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THE COUNCIL
REPORT OF THE FINANCE DIVISION
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COMMITTEE ON FINANCE
HON. DOMENIC M. RECCHIA, JR.
April 23, 2013

PROPOSED INT. NO. 906-A: By Council Members Recchia and Palma (by request of the Mayor)

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to notifying owners of real property about the valuation of real property and requiring income and expense statements from owners of income producing property for real property assessment purposes.

ADMINISTRATIVE CODE: Amends section 11-208.1 of the Administrative Code of the city of New York, and adds section 11-207.1 of the Administrative Code of the city of New York.

I. INTRODUCTION

Today, the Committee on Finance will meet to consider Proposed Int. 906-A, A Local Law to amend the Administrative Code of the city of New York, in relation to notifying owners of real property about the valuation of real property and requiring income and expense statements from owners of income producing property for real property assessment purposes. This legislation was introduced to the Council, by request of the Mayor on July 25, 2012, as Int. 906. After significant revisions, the legislation has been amended, and the Committee will consider the amended legislation as Proposed Int. 906-A.

The Department of Finance (“DOF”), which is the entity in charged with assessing real property in New York City, has been invited to testify, as well as members of the public.

II. BACKGROUND

A. Assessments

The New York State Real Property Tax Law (“RPTL”) provides that all real property in New York City be divided into four classes: Class One, which includes one, two and three family homes; Class Two, which includes other residential property not included in Class One (i.e. apartment buildings, cooperatives and condominiums); Class Three, which includes utility property; and Class Four, which includes all other property (including most commercial property).¹ Each year, DOF determines the value of every taxable property in the cCity.² The determination of value assigned to a property is termed an “assessment.”³ The level of

¹ See Real Property Tax Law § 1802(1).

² See New York City Charter § 1508.

³ See Real Property Tax Law § 102(2).

assessment on a property is one of the factors used to determine the amount of property taxes owed on a particular property.

A property's assessment is based on its market value. This market value is the worth of a property determined by DOF based on such property's classification. Pursuant to section 305 of the RPTL, each class of property must be assessed at the same percentage of full value⁴, though limits on how fast assessments can be increased often result in assessments being a smaller percentage of full value.⁵ The resulting value is commonly referred to as the "assessed value" of the property.

For income producing properties, as well as co-ops and condos, City assessors will use income and expense statements provided to DOF from the taxpayer,⁶ or if the co-op or condo units are not income-producing, then their assessment will be based on an estimate of the hypothetical rent that would have been charged for the units if the units were actually rental apartments.⁷ The submitted income and expenses are adjusted based on DOF statistical models and assessment guidelines⁸. Once the income for a property is determined, DOF determines the market value by using the income capitalization approach or a gross income multiplier to

⁴ See Real Property Tax Law § 305.

⁵ See Real Property Tax Law § 1805.

⁶ See section 11-208.1 of the Administrative Code of the city of New York.

⁷ Section 581 of the RPTL mandates that coops and condos be valued not as if they were coops or condos, but rather as if they are rental properties. Since DOF uses the income capitalization approach for valuing rental properties, DOF has to impute income and expenses for coops and condos. This is done by determining comparable rental properties to the coop or condo and using those incomes and expenses to estimate the potential income and expense of the coop or condo. http://www.nyc.gov/html/dof/html/property/property_condo_coop_comp_rental.shtml retrieved April 20, 2013

⁸ See page 8 of DOF's Class 2 Property Tax Brochure available at http://www.nyc.gov/html/dof/downloads/pdf/brochures/class_2_guide.pdf

estimate the property's full market value. The main difference between these two methods is that the latter bases value on the gross income of a property while the former uses net income, i.e. gross income minus expenses.⁹

B. RPIE process

As mentioned above, the market value for an income producing property or co-op/condo is a function of its income or assumed income. Prior to 1986, city assessors rarely had income information for income-producing properties available to them sufficiently in advance of determining the assessment of such properties.¹⁰ Such lack of data led to inaccurate assessments, and accordingly contributed to an increase in administrative and judicial review proceedings on DOF property assessments.¹¹

In June 1986, New York City enacted Local Law 24 of 1986, and subsequently, Local Law 63 of 1986, to formalize the procedure for acquiring income and expense data from income-producing properties.¹² Pursuant to Local Law 63, with certain exceptions, owners of income-producing property in New York City must file a statement of all income derived from and all expenses attributable to the operation of such property, otherwise known as a real property income and expense statement, or RPIE.¹³ RPIE Statements reflecting the previous calendar year's income and expenses, or previous fiscal year income, must be filed by September 1, but

⁹ See Testimony of Commissioner Martha E. Stark Before the City Council Finance Committee on the Mayor's Preliminary Budget, March 3, 2005. On File with the Committee.

¹⁰ See Declaration and Findings of Local Law 24 of 1986, which required the submission of income and expense statements from owners of income-producing properties.

¹¹ See *id.*

¹² See Local Law 24 of 2006 (invalidated due to inadequate notice requirement) and Local Law 63 of 1986, codified in section 11-208.1 of the Administrative Code of the city of New York.

¹³ See *id at* § 11-208.1 (d)(1).

the Commissioner of Finance could, upon the show of good cause, extend the date by 30 days.¹⁴

The law further exempts groups of small property owners from the filing requirement: (1) those whose property is assessed at \$40,000 or less; (2) those who own residential property containing 10 or fewer dwelling units; and (3) those who own a property in class one or two, which contains six or fewer dwelling units and one retail store.¹⁵

Pursuant to DOF's rules, in addition to the properties listed above, the following properties do not have to file an RPIE:

1. special franchise property;
2. owner-occupied property;
3. property occupied by related persons of owner;
4. fully tax-exempt properties;
5. exclusively residential property held in a condominium form of ownership, or cooperative property with no more than 2,500 square feet of commercial space;
6. newly acquired property (acquired within one month of RPIE due date); and
7. abandoned or uninhabitable property.¹⁶

Failure to file an RPIE in the first instance is punishable by a fine of up to 3% of the property's assessed value for the current year.¹⁷ Failure to file by a deferred date can result in a higher penalty of up to 4% of the assessed value; if the required statement is not filed for a second consecutive year, the penalty may reach as high as 5%.¹⁸ A penalty can be imposed only

¹⁴ *See id.* at § 11-208.1 (a)(4).

¹⁵ *See id.* at § 11-208.1 (e).

¹⁶ *See* 19 RCNY 33-01(b)(2).

¹⁷ *See* § 11-208.1 (d)(1) of the Administrative Code of the city of New York.

¹⁸ *See id.*

after a property owner has had an opportunity to be heard.¹⁹

In addition to these penalty provisions, the DOF Commissioner is given other enforcement tools. If a required RPIE statement is not timely filed, the Commissioner can seek a court order compelling production of the statement. At its option, the Commissioner also can subpoena relevant books and records concerning the property's income and operating expenses.²⁰ A property owner who does not file a timely statement is precluded from appealing DOF's assessment with the Tax Commission, an independent review board that reviews assessments of real property made by DOF.²¹

C. Problems with the RPIE process

While the purpose of the RPIE statements was to formalize the procedure for acquiring income and expense data from income-producing properties, many argue against the effectiveness or necessity of the RPIE statements due to the lack of transparency regarding the way those statements are used to determine the market value of an income-producing property. In the current process, in September, property owners submit to DOF the actual income and expenses of their property, broken down by various categories as determined by DOF. Then, as previously noted, DOF adjusts these submissions based on statistical guidelines that are produced by DOF to determine the assessment for such properties. Then, in January, DOF mails to such owners a Notice of property value, which simply states the new assessment. In recent years, this notice of property value for income-producing properties included the estimated sum of the income and expenses (but not the categorical component parts) that DOF used to

¹⁹ *See id.*

²⁰ *See id.* at § 11-208.1 (d)(3).

²¹ *See id.* at § 11-208.1 (d)(2).

determine that value. For the owner, it is not always clear how, and to what extent, the various component categories have been adjusted and if they were done in a way that properly reflects the unique nature of their property.

The law requires the imposition of penalties for the failure to file a RPIE statement, many property owners have claimed that they have never received a monetary penalty; rather DOF imputed the highest value of income imposed on comparable income-producing properties as the value of their property.

Presently, DOF asserts that the September 1 deadline for filing the income and expense statements does not allow the agency sufficient time to best evaluate the income and expense information received by property owners in order to complete the tentative assessment roll by January, nor is it sufficient to provide a timely notice of assessment increases to property owners. DOF believes that moving the filing deadline up to June 1 would provide sufficient time to make best use of the income and expense information, while continuing to allow property owners ample time to complete and file these statements.

III. PROPOSED INT. 906-A

On July 25, 2012, the Administration introduced legislation, Int. 906, A Local Law to amend the administrative code of the city of New York, in relation to notifying owners of real property about the valuation of real property and requiring income and expense statements from owners of income producing property for real property assessment purposes. The initial bill presented by the Administration contained primarily enforcement provisions, designed to compel compliance with the RPIE filing requirement, as well as accuracy provisions, designed to allow DOF to gain a better understanding of characteristics of a property, which would in

turn, allow for a more accurate value assessment. Through collaboration and extensive negotiation with the Administration, the legislation, now Proposed. Int. 906-A, has been amended with an eye toward compliance, accuracy, addressing owner hardships, and transparency.

Section 1

Section 1 adds a new section, 11-207.1 to the administrative code to provide transparency in the way in which DOF determines property values on the tentative assessment roll.

Subdivision (a) of 11-207.1 (Roll Report Transparency)

Subdivision a of section 11-207.1 provides that no later than February 15th of each year, DOF must publish on its website, and submit the following information to the mayor and to the council:

1. a distribution by relevant geographies and buildings types of the factors used in determining market values such as incomes, expenses, and rates of capitalization. The distribution should provide, at a minimum, the first, second and third quartiles of such factors;
2. specific formulas, data sources, and values used to determine the rates of capitalization for real property valuation;
3. average values and changes of incomes and expenses, as reflected on the statements required to be filed;
4. a statistical summary of the changes in the total market value and assessed value for each property tax class and property category from the assessment roll of the previous year;
5. a statistical summary of equalization and non-equalization changes from the assessment roll of the previous year; and
6. the method of valuation used for each property listed on the estimate of the assessed valuation of real property subject to taxation for the ensuing fiscal year, and the information used to determine such valuation.

In short, this report will provide taxpayers with a clearer understanding of how properties are being valued by DOF, while still protecting sensitive taxpayer income and expense information.

Subdivision (b) of 11-207.1 (Assessment value details referenced in NPV)

Subdivision (b) of section 11-207.1 requires the Notice of Property Value to inform property owners how to access additional information on DOF's website regarding the factors used by the department to determine the market value of the property to which such notice applies. The web address will be provided in the notice, and the information on the website will be made available at least 30 days before filing an appeal with the Tax Commission.

Section 2

Section 2 amends the opening paragraph and paragraphs 2, 3, and 4, of subdivision (a) of section 11-208.1 of the administrative code relating the RPIE filing date, fiscal year filers, owners who do not know the income of their property, and RPIE filing extensions for co-ops and condos.

Opening Paragraph of 11-208.1(a) (Filing Date Change)

Changes the date the RPIE is due from September 1st to June 1st.

According to DOF, the September 1st deadline does not give assessors sufficient time to review the RPIE data, make adjustments as necessary, and prepare assessments on that basis. With the additional time, DOF asserts, will facilitate a more adequate and thorough review of the RPIE, and DOF will be able to spend more time on quality control before the tentative assessment roll is issued. It is to be noted that since an RPIE covers income and expenses from the prior calendar year, taxpayers generally have all the information they need to complete the RPIE by June 1, and any taxpayer who has challenged an assessment at the Tax Commission, the data would already have been compiled for the income and expense statement needed for the Tax Commission, which is filed by May.

Paragraph 2 of 11-208.1(a) (Fiscal Year filers)

For owners whose books and records reflecting the operation of the property are maintained on a fiscal year basis, the RPIE shall be for the last fiscal year concluded as of May 1st, rather than August 1st.

Paragraph 3 of 11-208.1(a) (Non-operation of Property)

Paragraph 3 exempts property owners from filing the RPIE in the event such owners have not operated the property or do not know the income/expenses of the property. An exclusion form will be required, if applicable.

Paragraph 4 of 11-208.1(a) (Class 2 co-op/condo filing extension, timely filing clarification)

Paragraph 4 allows the Commissioner to extend the time for Class 2 co-op/condos to file the RPIE to 60 days, rather than 30 days. All properties given an extension will be considered timely filed, meaning they will still be eligible for tax commission appeals should they chose to do so.

Section 3

Section 3 amends paragraph 1 of subdivision (d) of section 11-208.1 of the administrative code relating to penalties and interest imposed for the failure to timely file a RPIE.

Paragraph 1 of 11-208.1(d) (RPIE interest, ~~lienability~~lienability, lien sale eligibility, and opportunity to cure)

Paragraph 1 imposes interest on the penalties currently imposed for failure to timely file an RPIE. The interest rate will be at a rate of 9% (properties with an assessed value of less than \$250k) or 18% (for properties with an assessed value of \$250k or more.)

Paragraph 1 also makes the failure to pay the penalties and interest a tax lien against the property, and such tax lien will be eligible for the lien sale. Inclusion into the lien sale will only

occur if the property has other qualifying charges (delinquent property taxes, water charges, or emergency repair charges).

The penalties shall only be imposed after an owner has been given an opportunity to be heard and an opportunity to cure the failure to file.

Section 4

Section 4 adds paragraphs 4, 5, 6, 7, and 8 of subdivision (d) of section 11-208.1 of the administrative code relating to a new exclusion form, penalties and interest imposed for the failure to timely file the exclusion form, website publication of a list of RPIE/exclusion form non-filers, innocent purchasers.

Paragraph 4 of 11-208.1(d) (Exclusion form requirement, penalty, interest, lienability, lien sale eligibility, and opportunity to cure)

Paragraph 4 requires owners of rental property to file an exclusion form if they have a rental property and are not required to file an RPIE, unless such property 1) has an assessed valuation of \$40k or less 2) is residential property with 10 or fewer units; 3) is a class 1 or class 2 with 6 or fewer units and one retail store; 4) is special franchise property. The exclusion form, due June 1st, will be a checklist of descriptive property characteristics that will allow DOF to obtain as much recent data about the property as possible to facilitate accurate assessments about a property.

Paragraph 4 also imposes penalties for the failure to timely file an exclusion form.

- 1st offense: up to \$100
- 2 consecutive offense: up to \$500
- 3rd consecutive offense: up to \$1,000

Paragraph 4, similar to the interest provisions for the RPIE, also imposes interest on the penalties imposed for failure to timely file an exclusion form. The interest rate will be at a rate of 9% (properties with an assessed value of less than \$250k) or 18% (for properties with an assessed value of \$250k or more).

Paragraph 4, similar to the lien provisions for the RPIE, also makes the failure to pay the penalties and interest a tax lien against the property, and such tax lien will be eligible for the lien sale. Inclusion into the lien sale will only occur if the property has other qualifying charges (delinquent property taxes, water charges, or emergency repair charges).

Like the RPIE, the penalties for failing to file the exclusion form shall only be imposed after an owner has been given an opportunity to be heard and an opportunity to cure the failure to file.

Paragraph 5 of 11-208.1(d) (Exemption from filing Exclusion form)

Paragraph 5 exempts the following from the exclusion form requirement: 1) properties with an assessed valuation of \$40k or less; 2) residential property with 10 or fewer units; 3) class 1 or class 2 properties with 6 or fewer units and one retail store; and 4) special franchise property.

Paragraph 6 of 11-208.1(d) (Notice to file RPIE or Exclusion in Notice of Property Value or Property Tax Bill)

Paragraph 6 requires DOF to include in the Notice of Property Value a statement of the requirement to file a RPIE, or, if applicable, a claim of exclusion form. The notice will contain penalty and interest information. The notice will also be included in their January property tax bill.

Paragraph 7 of 11-208.1(d) (Website publication of non-compliant owners)

Paragraph 7 requires that no later than 30 days prior to the imposition of penalties for an owner's timely failure to file an RPIE or exclusion form, DOF must publish on its website a list of non-compliant owners.

Additionally, no later than February of each year, the website publication must also include the penalties imposed on such owners, and the length of file delinquency.

Paragraph 8 of 11-208.1(d) (Innocent Purchaser Provision)

Paragraph 8 requires that in cases where the property owner closes on a property before: 1) the website publication of the non/late filer list; or 2) the reflection of the non/late filer penalty on the property tax bill for such property, DOF may waive any such penalty and cancel any lien imposed as a result of such penalty, upon request of the owner of such property. Guidelines for such waiver may be prescribed by the Commissioner.

Section 5

Section 5 provides that the bill would take effect immediately, but the bill's provisions will apply to RPIE statements due on June 1, 2014.

IV. CHANGES BETWEEN INT. 906 AND PROPOSED INT. 906-A

Proposed Int. 906-A, as compared to the original bill presented by the Administration, contains provisions to ensure: 1) adequate and accurate review of income and expense statements; 2) compliance with the RPIE and exclusion form requirements; 3) owners are given proper notice and certain protections; and 4) transparency in the way DOF determines market and assessed values for property.

	<u>Int. 906</u>	<u>Proposed Int. 906-A</u>
<u>Accuracy</u>		
Earlier Filing Date (From Sep to June)	✓	✓
Fiscal Year filers (RPIE covers information for the last fiscal year concluded as of May 1 st)		
Non- operation of property: File Exclusion form, rather than RPIE	✓	✓
Exclusion Form Requirement	✓	✓
<u>Enforcement/Compliance</u>		
Liable Penalties for failure to file RPIE and Exclusion Form	✓	✓
Interest on Penalties for failure to file RPIE and Exclusion Form	✓	✓
Penalties for failure to file Exclusion form	Amount determined by Commissioner	Removes Commissioner discretion in determining penalty amount. The bill now specifies penalty amount
CPA Certification of RPIE (Required CPA certification of RPIEs filed by owners of properties with an assessed value of \$1million or more and at least \$100k in rental income.)	✓	✗

<u>Addressing Owner Hardships</u>	<u>Int. 906</u>	<u>Proposed Int. 906-A</u>
Notice to file RPIE or Exclusion Form in the Notice of Property Value and the January Property Tax bill.	X	✓
Time extension for Class 2 co-op/condos	X	✓
Time extensions considered timely filed	X	✓
Opportunity to Cure Failure to File RPIE and Exclusion form before imposing penalties	The penalties are imposed after an owner has been given an opportunity to cure the failure to file, but only if the Commissioner promulgates rules in such regard.	The penalties are imposed after an owner has been given an opportunity to cure the failure to file, regardless if rules are promulgated in such regard.
Innocent Purchaser provision	X	✓
Effective Date	Bill provisions would apply to the 2013 Roll	Bill provisions would apply to the 2014 Roll
<u>Transparency</u>		
Website Publication of Non/late-Filers	X	✓
Roll Report Transparency	X	✓
Additional details on DOF website referenced in NPV	X	✓

