



REPORT ON LEGISLATION BY THE CONDEMNATION AND TAX CERTIORARI COMMITTEE

Int. 2412-2021 Council Member Dromm

A LOCAL LAW to amend the New York city charter, in relation to the application procedure for the correction of assessment for taxation

THIS BILL IS APPROVED

The New York City Bar Association’s Condemnation and Tax Certiorari Committee supports the proposed amendments to the New York City Charter to update a procedural aspect of applying to the New York City Tax Commission for property tax assessment relief. The change proposed is to allow Tax Commission applications to be “certified” instead of being “duly verified.”

The assessment review process administered by the Tax Commission is an important element of the City’s administration of real property taxes. The Committee supports all necessary measures to preserve its integrity and effectiveness. We would not support this proposal if it were understood that the change would weaken that important underpinning of the process. The reasons why the public interest would be advanced by changing verification to certification for assessment review applications are, in brief:¹

- Appearing before a notary to verify an application is a substantial obstacle for many taxpayers who lack ready access to a notary because there is a short time window to

¹ The Committee issued a comprehensive report in January 2021 on the need for the proposed amendments, which presents the context of the application process, historical background of provisions requiring applications to be duly verified, existing Tax Commission protections of the integrity of the assessment review process, parallel provisions for assessment review applications in the rest of New York State, relevant considerations in State law, and policy arguments in favor of the proposed amendments. See “Proposed Amendment to the New York City Charter In Order to Simplify the Application Process to Correct Property Tax Assessments,” New York City Bar Association, Jan. 20, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/property-tax-assessments-at-nyc-tax-commission-simplifying-process>. (all websites last visited Oct. 26, 2020).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

file applications by March 1 after publication of tentative tax assessments January 15 each year.

- Failure to duly verify an application is a jurisdictional defect that bars tax relief completely for one year at the Tax Commission and in court, irrespective of how accurate the facts presented and meritorious the claims.
- State law applicable to all other local assessing jurisdictions removed the requirement for verification in 1978 and now allows certification. Only New York City taxpayers must verify applications to obtain assessment review in the State.
- The City Department of Finance in its Real Property Income and Expense (“RPIE”) property valuation data reporting process, akin to the process of reporting by applicants in Tax Commission assessment review, allows certification and does not require verification of required property information.
- To the extent it prevents taxpayers from presenting meritorious claims, the verification requirement impedes the full and proper exercise of the Tax Commission’s mandate to correct assessments for the benefit of taxpayers facing over-taxation, provide due process, and ensure fairness in the administration of the property tax system.
- As a deterrent to potential applicant misrepresentation, criminal law punishes false written statements that are certified equally effectively as verified statements.
- Swearing before a notary in signing a written form is a formality of less significance to people in our secular world than historically, and so is an unreliable shield for ensuring integrity of the Tax Commission process.
- Verification is superfluous in preserving the integrity of the review process because the Tax Commission’s other evidentiary and procedural safeguards work effectively.

The requirement for verification before a notary impedes the exercise of the Tax Commission’s delegated authority to correct assessments for the benefit of taxpayers facing over-assessment and provide them a fair opportunity to obtain relief from excessive or otherwise erroneous real property taxation. Since verification adds no genuine protection to the integrity of the review process beyond that offered by certification, it unnecessarily burdens taxpayers’ access to assessment review and hinders the City in fully achieving the fair administration of property tax assessments. To that end, the Charter should be amended in a way that will help the Tax Commission better perform its mission. There is an important public interest in lifting undue obstacles to taxpayers’ efforts to obtain correction of assessment errors. Appearing before a notary has proven to be particularly troublesome currently but is a technical formality that taxpayers, who have a due process right to have the government hear their requests for relief from erroneous assessments, should be spared.

The requirement that applicants appear before a notary to verify their applications has been suspended for the past two years due to the threat presented by COVID-19 to the health and welfare

of taxpayers seeking property tax relief and the person performing notary services.² We are not aware of any complications to the Tax Commission’s review of applications due to the lack of notarization during this time. These health-related concerns may well continue into 2022. Further, the likely permanent increase in remote office work and the decline in retail outlets, such as stationery stores, that had traditionally offered notary services, will increasingly frustrate access to review of assessments. The need to find a notary is a difficulty for many property owners but is especially burdensome for owners of self-managed properties of modest value. An assessment appeal for a four-family house, a two-family co-op or a small retail store requires appearance before a notary to complete the filing.

RECOMMENDATION

The proposed legislation currently has an effective date of 120 days after enactment. The Committee respectfully requests that the Council amend the legislation to make the change take effect immediately so it can be effective in advance of the next filing period commencing on Tuesday, January 18, 2022. The City Charter requires that applications for properties in tax classes two, three and four be duly verified and must be received by the Tax Commission on or before March 1, 2022. Suspension should be effective immediately so that it is continuous with the suspension that applied under the Mayor’s executive order last year. In the absence of the proposed change, many meritorious requests for correction will be denied all means to obtain review by the Tax Commission and courts for failure to jump this procedural hurdle. More than 50,000 applications are filed annually,³ and it can be expected that more taxpayers will seek assessment relief in 2022.

Tax Commission reliance on certification, together with its evidentiary and procedural safeguards already in effect, will maintain the integrity of the review process and better enable taxpayers to obtain deserved tax relief. We therefore support the swift enactment of the proposed legislation amending the Charter to replace verification of applications with certification.

Condemnation and Tax Certiorari Committee
Glenn Borin, Chair

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² In 2020, the Tax Commission waived the requirement for notarization; in 2021, the waiver came through Mayoral Executive Order. *See* Emergency Executive Order No. 181, Feb. 11, 2021, <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2021/eo-181.pdf>.

³ Tax Commission of the City of New York 2020 Annual Report, at 12, https://www1.nyc.gov/assets/taxcommission/downloads/pdf/annual_report20.pdf.