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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 5<sup>th</sup> 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**).<sup>1</sup> 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>)

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<sup>1</sup> <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*

**ROSE GILL HEARN**  
Commissioner  
NYC Department of Investigation

**MARTHA E. STARK**  
Commissioner  
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 110<sup>th</sup> 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.<sup>1</sup>**

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

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<sup>1</sup> 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.<sup>2</sup>**

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.

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<sup>2</sup> 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<sup>3</sup>.**

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.**

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<sup>3</sup> 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<sup>4</sup>.**

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

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<sup>4</sup> 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.<sup>5</sup>

### **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**

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<sup>5</sup> 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.<sup>6</sup> 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.

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

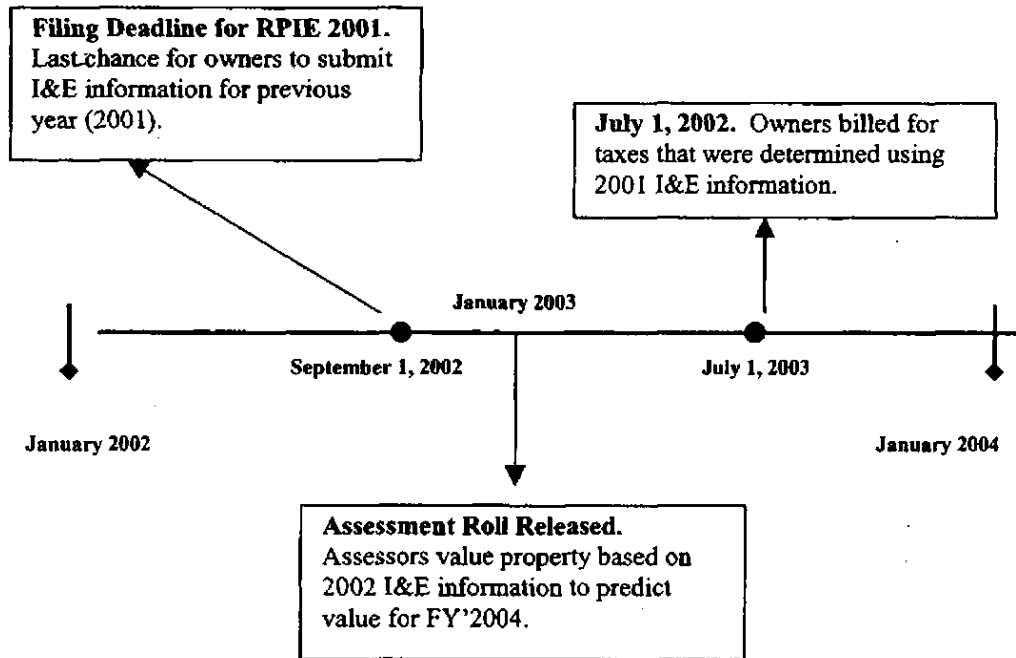
- The tax rate freeze that has been policy for the last 12 years further complicates matters because it causes assessors to think of themselves as revenue generators instead of as public servants responsible for setting an accurate value for properties. This may lead assessors to overstate values and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

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# Challenging Notice of Property Valuation

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**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 15<sup>th</sup> which includes assessment information applicable to the tax year that begins July 1<sup>st</sup> and runs through 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 1<sup>st</sup>: For Tax Class Two, Three and Four properties.
- March 15<sup>th</sup>: 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**

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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 relieved school tax or relieved 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 relieved school tax or relieved 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

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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.

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## 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**

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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

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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**

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**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 relieved 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

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## NY CLS RPTL § 556

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 it 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 15<sup>th</sup>. 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 5<sup>th</sup>, 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 10<sup>th</sup>, 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.