

Testimony of Tax Commission President Ellen E. Hoffman
Before the Finance Committee
on Intro 1038

Good morning. Thank you Chair Dromm and members of the committee for inviting me to speak on Intro. 1038.

My name is Ellen Hoffman and I am the President of the New York City Tax Commission.

Let me start by saying that I fully support the primary purpose of this bill in increasing the dollar threshold for Tax Commission applications for correction requiring the certification of a certified public accountant. The Tax Commission is sympathetic to the burden placed on owners of modest size properties having to pay accountants several thousands of dollars to certify their income and expense statements and we agree with the proposed increase in the threshold to \$5 million.

The current threshold of \$1 million was adopted in 1973.

I don't have perfect statistics to illustrate all of the changes in relevant facts since then, but I think I can give you a good idea of how things have changed.

In 1977, the total actual assessed value of all property in the City was under \$40 billion. For fiscal 2018, the total taxable actual assessed value was over \$251.5 billion.

In 1986, the total assessed value of parcels filing appeals with the Tax Commission was just over \$40 billion. For fiscal 2019 that total is over \$233.4 billion.

In fiscal 1993, the number of applications filed with the Tax Commission for properties having an assessed value of over \$750,000 was about 10,500. For fiscal 2019 the number of applications filed for properties having an assessed value over \$450,000 was about 39,300.

Although it isn't a perfect comparison, I feel confident in saying that the number of applications requiring an accountant's certification has increased by at least 300% in the last 15 years.

In short, the \$1 million dollar threshold does not have the same significance today as it did when it was adopted 45 years ago. With the increase in assessed values in the 45 years since the \$1 million threshold was adopted, owners of what are now modest sized properties are burdened with the expense of hiring accountants to issue the certifications.

Last year, of the 54,557 applications filed, 25,209 were for properties having an assessed value of \$1 million or more. But only 6913 were for properties having an assessed value of \$5 million or more. As a result, with this legislative change, as many as 18,000 applicants will no longer have to provide the certification.

However, while we support the increase in the threshold, for very practical reasons, we strongly object to the provision requiring the threshold to be indexed to inflation on a yearly basis.

Applications with the Tax Commission are due March 1 each year for tax class 2, 3 and 4 properties. Many are filed shortly after the Notice of Property Value is issued by the Finance Department in mid-

January. Our forms and instructions have to be printed by December to have them available for applicants.

The average annual increase in the Consumer Price Index each year is not released until mid-January so it would be impossible for us to incorporate that change into our forms and instructions and to effectively communicate the new threshold to applicants in time.

Moreover, the most recent annual increase was 2.1%. That represents a very small change in assessed value to justify the practical difficulties of adjusting the certification threshold every year. Applicants might incur an unnecessary expense because they were unaware of a slight change in the threshold.

Thank you again for giving me the opportunity to address you today. I am happy to address any questions you may have.

Int. 1038/2018

October 4, 2018

Testimony of Glenn Borin
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Good morning members of the Finance Committee. My name is Glenn Borin. I appreciate this opportunity to speak on Intro. No. 1038, which would amend Administrative Code § 11-216 in relation to the minimum assessed value of income-producing properties whose owners are required to obtain an audit in order to be heard by the New York City Tax Commission.

I am an attorney with the firm of Marcus & Pollack LLP, which specializes in real estate tax matters. I am a Trustee of the Real Estate Tax Review Bar Association and a member of the Condemnation and Certiorari Committee of the Association of the Bar of the City of New York.

My prospective on the issue is based on 12 years of private practice representing property owners in real estate tax appeals and 25 years of public service in the same area of law, including service as counsel to the Tax Commission.

The current law, which sets a threshold of \$1,000,000 for the audit requirement, was added by Local Law No. 27 for 1973 and remains as originally enacted. The proposed change would increase the minimum from \$1,000,000 to \$5,000,000. Inflation over the past 45 years has changed the meaning of \$1,000,000. Currently, a commercial property assessed for less than \$5,000,000 is a modest property and much smaller than a property that would have been assessed for \$1,000,000 in 1973. The question to be asked is whether the inadvertent extension of this requirement from major commercial properties to relatively small properties is good policy or should be the subject of corrective legislation to restore the original intent of the law.

A tax law requiring the taxpayer to pay for a private audit by a CPA is unusual – it is not required in the income tax where the income and expense statement of the taxpayer directly determines the tax due. Although income and expense statements are important to the property tax, they do not directly determine the tax and Tax Commission's reliance on the owner's statements for relatively low-valued properties has been modified by developments in the assessment review process since 1973.

In order to place this requirement in context, it is best to start with the basics of the assessment review process for income-producing properties, such as apartments, offices and stores. The Department of Finance determines a tentative assessment for each property each year. If there is no change on review, the new assessment will set the taxes due for the upcoming fiscal year. However, the owner can challenge the tentative assessment by application to the Tax Commission and, if not resolved there, then through a judicial proceeding.

At each level there is a determination of market value. Although there are some special rules for tax valuations, in essence they are the same as the products of professional appraisers and

analysts in the real estate business. It is up to the taxpayer to persuade the Tax Commission or the court that its estimate of market value is more accurate than that of Department of Finance.

In order to have a hearing before the Tax Commission, the owner must certify and submit an income and expense statement if the property is income producing. If the new assessment is \$1,000,000 or more, the statement must also be certified by a CPA who has conducted an audit of the income and expenses for the period covered by the statement – usually the calendar year ending on the previous December 31. The statement and the auditor's certification together with the owner's certification are due by March 24, less than 12 weeks after the owner's books are closed for the prior year.

The income and expense statement is often an important part of the valuation analysis. However, in making its determination, the Tax Commission considers multiple sources of information, many of which are newly developed since 1973.

In 1986, the Council enacted a requirement that owners file income and expense data directly with the Department of Finance even if they choose to forgo a hearing by the Tax Commission. As a result of this initiative and advances in technology, income and expense data for all properties are now available to both the Department of Finance and the Tax Commission in electronic form.

If the income and expenses submitted by the owner are outside the range for similar properties, the Tax Commission will ask for additional information to help it determine the reason. Local legislation in the 1980s and 1990s that extended the review period, allows the Tax Commission the time to make these follow up requests and use the additional data now available to it.

Ultimately, if the Tax Commission does not find the information persuasive, it will confirm the assessment; it is never compelled to offer a reduction of the assessment in an uncertain case, as the owner will still have recourse to the courts.

Many owners of both large and small properties have difficulty meeting the deadline to obtain the CPA certification, and the cost may be a material issue. Although the process offered by the Tax Commission has advantages, including its relative speed, large property owners can still access the courts without filing the income and expense statement with the Tax Commission. While this avenue is theoretically open to small property owners as well, it is often not a practical option. If owners of small properties are shut out of the review process by administrative obstacles, the equity of the tax and its acceptance by the public are degraded.

The preponderance of the tax dollars at issue in review proceedings are paid by owners of large commercial and multifamily properties that would continue to be subject to the requirement to obtain an audit in order to take advantage of the Tax Commission's expeditious process. My firm's clients are primarily owners of large properties and will not gain an advantage from this legislation. However, the proposed update of the law is in the public interest and should be adopted.

I would be happy to answer any questions.

Thank you for the opportunity to speak on this issue.



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**WRITTEN TESTIMONY OF THE COMMITTEE ON
CONDEMNATION & TAX CERTIORARI**

**NEW YORK CITY COUNCIL COMMITTEE ON FINANCE
HEARING ON INT. 1038-2018**

October 4, 2018

My name is Peter Blond and I am the immediate past chair of the Condemnation and Tax Certiorari Committee of the New York City Bar Association. We appreciate that the Committee on Finance has called this hearing to discuss Int. 1038-2018. Our Committee proposed this legislation, which would amend Section 11-216 of the New York City Administrative Code to increase the Tax Commission TC309 Accountant Certification assessment threshold from \$1 million to \$5 million.

The \$1 million threshold was set in 1973, and it should be self-evident that New York City property values have increased greatly during this period, thereby encompassing more and more ordinary property owners in 2018 than were originally intended back in the early 1970's. The \$1 million threshold requires an owner of income-producing property to acquire a statement of income and expenses prepared by an independent CPA just to obtain a substantive hearing, much less an actual assessment reduction.

The submission of the required statement is a costly burden on those owners. CPA's regularly charge our clients in excess of \$10,000 to prepare these full audits in a time frame that affords less time than the Federal and State of New York governments for their returns. Increasing the threshold to \$5 million is remedial in nature, and is a necessary step towards guaranteeing increased fairness in the New York City property tax system with respect to income-producing property.

Appended and incorporated as part of this testimony please find the Committee's report in support of Int. 1038-2018, which further discusses the need for this legislation.

Thank you for your consideration.



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REPORT ON LEGISLATION BY THE COMMITTEE ON CONDEMNATION & TAX CERTIORARI

Int. No. 1038-2018
Council Members Grodenchik, Dromm, Yeger

A Local Law to amend the administrative code of the city of New York, in relation to amending the requirement that a statement of income and expense certified by a certified public accountant be provided in order for an income-producing property to be granted a reduction in real property assessment by the tax commission

THIS BILL IS APPROVED

This report is respectfully submitted by the Condemnation and Tax Certiorari Committee (the "Committee") of the New York City Bar Association in support of Int. No. 1038-2018. The Committee addresses issues relating to the statutory procedures for review and correction of assessed valuation of real property and for the condemnation of real property in New York City. The New York City Bar Association promotes impartial rules and laws that safeguard the due process rights of all New York City residents and property owners. In furtherance of that goal, for New York City real estate taxpayers, we submit this position paper in order to urge modernizing Section 11-216 of the New York City Administrative Code.

BACKGROUND

Section 11-216 (b) was adopted in 1973 and states, "No reduction shall be granted for an income-producing property unless there is submitted to the tax commission a statement of income and expenses in the form prescribed by the tax commission and which shall be, in the case of property valued at one million dollars or more certified by a certified public accountant. The commissioner granting such reduction in assessment shall state in a short memorandum the basis upon which the reduction is granted."

The Tax Commission enforces Section 11-216(b) by requiring that, where the newly published assessment is \$1,000,000 or more, taxpayers seeking correction of the assessment hire a certified public accountant to audit a statement of income and expenses of the operation of the property for the most recently completed calendar or fiscal year. The accountant must sign the Tax Commission's TC309 form, which must be attached to the income statement when filed. As stated on the TC309 form, the audit must be performed according to auditing standards generally accepted in the United States. The Tax Commission form also requires the accountant's

acknowledgment that, "Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the schedule is free from material misstatement."

It is our understanding from a collective poll of thousands of our clients, that the cost of an audit for this purpose can frequently be \$10,000 or more. If the applicant does not obtain the audit and file form TC309, the Tax Commission does not grant review of the assessment.

DISCUSSION

The City Council's intentions in 1973 were likely premised on wanting to provide the Tax Commission full faith and confidence in the income and expenses being submitted on behalf of what were then considered to be highly valued properties that were seeking reduction of their real estate tax assessments. However, the image of a 1973 "one million dollar" property does not have nearly the same significance in 2017. Consequently, we believe the Council's original intent must be maintained but it should be based on current values.

According to the American Institute for Economic Research, \$1,000,000 in 1973 would equate to \$5,454,545 in 2016. The U.S. Bureau of Labor Statistics inflation calculator at InflationData.com states that \$1,000,000 in 1973 would equate to \$5,405,563 in 2016. The Consumer Price Index increased 98.2% from 1983 to 2003 alone.

Based on the data available to us, an increase in the almost 50 year old threshold (\$1,000,000) requiring a TC309 Account's Certification would be cost-neutral to the City. Indeed, the substantial cost and burden of obtaining a TC309 is on the taxpayer merely to obtain substantive review of their application, regardless of whether they are successful in proving that their property is over-assessed.

RECOMMENDATION

The Condemnation & Tax Certiorari Committee supports Int. No. 1038-2018, which would create a new assessed value threshold - obligating a TC309 Accountant's Certification - at \$5,000,000. This overdue update will allow ordinary properties to obtain substantive review of their property tax assessments and thereby provide equal protection under the law without the financial burdens currently imposed. The Committee approves of the annual value adjustment also incorporated in the bill, although the increase from \$1,000,000 to \$5,000,000 to account for past inflation is the more pressing need at present.

Condemnation and Tax Certiorari Committee
Reed Schneider, Chair

September 2018

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1038 Res. No. _____

in favor in opposition

Date: _____

Name: PETER BLOND (PLEASE PRINT)

Address: _____

I represent: NYC BAR & REAL ESTATE TAX REVIEW BAR
Address: _____ ASSOC.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1038 Res. No. _____

in favor in opposition

Date: _____

Name: Allen Antloff (PLEASE PRINT)

Address: Tax Commission

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1038 Res. No. _____

in favor in opposition

Date: 10/4/18

Name: Glenn Borin (PLEASE PRINT)

Address: _____

I represent: NYC Bar Assn. + Real Estate
Address: Tax Review Bar Assn.