assessors; provided, however, that if the village has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter, the county director shall perform the powers and duties imposed upon such officer by this section on behalf of such village.

9.

(a) A tax levying body may, by resolution, delegate to an official who is empowered to authorize payment of bills without prior audit by such body or, in the event there is no official so empowered, to an official responsible for the payment of bills upon audit of the appropriate municipal corporation so designated by it, the authority to perform the duties of such tax levying body, as provided in this section. Such resolution shall only be in effect during the calendar year in which it is adopted and shall

designate that such delegation of authority is applicable only where the recommended correction is twenty-five hundred dollars or less, or such other sum not to exceed twenty-five hundred dollars.

(b) Where such resolution is adopted and the recommended correction does not exceed the amount specified in the designating resolution, the county director shall transmit the written report of the investigation and recommendation, together with both copies of the application, to the official designated by the tax levying body. Upon receipt of the written report, the designated official shall follow the procedure which the tax levying body would follow in making corrections, provided, however, where the designated official denies the correction, in whole or in part, such official shall transmit to the tax levying body for its review and disposition pursuant to subdivision five of this section the written report of the investigation and recommendation of the county director, together with both copies of the application and the reasons that the designated official denied the correction. Where the recommendation of the county director is to deny the application or the correction requested is an amount in excess of the amount authorized in the enabling resolution, the county director shall transmit the written report of the investigation and recommendation, together with both copies of the application, to the tax levying body.

(c) On or before the fifteenth day of each month, the designated official shall submit a report to the tax levying body of the corrections processed by such official during the preceding month. Such report shall indicate the name of each recipient, the location of the property and the amount of the correction.

History

Add, L 1974, ch 177, § 4, eff Sept 1, 1974; amd, L 1975, ch 124, § 7; L 1978, ch 390, § 5; L 1981, ch 773, § 9, eff Jan 1, 1982; L 1983, ch 735, § 12, eff July 27, 1983; L 1986, ch 317, §§ 7-9, eff Jan 1, 1987; L 1988, ch 160, § 11, eff Jan 1, 1989; L 1997, ch 515, § 1, eff Sept 3, 1997; L 2002, ch 616, § 4, eff Jan 1, 2003; L 2004, ch 652, § 1, eff Oct 26, 2004; L 2010, ch 56, § 1 (Part W), eff June 22, 2010.

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NY CLS RPTL § 556

Current through 2024 released Chapters 1-456

New York Consolidated Laws Service > Real Property Tax Law (Arts. 1 — 20) > Article 5 Assessment Procedure (Titles 1 — 5) > Title 3 Correction of Assessment Rolls and Tax Rolls (§§ 550 — 559)

§ 556. Refunds and credits of taxes

1.

(a) Pursuant to the provisions of this section, an appropriate tax levying body may refund to any person the amount of any tax paid by him or her, or portion thereof, as the case may be, or may provide a credit against an outstanding tax (i) where such tax was attributable to a clerical error or an unlawful entry and application for refund or credit is made within three years from the annexation of the warrant for such tax, or (ii) where such tax was attributable to an error in essential fact, other than an error in essential fact as defined in paragraph (d) of subdivision three of section five hundred fifty of this title, and such application for refund or credit is made within three years from the annexation of the warrant for such tax.

(b) For each year for which a refund or credit is granted pursuant to the provisions of this section by reason of the existence of an unlawful entry as defined by paragraph (b) of subdivision seven of section five hundred fifty of this title, the assessor of the assessing unit in which the subject real property is actually located, but has been omitted from the assessment and tax rolls of such assessing unit, or a school district or special districts located therein, shall have the authority to enter such real property on the current assessment roll in accordance with the provisions of section five hundred fifty-one of this title, notwithstanding any time limitation contained in such section.

2.

(a) Whenever it appears to a person who has paid a tax that such tax, or a portion thereof, was attributable to an unlawful entry, a clerical error, or an error in essential fact, as described in subdivision one of this section, such person may file an application in duplicate, including any available proof of the error, with the appropriate county director of real property tax services for a refund of such tax, or portion thereof, as the case may be.

(b) Whenever it appears to a person who is an owner of a parcel which is subject to an outstanding tax, that such tax, or a portion thereof, was attributable to an unlawful entry, a clerical error, or an error in essential fact, as described in subdivision one of this section, such person may file an application in duplicate, including any available proof of the error, with the appropriate county director of real property tax services for a credit of such tax, or portion thereof.

(c) For an error in essential fact, the application for correction shall include a copy of the property record card, field book, or other final work product upon which the incorrect assessment was based and a copy of any existing municipal record which substantiates the occurrence of the error. For an unlawful entry as defined in paragraph (a) of subdivision seven of section five hundred fifty of this title, the application for correction shall include a statement by the assessor or by a majority of a board of assessors substantiating that the assessor or assessors have obtained proof that the parcel which is the subject of the application should have been granted tax exempt status; the failure to include such statement shall render the application null and void and shall bar the tax levying body from directing a refund or credit of taxes pursuant to this section.

3. The application for a refund or credit pursuant to this section shall be on a form and shall contain such information as prescribed by the commissioner and shall be available in the offices of all collecting officers and in the office of the county director.

4.

(a) The county director, within ten days of the receipt of an application filed pursuant to this section, shall investigate the circumstances of the claimed unlawful entry, clerical error or error in essential fact to determine whether the error exists, and on such investigation he may require and shall receive from any officer, employee, department, board, bureau, office or other instrumentality of the appropriate municipal corporation such facilities, assistance and data as will enable him to properly consummate his studies and investigations hereunder.

(b) Upon completion of such investigation the county director shall immediately transmit a written report of such investigation and his or her recommendation for action thereon, together with both copies of the application, to the tax levying body. If the same alleged error also appears on a current assessment roll, the county director shall also file a copy of such report and recommendation with appropriate assessor and board of assessment review who shall consider the same to be the equivalent of a petition for correction filed with such board pursuant to section five hundred fifty-three of this title.

5. The tax levying body, at a regular or special meeting, upon the presentation of an application filed pursuant to this section and the written report described in subdivision four of this section, shall:

(a) examine the application and report to determine whether the claimed unlawful entry, clerical error or error in essential fact exists;

(b) reject an application where it is determined that the claimed unlawful entry, clerical error or error in essential fact does not exist by making a notation on the application and the duplicate copy thereof that the application is rejected and the reasons for the rejection;

(c) approve an application where it is determined that the claimed unlawful entry, clerical error or error in essential fact does exist by making a notation on the application and the duplicate copy thereof that the application is approved and by entering thereon the amount of the refund to be paid or outstanding tax to be credited;

(d) mail an application that has been rejected to the applicant;

(e) mail an application that has been approved to the applicant.

6.

(a) The amount of any tax refunded or credited pursuant to this section shall be a charge upon each municipal corporation or special district to the extent of any such municipal corporation or special district taxes that were so refunded. Amounts so charged to cities, towns and special districts shall be included in the next ensuing tax levy.

(b) In raising the amount of a refund or credit pursuant to this section of a relevied school tax the appropriate tax levying body shall charge back against the school district which levied such tax the amount of the refund or credit which shall not exceed the amount paid by the county treasurer to such school district upon the return of such tax. The amount so charged against such school district shall be deducted by the county treasurer and withheld from any moneys which shall become payable by him to such school district by reason of taxes which shall thereafter be returned to him by such school district. No such charge shall be made by the county legislative body against a school district unless ten days' notice thereof by mail has been given to the school authorities thereof. Notice that such deduction will be made shall thereafter be given by the county treasurer in writing to such school authorities on or before the first day of May prior to the making of such deduction.

7. The powers and duties imposed by this section upon the county director of real property tax services shall be performed by such officer for taxes levied for county, city, town, special district and school district purposes except that (a) in the case of counties having the power to assess real property for tax purposes such powers and duties shall be performed by the chief assessing officer or the chairman of the county board of assessors and, (b) in the case of villages, for village tax purposes, such powers and duties shall be performed by the village assessor or the chairman of the village board of assessors; provided, however, that if the village has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter, the county director shall perform the powers and duties imposed upon such officer by this section on behalf of such village.

8.

(a) A tax levying body may, by resolution, delegate to an official who is empowered to authorize payment of bills without prior audit by such body or, in the event there is no official so empowered, to an official responsible for the payment of bills upon audit of the appropriate municipal corporation so designated by it, the authority to perform the duties of such tax levying body, as provided in this section. Such resolution shall only be in effect during the calendar year in which it is adopted and shall designate that such delegation of authority is applicable only where the recommended refund or credit is twenty-five hundred dollars or less, or such other sum not to exceed twenty-five hundred dollars.

(b) Where such resolution is adopted and the recommended refund or credit does not exceed the amount specified in the designating resolution, the county director shall transmit the written report of the investigation and recommendation, together with both copies of the application, to the official designated by the tax levying body. Upon receipt of the written report, the designated official shall follow the procedure which the tax levying body would follow in making refunds, provided, however, where the designated official denies the refund or credit, in whole or in part, such official shall transmit to the tax levying body for its review and disposition pursuant to subdivision five of this section the written report of the investigation and recommendation of the county director, together with both copies of the application and the reasons that the designated official denied the refund or credit. Where the recommendation of the county director is to deny the application or the refund or credit requested is in an amount in excess of the amount authorized in the enabling resolution, the county director shall transmit the written report of the investigation and recommendation, together with both copies of the application, to the tax levying body.

(c) On or before the fifteenth day of each month, the designated official shall submit a report to the tax levying body of the refunds or credits processed by such official during the preceding month. Such report shall indicate the name of each recipient, the location of the property and the amount of the refund or credit.

(d) In no case shall the total sum of such refunds or credits approved by the designated official exceed the amount appropriated therefor by the tax levying body.

9. In the event that an appropriation for a refund authorized pursuant to this section is included in the annual budget next adopted after approval of such refund, interest shall be added to such refund computed from the date that the application is approved pursuant to subdivision five or eight of this section.

10. When a portion of an outstanding tax has been credited pursuant to this section, any interest and penalties that have been imposed thereon shall be reduced to the extent that such interest and penalties were attributable to the credited portion of the tax, and no additional interest and penalties shall be imposed if the corrected amount of the tax is paid within eight days of the date on which the notice of approval is mailed pursuant to paragraph (e) of subdivision five of this section.

History

Add, L 1974, ch 177, § 4, eff Sept 1, 1974, with substance derived in part from former § 556; amd, L 1975, ch 124, § 8, eff May 27, 1975; L 1976, ch 634, § 2; L 1978, ch 390, § 6; L 1980, ch 753, § 4; L 1983, ch 735, § 13, eff July 27, 1983; L 1984, ch 383, § 1, eff July 18, 1984; L 1986, ch 317, §§ 10, 11; L 1988, ch 160, § 12, eff Jan 1, 1989; L 1993, ch 383, § 1, eff Sept 19, 1993; L 1997, ch 515, § 2, eff Sept 3, 1997; L 1999, ch 262, § 1, eff July 13, 1999; L 2002, ch 616, § 5, eff Jan 1, 2003; L 2004, ch 652, § 2, eff Oct 26, 2004; L 2010, ch 56, § 1 (Part W), eff June 22, 2010.

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Exhibit “D”

Notice of Rule Making for 19 RCNY §§ 53-01 and 53-02 (2016)

NOTICE OF RULE MAKING

Pursuant to the power vested in me as Commissioner of Finance by New York City Administrative Code section 11-206 and sections 1043 and 1504 of the New York City Charter, I hereby promulgate the rule concerning the correction of any assessment or tax which is erroneous due to a clerical error or error in description. This rule was published in the proposed form on February 29, 2016. A hearing for public comment was held on March 31, 2016.

S/S
Jacques Jiha Commissioner of Finance

STATEMENT OF BASIS AND PURPOSE

Section 11-206 of the Administrative Code of the City of New York gives the Commissioner of the Department of Finance the ability to correct any assessment or tax which is erroneous due to a clerical error or error in description. Historically, the authority granted under section 11-206 has been exercised narrowly, leaving unaddressed many categories of errors that could be corrected under this section. This rule significantly expands the categories of errors for which the Department of Finance will offer an opportunity to correct. Corrections would apply going forward, but could also apply to errors occurring up to six years prior to the date an application for a correction is submitted. These rules also specifically outline the types of errors that are correctible under section 11-206. A correction made according to this section is separate and apart from an appeal to the Tax Commission.

The rule sets forth:

- the types of assessment errors that are considered clerical errors and errors in description and that may be corrected administratively by the New York City Department of Finance, including specific examples, as well as the types of errors that are not subject to administrative correction.
- the procedures to request administrative review of assessment errors.

Matter underlined is new. Matter in [brackets] is to be deleted.

"Will" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

§ 1. Title 19 of the Rules of the City of New York is amended by adding a new Chapter 53, to read as follows:

Chapter 53

POWER OF THE COMMISSIONER OF FINANCE TO CORRECT ERRORS CONCERNING ASSESSMENT OR TAX ON REAL PROPERTY

§ 53-01. ***Administrative Review Procedure***

(a) *Application Procedures.* (1) Any request for administrative review concerning assessment or tax of real property pursuant to this section must be filed by the owner of the property or any person who would be entitled to file a complaint pursuant to section 163 of the New York City Charter with the Property Division of the Department of Finance. Any such request must be made on an application form prescribed by the Commissioner of Finance and include all required information.

(2) An eligible filer may submit an application pursuant to this section for administrative review of clerical errors and errors in description as defined in subdivisions (a) and (b) of section 53-02 of this chapter. An eligible filer is not restricted as to when an application may be submitted.

(3) The Department of Finance will only correct eligible errors that occurred within six years of the date of submission of an application.

(4) It will be within the sole discretion of the Department to determine whether additional documentation or an inspection is necessary to review the application for administrative review. If all requested documentation is not submitted within ninety days, the application will be denied.

§ 53-02. **Clerical errors and Errors in Description**

(a) *Clerical Errors.* The Commissioner of Finance may correct any assessment or tax that is erroneous due to a clerical error as defined in subdivision 2 of section 550 of the Real Property Tax Law. Clerical error will include but not be limited to the following:

(1) Failure to process partial exemption.

Example: Eligible senior citizen submits a completed application for the senior citizen homeowner exemption for the 2014/15 year and provides a certified mail receipt that is was submitted timely. The application is not approved or denied but is lost and the homeowner does not receive the exemption for 2014/15.

(2) Computer programming or inputting error resulting in value different than intended by assessor.

Example: Assessor values an office building at $1,000,000 but the assessment roll mistakenly reflects a value of $10,000,000 due to a computer programming or inputting error.

(b) *Errors in Description.* The Commissioner of Finance may correct any assessment or tax due to an error in description which will include but not be limited to the following:

(1) Incorrect tax classification on the assessment roll due to an inventory error concerning the records maintained by the Department of the physical characteristics of the property.

Example: Department records indicated that there were twelve units on the property when there were in fact ten units. The tax class will be changed from class 2 to subclass 2B (capped).

(2) Physical change not put on the assessment roll or put on as an equalization change.

Example: New construction was performed on the property but the assessment roll does not reflect a physical increase subsequent to the completion of the work).

(3) Physical change put on the assessment roll when no physical work was done.

Example: No construction work or alterations were performed on the property but the assessment roll reflects a physical increase in assessed value.

(4) Equalization change erroneously put on an assessment roll as a physical change.

Example: The value of the property increased due to increases in rental income, but no physical work was done on the property in the previous year. The assessment erroneously reflected a physical increase in assessed value instead of an equalization increase in assessed value.

(5) In progress assessment erroneously not removed from the assessment roll.

Example: Construction has commenced on a commercial building for a year but it is not ready for occupancy by April 15th. Therefore the assessment on the improvement should be removed from the assessment roll. The failure to remove the assessment based on the partial completion will be corrected.

(6) Incorrect entry on the assessment roll of the assessed value of an improvement which was destroyed or removed prior to the taxable status date.

Example: House on the property was demolished prior to January 5th, but the assessment roll indicates a building assessed value for the property.

(7) Incorrect entry on the assessment roll of the assessed value of an improvement which was not in existence or which was present on a different parcel.

Example: House assessed for the property at 100 Main Street (vacant land) when the house existed on the property at 110 Main Street.

(8) Assessment based on incorrect square footage.

Example: Owner-occupied warehouse is valued based on 10,000 square feet when it has 5,000 square feet and the assessed value would have been lower if the correct square footage had been used.

(9) Assessment based upon incorrect number of units.

Example: Retail property is valued using four rental units when it has two rental units, and the assessed value would have been lower if the correct number of units had been used.

(10) Inaccurate building class that affected assessed value.

Example: Warehouse property (building class E1) erroneously had a K1 retail building class that resulted in higher income being applied and an assessed value that was too high.

(11) Erroneous calculation of transitional assessment or statutory limitation on assessment increases.

Example: Class one property has an equalization increase in assessed value of 10% from the previous year, which exceeds the statutory cap of 6% per year.

(12) Incorrect apportionment of parcel on the tax map.

Example: Parcel was requested to be apportioned 50% to the old owner and 50% to the new owner. The tax map erroneously apportioned 70% of the parcel to the old owner and its assessed value would have been lower if the apportionment had been done correctly.

(13) Land incorrectly deemed developable.

Example: Property is protected wetlands and cannot be developed, but is valued as if it were vacant land subject to development.

(14) Correction of defective changes by notice.

Example: The assessed value of a commercial property is increased prior to May 10th, the end of the change by notice period, but the 10-day notice required pursuant to statute is not mailed. The increase is therefore defective and the assessed value should be restored to the prior amount.

(c) *Errors Not Subject to Administrative Correction.* The following errors will not be subject to administrative correction:

(1) Overvaluation due to inappropriate comparables or attributed income:

Example: Condominium was valued using comparable income from rentals in a different neighborhood rather than rentals from the same neighborhood.

(2) Incorrect valuation model utilized.

Example: Retail property was valued using an 8% capitalization rate, but it was determined in subsequent models that a 9% capitalization rate was more appropriate for this type of property in this location.

(3) Error in land/building ratio.

Example: The land assessed value for a class one single-family house is 40% of the total assessed value, but it is subsequently determined that the land proportion of the total assessed value should be 50%.

(4) Incorrect calculation of exemption based on error in application of the statute (inclusion of additional year in exemption calculation previously held by court not to be a clerical error).

Example: a J-51 exemption was incorrectly calculated to include equalization increase for four years instead of three years as per the statute.

(d) Nothing in this section shall limit the authority of the department to make changes pursuant to the change by notice procedures described in section 1512 of the New York City Charter or the request for review procedures described in section 37-06 of Title 19 of the rules of the City of New York.

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November 22, 2024

NYC Department of Finance
Legal Affairs Division
dofrules@finance.nyc.gov

Re: Amendment of Rules Relating to Request for Review Process and Clerical Error Administrative Review Process

Dear DOF:

I am writing to provide comments on the Department of Finance's (DOF) proposed amendments to Chapter 53 of Title 19 of the Rules of the City of New York, concerning the correction of certain errors affecting assessments or taxes on real property.

We represent hundreds of New York City taxpayers, including residents and voters, in helping to keep their property taxes fair and equitable, especially in the face of overassessment and overtaxation.

First and foremost, I appreciate the DOF's efforts to enhance the efficiency and integrity of the property tax assessment system. I understand the Department's concerns about ensuring finality in taxation matters and preventing the potential misuse of the correction process. However, I respectfully disagree that the proposed amendments adequately address these issues without unduly disadvantaging taxpayers who may have been adversely affected by errors.

1. Limitation on Eligible Filers (Section 3)

The proposed restriction that only property owners or other qualified filers who owned the property during the applicable tax year may file a request for administrative review could inadvertently penalize new property owners. Errors in assessments can have a lasting impact on a property's tax liability, and new owners may inherit these issues without recourse under the proposed rule.

Recommendation: I suggest that the DOF consider allowing new property owners to file correction requests for errors that continue to affect the property's current assessment or tax liability. This approach ensures that all taxpayers have the opportunity to address inaccuracies, promoting fairness and equity in the taxation system.

2. Reduction of the Time Frame for Corrections (Section 4)

Reducing the correction window from six years to effectively three years may not provide sufficient time for property owners to discover and address errors, especially those that are not immediately apparent. The exceptions for extenuating circumstances are narrow and may not cover situations where taxpayers, acting in good faith, were unaware of the errors within the shortened time frame.

Recommendation: I propose maintaining a longer correction period, such as four to six years, to balance the need for finality with the taxpayers' right to seek redress for errors. Alternatively, expanding the exceptions to include circumstances where the error's discovery was delayed despite the taxpayer's due diligence could offer a fair compromise.

3. Prohibition of Corrections After Prior Determinations (Section 5)

Preventing corrections when a taxpayer has previously sought relief through the Tax Commission or judicial review may inadvertently bar the correction of errors that were not identified or addressed in those proceedings. Taxpayers may not have been aware of certain errors at the time or may not have had the opportunity to present them fully.

Recommendation: It would be equitable to allow corrections for errors that were not the subject of prior determinations on the merits. This ensures that taxpayers are not unfairly precluded from rectifying issues that were previously unknown or unaddressed.

4. Redefinition of "Clerical Errors" and "Errors in Description" (Section 6)

The proposed narrowing of these definitions and the removal of illustrative examples could create ambiguity and hinder taxpayers' understanding of what constitutes an eligible error. Clear examples help taxpayers navigate the correction process and ensure that legitimate errors are addressed.

Recommendation: I recommend reinstating detailed definitions and examples to provide clarity. This approach would assist taxpayers in determining eligibility and reduce unnecessary filings, thereby improving administrative efficiency.

Conclusion

While I recognize the DOF's intention to streamline the correction process and prevent its misuse, it is crucial to ensure that taxpayers' rights to fair and accurate assessments are preserved. Making the correction process more restrictive may inadvertently harm taxpayers who have been subjected to errors through no fault of their own.

I respectfully urge the Department to reconsider the proposed amendments and explore alternative solutions that address administrative concerns without compromising taxpayer fairness. Enhancing, rather than constraining, the correction mechanisms would promote equity and trust in the property tax system.

Thank you for considering my comments. I am available to discuss these suggestions further and contribute to a solution that serves both the interests of the Department and the taxpayers of New York City.

Sincerely,

Benjamin M. Williams

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November 22, 2024

Email: DOFRules@finance.nyc.gov

New York City Department of Finance
Legal Affairs Division
375 Pearl Street, 30th Floor
New York, NY 10038
Attn: Mr. Timothy Byrne

Re: Proposed RFR & CER DOF Rules

Dear Mr. Byrne:

The proposed changes to the New York City Department of Finance (DOF) "RFR" & "CER" programs are the most anti-taxpayer clauses I have encountered during my 27-year legal career that has focused solely on tax certiorari matters. In 2016, former Commissioner Jacques Jiha understood DOF's mission statement and that he worked for and represented all New York City taxpayers fairly and equally. DOF's mission, particularly in areas regarding assessments and the corresponding taxes they create for the City's coffers, is to make corrections where appropriate. For these reasons, just 8 years ago, former Commissioner Jiha enacted the very provisions we are here to defend, and demand remain in place not only for our clients, but for all New York City taxpayers.

As of now, DOF's website states: "Our mission: DOF administers the tax and revenue laws of the City fairly, efficiently, and transparently to instill public confidence and encourage compliance while providing exceptional customer service." With that mission statement apparently lost in translation, your proposal will accomplish the following:

1. Decimate taxpayer refund period for corrections of error from six years (as is the case in every jurisdiction in New York State at present) to only three.
2. Eliminates taxpayer right to a New York City Tax Commission hearing by merely seeking redress of the City's own error with DOF.
3. Without a clear 'grandfather' clause, all pending CER's right to existing 2016 rules will be forfeited despite waiting for years in many cases just for DOF's response. This likely

means hundreds if not thousands of New York City taxpayers will have their pending claims retroactively dismissed or receive less than half of what was legally available despite their timely filing. In the interim, other taxpayers have had their matters redressed whether they were filed before or after other pending cases. Without an appropriate 'grandfather' clause, DOF has engaged in unequal treatment under the law.

Equally distressing to New York City taxpayers should be DOF's tone in this rather harsh betrayal. How dare DOF suggest taxpayers that have been overcharged for decades in some instances, are receiving some sort of "windfall" by obtaining a six-year refund for inappropriate assessed values based on errors like square footage or unit count. In the law, and in any common-sense setting, we call that being made whole. In Nassau County, not only do taxpayers receive the six-year legally appropriate look-back period but their refund also comes with interest! DOF fixing egregious errors and refunding overpayments is your current duty, yet you are attempting to wash your hands of that responsibility in the name of money and convenience. Many if not most of these requests are on behalf of residential property owners in classes 1 & 2. These are predominantly voters and you are abandoning their legitimate claims for correction pursuant to existing State statute and case law.

I represent a cooperative apartment building that is still waiting for a DOF response - for approximately one year - despite DOF having performed a field inspection in July. The correction of error requested is for six years. That matter, along with many others, will be seeing the inside of a court room should these rules move forward "as is." It is also fair to wonder, in light of the continuing TENNY lawsuit, why so many public officials acknowledge that New York City's assessment system is fraught with inequities, yet DOF is acting as if there are no legitimate ones to review. DOF owes an apology to New York City taxpayers and these proposals should be incinerated in the name of decency.

Sincerely,

Peter E. Blond

cc: Mayor Eric Adams
Preston Niblack, Commissioner of Finance

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November 22, 2024

COMMENTS/OBJECTIONS TO THE PROPOSED MODIFICATIONS BY NEW YORK CITY DEPARTMENT OF FINANCE ("DOF") PERTAINING TO TAXPAYER INITIATED REQUESTS FOR REVIEW ("RFR") AND REQUESTS TO CORRECT CLERICAL ERRORS AND ERRORS AND DESCRIPTION.

Executive Summary:

The proposed rule, which serves to amend and significantly curtail the existing rules and policies of DOF, is anti-taxpayer and serves to undermine DOF's mission, duty and responsibility to strive to maintain the real property tax roll free and clear of errors. This is admittedly a difficult task and, as such, the need to be able to correct these errors has been recognized by the State and City legislatures, by the New York State Courts and by DOF. The proposed rule will curtail this ability.

The proposed rule is designed to allow DOF to treat taxpayers in a disparate manner and imposes obligations on the taxpayer that are unreasonable.

The proposed rule ignores the current state of the law and instead focuses on case law dating back to the post-Civil War period (*Hermance v Board of Supervisors,* 71 N.Y. 481 (1877)) and two other cases, one from 1890 and the other from 1925. What should be focused on is the Second Department decision in *Better World Real Estate Group v New York City Department of Finance,* 122 A.D.3d 27 (2014). *Better World* led to the enactment of DOF's existing Clerical Error Rule (19 RCNY § 53, *et seq.)* which the proposed rule seeks to essentially eliminate. It is unreasonable to ignore the decision in *Better World* when presenting this proposed rule to the

public, but instead choosing to focus on antiquated, and no longer relevant precedent that dates back almost 150 years.

Respectfully, DOF has lost sight of its mandate to do its best to properly assess taxpayers and to do so in a fair, equitable and consistent manner. The proposed rule will serve to deny taxpayers the right to have errors corrected that ought to be corrected.

It is respectfully requested that DOF not proceed with the enactment of this rule and instead schedule interactive meetings with the public so that the proposals contained in the rule can be discussed and vetted prior to any modifications being made.

Detailed Analysis of the proposed rule:

In New York "the law regarding real property assessment proceedings is remedial in character and should be liberally construed to the end that the taxpayer's right to have his assessment reviewed should not be defeated by a technicality." *Matter of Better World Real Estate Group v. New York City Dept. of Fin.*, 122 A.D.3d 27, 38 (2d Dept. 2014) (quoting the Court of Appeals in *Matter of Garth v. Board of Assessment Review for Town of Richmond*, 13 N.Y.3d 176, 180 (2009)). The proposed amendment to the Clerical Error Rule, 19 RCNY §53, *et. seq.* (the "Proposed CER") is not faithful to the letter or the spirit of this principle articulated by the New York Court of Appeals and reiterated by the Second Department in *Better World. Better World* involved the same provision, New York City Administrative Code § 11-206 ("11-206"), under which the Proposed CER is being enacted. The Proposed CER is a regressive attempt to curtail taxpayer rights by starkly contracting the categories of errors that may be corrected through its procedure and placing new limits on the time to correct errors that would otherwise still be available for correction.

I. THE APPELLATE DIVISION, SECOND DEPARTMENT'S 2014 DECISION IN *BETTER WORLD* REJECTED THE POSITION THAT ERRORS AVAILABLE FOR CORRECTION UNDER 11-206 SHOULD BE NARROWLY CONSTRUED

The current Clerical Error Rule (the "CER") was enacted in 2016 on the heels of the Second Department's decision in *Better World*. In that 2014 decision, the Court rejected a number of arguments put forth by DOF.

First, DOF took the position in *Better World* that clerical error review should be limited to errors of mere form: "clerical errors were limited to transcription errors, and arithmetic or mathematical errors." 122 A.D.3d at 39. The Second Department rejected this argument: "DOF's authority [under 11-206] is not limited to transcription errors or arithmetical errors." 122 A.D.3d at 40.

Second, the Court in *Better World* rejected the argument that the legislative history of 11-206 indicates that the definitions of a "clerical error" and "error in description" should be narrowly construed. *See* 122 A.D.3d at 41.

Third, the Second Department rejected DOF's argument that RPTL Article 7 is the exclusive method to challenge a real property tax assessment: "[w]e also note that acceptance of the respondents' view that RPTL article 7 is the sole vehicle for challenging a real property tax assessment would render Administrative Code §11-206 *superfluous and meaningless*." 122 A.D.3d at 38 (emphasis added). The Court noted, relying on Court of Appeals precedent, that the law regarding real property assessment proceedings should be liberally construed:

> Our determination in this regard is generally supported by the "view that the law regarding real property assessment proceedings is 'remedial in character and should be liberally construed to the end that the taxpayer's right to have his assessment reviewed should not be defeated by a technicality' " (*Matter of Garth v. Board of Assessment Review for Town of Richmond,* 13 N.Y.3d 176, 180, 889 N.Y.S.2d 513, 918 N.E.2d 103, quoting *Matter of Great E. Mall v. Condon,* 36 N.Y.2d 544, 548, 369 N.Y.S.2d 672, 330 N.E.2d 628). *Indeed, the ultimate goal of property valuation in any tax proceeding "is to arrive at a fair and realistic value of the property involved"* (*Matter of Great Atl. & Pac. Tea Co. v. Kiernan,*

> 42 N.Y.2d 236, 242, 397 N.Y.S.2d 718, 366 N.E.2d 808) so that "all property owners contribute equitably to the public fisc" (*Matter of Allied Corp. v. Town of Camillus,* 80 N.Y.2d 351, 356, 590 N.Y.S.2d 417, 604 N.E.2d 1348).

Better World, 122 A.D.3d at 38-39 (emphasis added).

Fourth, the Second Department held that "[t]o the extent that [DOF] contend[s] that Administrative Code § 11-206 be construed as having a limitations period, *any such limitations period must be crafted by the New York City Council*...." *Better World*, 122 A.D.3d at 40 (emphasis added).

II. DOF'S 2016 ENACTMENT OF A RULE RECOGNIZING THE LAW AS SET DOWN IN *BETTER WORLD* AND MAKING IT EASIER FOR PROPERTY OWNERS TO CORRECT ERRORS ON THE NEW YORK CITY TAX ROLLS

In the aftermath of *Better World*, DOF enacted the CER in 2016, which accepted the Second Department's decision in *Better World* as law. DOF, through the CER, made clear that "clerical errors" and "errors in description" are not limited to typographical and arithmetic errors, and that these errors should not be construed narrowly but rather include a wide variety of errors, including classification errors such as an "inaccurate building class that affected assessed value" (19 RCNY § 53-02(b)(10)). The CER also made clear that these expanded categories of errors could be corrected outside of the procedure set forth in RPTL Article 7 and laid down a procedure to request administrative review of assessment errors. The Statement of Basis and Purpose in the Notice of Rule Making for the 2016 CER made clear that DOF was conforming to the Second Department's pronouncements on 11-206, as it was legally required to do:

> Section 11-206 of the Administrative Code of the City of New York gives the Commissioner of the Department of Finance the ability to correct any assessment or tax which is erroneous due to a clerical error or error in description. *Historically, the authority granted under section 11-206 has been exercised narrowly*, leaving unaddressed many categories of errors that could be corrected under this section. *This rule significantly expands the categories of errors for which the Department of Finance will offer an opportunity to correct*. Corrections would apply going forward, but could also apply to errors occurring up to six years prior to the date an application for a correction is submitted. *These*

> *rules also specifically outline the types of errors that are correctible under section 11-206. A correction made according to this section is separate and apart from an appeal to the Tax Commission.*

19 RCNY §53, June 16, 2016 Note (emphasis added).

III. DOF'S REGRESSIVE PROPOSAL TO AMEND THE CER, VIOLATE THE APPELLATE DIVISION'S PRONOUNCEMENTS ON 11-206 AND MAKE IT MORE DIFFICULT FOR TAXPAYERS TO CORRECT ERRORS ON THEIR PROPERTIES

The Proposed CER regresses to the DOF's positions on 11-206 before those positions were rejected by the Second Department in *Better World*. The Statement of Basis and Purpose of Proposed Rule (the "Statement of Basis and Purpose") states:

> *Evidence from the legislative histories of these provisions suggests that in 1915, the Legislature when enacting the precursor to today's Administrative Code § 11-206, intended "clerical error" and "error of description" to refer to only ministerial mistakes*. ... The changes proposed in this rule would more clearly align Chapter 53 with the intent of the State laws authorizing the correction of clerical error and errors in description by clarifying that the Chapter 53 process only applies to correcting inadvertent clerical errors. Substantive challenges to property tax assessments on the merits continue to be heard by the Tax Commission or through a tax certiorari proceeding.

(Emphasis added).

Even though *Better World* held that "DOF's authority [under 11-206] is not limited to transcription errors or arithmetical errors" (122 A.D.3d at 40), the Proposed CER limits corrections to clerical errors and errors in descriptions to those very type of errors, also known as "ministerial mistakes." The Proposed CER carves out from the definition of the CER (1) any discretionary act or an act based in whole or in part of an individual's judgment; or (2) any interpretation of law, regulation or policy. To support this proposition, the Proposed CER's Statement of Basis and Purpose states that "[t]hese rule changes clarify the scope of Chapter 53 consistent with the intent of the Legislature in enacting what has not become Administrative Code § 11-206..." This is false. The Proposed CER relies on the same "legislative history" that the Second Department held did

"*not indicate that the subject terms should be narrowly construed*." 122 A.D.3d at 41 (emphasis added).

The Proposed CER deletes all examples of clerical errors and errors in description, regressing to the landscape recognized by both the majority and dissent in *Better World* of having "no definition of a 'clerical error' and 'error in description.'" 122 A.D.3d at 43-44. While the current CER recognizes that a correction under 11-206 is made "separate and apart" from Article 7, the Proposed CER states that all substantive challenges to real property assessments must be through RPTL Article 7.

The Proposed CER also violates *Better World's* holding by changing the time period in which the CER procedure can be used from six years prior to the application to just the tax year in which the application was submitted *or* during the two directly preceding tax years. In *Better World*, the Second Department held that "[t]o the extent that the respondents contend that Administrative Code § 11-206 be construed as having a limitations period, any such limitations period *must be crafted by the New York City Council*...." *Better World*, 122 A.D.3d at 40. Here, DOF is trying to limit the time period to bring a challenge under 11-206 itself, which is an *ultra vires* act. Further, even the manner in which DOF defines this two year period is confusing at best. The exact language seems to allow the taxpayer to contest *either* the current year *or* the two preceding tax years. The disjunctive instead of the conjunctive was used to set this limitation period.

The Proposed CER was also crafted in a manner that will allow DOF to adjust accounts beyond the shortened limitation period when *DOF* deems it to be appropriate to do so.

The Proposed CER should not be enacted.

Respectfully submitted,

Scott Goldberg

REBNY Comments | November 22, 2024

The Real Estate Board of New York to
The New York City Department of Finance re: the taxpayer-initiated Request for Review process and the clerical error administrative review process

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association. Founded in 1896, REBNY represents commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to comment on the Department of Finance's (DOF) proposed rules that impact the process to correct clerical errors.

The proposed rule would significantly alter how property owners can address errors in property tax assessments. While the goals of promoting efficiency and reducing potential abuse are laudable, the proposed amendments could significantly limit property owners' ability to address legitimate errors, which is particularly important given the complexity of New York City's property tax system.

The proposed rule would amend Section 53-01(a)(1) to provide that a request for administrative review to correct a clerical error can only be filed by a filer who owned the property in the year in which the error is believed to have occurred. As stated in the proposal, "the purpose of this provision is to prevent applications … by people who did not suffer any injury." However, there are circumstances where tax assessments from prior years, including when the current owner did not own the property, will have a significant impact on the property's current value. For example, this could occur if a property has been excluded from a protected tax class or if a particular tax year is the base year for future exemptions or abatements. It is not appropriate to remove the ability of a property owner to seek corrections that have substantive import on future assessments and/or tax benefits.

In addition, the proposed rule would adjust the time-period in which a request for a correction may be filed from six years prior to the date of the application to the tax year in which an application for

correction of errors was submitted or during the two directly preceding tax years. Often, the types of changes that are addressed via the clerical error correction process are those that are difficult to spot in the current tax year and indeed may not appear for several years. This can occur, for example, in cases where there is a tax lot created as a result of apportionment. For this reason, we encourage DOF to maintain the six-year timeframe to correct errors.

The proposed rule further states that DOF will not allow an applicant to obtain a correction in a circumstance where an owner also seeks relief from the Tax Commission or sought judicial intervention and receives a decision on the merits. This proposal will significantly limit when DOF will correct clerical errors by forcing taxpayers to decide to forego their ability to address issues of value before the Tax Commission in order to pursue the correction of error from DOF. As the Tax Commission typically does not correct errors that are within the scope of the clerical error correction, this proposal makes it very challenging for a taxpayer to pursue the error correction path in a complex situation.

Furthermore, the proposed rule establishes that clerical errors and errors in description include only those that are purely ministerial in nature or that are the result of a mistaken conclusion of fact that could be unambiguously resolved by reference to documents on the DOF website. Current rules enumerate fourteen appropriate scenarios for correction requests. These scenarios would be eliminated under the proposal and replaced with a catchall phrase of ministerial errors.

Unfortunately, this creates significant ambiguity as to what kinds of errors will be deemed to be ministerial. Moreover, the addition of the requirement that errors be "unambiguously resolved by reference to documents or information posted on the website of the Department of Finance," overlooks the reality that many errors require information from other City agencies or from information from outside parties. This could include situations where documents are needed from the Department of Buildings to establish the date of demolition or where the measurement of an existing budling's gross floor area by a licensed engineer or architect.

For these reasons we believe the proposed rule will introduce significant new challenges for property owners. Thank you for considering these views.

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