



NEW YORK
CITY BAR

**COMMITTEE ON
CONDEMNATION AND
TAX CERTIORARI**

WILLA I. LEWIS
CHAIR
386 PARK AVE. SOUTH
SUITE 600
NEW YORK, NY 10016
Phone: (212) 563-2200
Fax: (212) 629-4272
wlewis@bsl-taxcert.com

DARA A. IRYAMI
SECRETARY
42 BROADWAY, SUITE 1744
NEW YORK, NY 10004
Phone: (212) 344-1048
Fax: (212) 344-2870
retaxapp@covad.net

December 5, 2006

VIA E-MAIL AND REGULAR MAIL

Hon. Dara Jaffee
Assistant Commissioner of Legal Affairs
New York City Department of Finance
One Centre Street – Room 500
New York, New York 10007

Re: Proposed Amendments to Section 11-208.1 of the Administrative Code

Dear Commissioner Jaffee:

We write on behalf of the Committee on Condemnation and Tax Certiorari of the Association of the Bar of the City of New York to comment on the proposed modifications of Section 11-208.1 of the Administrative Code of the City of New York. The proposed changes would require the electronic filing of the mandatory real property income and expense statement (RPIE) by most owners of income producing property located in the City of New York. Our members are opposed to the amendments as proposed.

The Committee on Condemnation and Tax Certiorari generally consists of attorneys who represent owners of real property both within New York City and elsewhere. Our collective clients include a broad spectrum of owners of every type of property, from small residential buildings to multi-million dollar office towers. They include individuals who may own one small property in Queens, and corporations and real estate investment trusts owning billion dollar Manhattan portfolios. As representatives of this cross-section of the real estate tax paying public subject to the RPIE filing requirements imposed by the Administrative Code sections being amended, we have experience with every strata of ownership and taxpayer. Our experience tells us that the newly proposed rules will place an undue burden on many owners of real property in the City.

Since the enactment of Section 11.208.1 in 1986, property owners have been required to file forms containing income and expense data with the Department of Finance to aid in the setting of appropriate assessments of income producing properties. Where the taxpayer has filed a tax protest with the New York City Tax Commission with the appropriate figures, the RPIE income and expense filing requirement has been fulfilled. Exempt from the filing requirement are owners of property assessed for \$40,000 or less and residential property containing ten or fewer dwelling units or six or fewer units and one retail store. Penalties for failure to file an income and expense statement are set forth in Section 11.-208.1 d.(1). These penalties may include the payment of an amount of up to five percent of the assessed value of the property for the year of the default. In addition, Section 11-208.1 d (2) requires that the Tax Commission deny a hearing to the property. Thus, failure to file can result in substantial fines and must result in the loss of the significant right to administrative review of the assessment.

The proposed changes to the Rules Relating to the Filing of Income and Expense Statements, Section 33-01 of 19 RCNY Chapter 33, states that the statement must be filed by electronic means. This would apply to every taxpayer required to file – thousands of taxpayers owning thousands of properties. Although there is a provision permitting the Commissioner of Finance to waive the electronic filing requirement for “good cause”, such “good cause” is not defined. Moreover, the request for a waiver must be made in writing no later than 30 days prior to the deadline for filing the statement. And the rules specifically state that failure to file in the electronic format may be considered a failure to file for purposes of penalties.

For the RPIE 2005, which was due in September of this year, the Department of Finance initiated its electronic filing procedure on a voluntary basis. Additionally, taxpayers were encouraged to file electronically in that they were given an additional two weeks to file. Although a number of taxpayers elected to file in this manner, our members found that many of their clients were unable to file electronically due to lack of computers and the technological skills they needed to do so accurately. The majority of taxpayers filed paper forms. Moreover, as many property owners (and their accountants) attempted to file electronically on the day the filing was due, the City’s server apparently was unable to handle the volume of filers. This problem arose, it should be noted, with only a segment of owners required to file electing to do so electronically.

Unlike the current regulations which permit the filing of a computerized rent roll in place of the completion of Part One, Section G of the RPIE form which calls for detailed lease information, the proposal would require the completion of voluminous data online. This would impose a substantial burden for all property owners of commercial or mixed use property. A large office building, for example, would require many hours of data entry to complete the detailed form.

Requiring all property owners to file the forms by electronic means places a particularly significant burden on the small property owner. Our members note that many of our clients do not go to the expense of having an accountant prepare their forms. The Tax Commission only requires properties with assessments of \$1,000,000 or more to have their finance statements certified by a CPA. The bulk of the financial statements for smaller properties are prepared by the owner. Moreover, a great number of landlords in the City are people for whom English is not their first language, and are uncomfortable using technology where the instructions are not in their native tongue. Additionally, many property owners are not technologically astute. Our membership notes that a surprising number of the property owners we come into contact with do not even own a computer for day to day operations, let alone financial functions.

As previously noted, appropriate income and expense filings with the Tax Commission in connection with real property tax protests currently satisfy the income and expense portion of the RPIE filing requirement, relieving the owner of duplicate Department of Finance filings. The proposed new rules provide that filings with the Tax Commission that are electronic will satisfy the RPIE filing requirement. As of now, the Tax Commission does not have the capability of receiving protest applications and income and expense statements in electronic form; thus, all property owners who file with the Tax Commission will be forced to file the same statements a second time with the Department of Finance. Not only will this duplicate effort and paperwork, but it will also cause confusion as many owners will erroneously believe that they have fulfilled their filing requirement upon filing the figures with the Tax Commission.

The provision for a request for an exemption to the electronic filing requirement does not alleviate the unreasonable and unnecessary burden that will be placed on property owners with the enactment of these rules. Nowhere is the term “good cause”, which the Commissioner must find to waive the requirement, defined. The less sophisticated, less affluent property owner who does not seek professional help in filing these forms is unlikely to be aware of the need to request a dispensation, and less likely to do so 30 days or more before the deadline. Moreover, the Commissioner may very well be unable to respond to such requests in a timely fashion should a large number of landlords seek relief from the electronic filing requirement.

The Department of Finance currently requires that taxpayers use electronic funds transfers for payment of real property taxes where the taxes due are \$300,000 or more. Should the Department of Finance have an electronic filing requirement for RPIEs, it should only apply where the assessed value exceeds a threshold level. We submit that a \$5,000,000 threshold in assessed value, relieving the smaller taxpayer of the mandatory filing requirement, would be reasonable.

If the proposed changes in the rules are enacted, we recommend that the Department of Finance be required to make computers available to the public for use in filing electronically, together with knowledgeable personnel to assist with the filing. This would be consistent with the current requirement imposed by the State Legislature in the Real Property Tax Law Section 1582. The Legislature has reasoned that when a locality implements a tax roll that is “machine readable only”, that locality must provide both a “sufficient number of machines to ensure ready public access and the staff to assist the public in the use of the machines”. In other words, the locality cannot assume that a taxpayer has personal computer capacity; rather the locality must implement a procedure whereby all taxpayers will have equal access to the automated system. In light of the serious penalties that may be imposed for failure to file, it is incumbent upon the City to facilitate the filing if it is mandatory.

Members of our Committee recently attended the TAXRAPP 2006 symposium. The keynote speaker, David Osborne, and a number of presenters made reference to the efforts of the Department of Finance to restructure itself, and, specifically, to be a more “transparent” and responsive agency. Property owners, including our clients, would be (in the vocabulary of your keynote speaker) the “compliers”, those who must adhere to the regulatory functions imposed by your agency. Though we understand and appreciate that protecting the tax base is one of the

Department of Finance’s major priorities, we are concerned that the proposed amendments impose an unreasonable burden on the public. If such requirements are enacted, fairness requires the adjustments to your proposal which we have outlined herein. After all, a responsive government acts to insure maximum overall cooperation between government and the governed.

In conclusion, the Committee opposes the Proposed Rules as unduly burdensome to the public. The existing rules are effective in providing the Department of Finance with the information it needs to accurately assess real property in New York City. Electronic filing of the Real Property Income and Expense Statements should continue on a voluntary basis. If the Department of Finance changes to a mandatory electronic filing requirement, it should apply to large properties only, and protect all New York City landlords from burdensome and unreasonable technological obligations.

Respectfully submitted,

Willa I.Lewis
Chair

cc: Hon. Glenn Newman