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November 21, 2024

NYC Department of Finance
Legal Affairs Division
375 Pearl Street, 30th Floor
New York, New York 10038
Attn.: Timothy Byrne
Email: DOFRules@Finance.nyc.gov

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

Dear Mr. Byrne:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your consideration of these points.

Sincerely,

Tener Consulting Services