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**Spring is here! The Real Property Income & Expense filing is due on June 1st - by Peter Blond**

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While spring seemingly has not arrived locally, it usually brings real estate tax assessment responsibility via the legally mandatory Real Property Income & Expense (RPIE) filing due each June 1st. The RPIE is required because New York City utilizes an income and expense approach to value when establishing annual assessments for tax class two and four parcels. In 2017, over 15,000 New York City property owners still failed to comply fully with the New York City Department of Finance (DOF) RPIE-16 filing requirements. It's difficult to fathom how that many – again – assumed their real estate tax assessment duties terminated with the New York City tax commission deadlines in March (if they protested at all).

With that said, it's equally tough to fathom that owners of income producing properties must provide their annual records, but the city has no reciprocal compulsion to utilize the data in whole or part. Even so, miss that June 1st deadline and DOF has been unforgiving issuing fines to those deemed non-compliant. While a \$300 fine for the lowest level of assessments (properties paying approximately \$5,000-\$10,000 in annual property taxes) is relatively meager, there are numerous relatively ordinary parcels that are fined a minimum of \$5,000 for their non-compliance (many paying less than \$100,000 annually).

Property owners automatically forfeit their right to a substantive hearing at the New York City tax commission, the following year, if they are deemed RPIE non-compliant. Remember, that does not invalidate or prevent your protest, but it does delay substantive review. Historically, the DOF has exploited the most unfavorable combinations when estimating income, expenses and cap rates for non-compliant properties. Most attorneys urge filing a protest every year, but particularly following deemed non-compliance, to at least confirm the city's imputed income is reasonable.

The RPIE's vacancy section is yet again flawed, and thereby, potentially detrimental to property owners. Sadly, the flaws include careless error coupled with poor appraisal technique. For example, on page 7 of the DOF RPIE "Worksheet and Instructions" section E – vacancy information, it directs you to use a taxable status date of January 5th, 2017. Meanwhile, the corresponding section on the form states "indicate the percentage of total s/f that was vacant (unoccupied, unleased or generating no income) as of January 5th, 2018. However, it goes further, stating "square feet occupied for any portion of January 5th, 2017 may not be included." Assuming this was the intended language, it apparently is seeking only full year vacancy data?

Wait, you're confused? It gets better! DOF states that the total vacancy reported "may exceed 100%." I've only been handling New York certiorari matters for 20 years, but I've never seen a vacancy situation exceed 100%. Needless to say municipalities already produce enough erroneous assessments. By confusing the entire analysis on two taxable status dates and a vacancy rate which could falsely indicate a figure over 100%, the city's valuation model will likely impute extra gross income unnecessarily. For example, if the property was occupied from January 15th, 2017 until December 31st, 2017, the correct answer appears to be 100% vacant. By indicating 100% vacant, the city's projection may include a gross income increase – rather than a decline – because the answer can't explain that almost a full year of rent was collected. This example could result in a substantial over-assessment because DOF may use both the 11 & ½ months of collections PLUS

imputed rent for what they perceived as a 12 month vacancy without income.

The RPIE is required for non-income producing properties as well. Many property owners incorrectly presume they are exempt simply because they filed an exemption in a prior year. This presumption is purely wishful thinking, because in fairness to DOF, use and occupancy change regularly. If you are usually exempt under one of the eleven RPIE exclusions, you must still file by indicating which one applies this year or you will be fined (albeit a relatively insignificant amount, if actually exempt).

Complications for property owners, at the New York City tax commission, are being caused by discrepancies between the tax commission income & expense data as compared to the same reporting period for the DOF RPIE. RPIE data covering the same period should match tax commission data identically. If an error or omission is detected, subsequent to filing with the tax commission, an amended income and expense report should be submitted as promptly as possible.

If you have any doubt, just file. Make certain you hit the "submit" button and print a copy, which clearly indicates the date and time the form was filed. If you have any questions, contact your tax certiorari counsel or accountant to determine what is required. Pursuant to law, filings should be on-line only at [nyc.gov/rpie](http://nyc.gov/rpie).

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