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Real Property Income & Expense filing – The not so fun spring task on the horizon - by Peter Blond

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After discovering my raccoon ravaged garbage pail this morning, it reminded me of another not so fun spring task on the horizon, the legally mandatory Real Property Income & Expense (RPIE). The RPIE is required every year because New York City employs an income and expense approach to value to establish annual assessments for tax class two and four properties. In 2018, over 15,000 New York City property owners failed, again, to comply fully with the New York City Department of Finance (DOF) RPIE-17 filing requirements. Despite all of DOF's efforts to inform taxpayers through email, roughly the same number of taxpayers wrongly assumed their annual real estate tax assessment obligations were fulfilled.

Property owners deemed RPIE non-compliant automatically sacrifice their right to a substantive hearing at the New York City Tax Commission, by statute, the following calendar year. Importantly, while non-compliance does not invalidate or prevent a tax commission protest, the corresponding delay in receiving substantive review can exacerbate distressed situations. It is a classic domino effect. Historically, DOF's approach exploits the most unfavorable combinations for estimating income, expenses and cap rates for non-compliant properties. At a time where New York City retail vacancies are reaching widespread proportions for any period, let alone during arguably the longest bull market in history, ending or failed net tenancies are of particular concern.

As an example, Property X, which boasted a triple net tenant that was also responsible for filing the annual RPIE, failed to electronically file the RPIE-17 by the June 1st, 2018 deadline. Property X was not receiving any income from their failed triple net tenant in calendar 2018 and a formal eviction takes place late in 2018, leaving the property fully vacant as of January 5, 2019 (taxable status date for the 2019/20 tax year). Property X filed a 2019/20 NYC Tax Commission protest by the March 1st, 2019 deadline, but is now informed of their RPIE-17 non-compliance and is thereby denied a substantive hearing in 2019.

In this example, it is safe to assume that DOF assesses Property X as if the net lease were still in place. Precluded from timely review and correction by the tax commission, Property X, now waking to its new assessment reality, is stuck – at least near term - with an artificially high assessment and a vacant space, leaving potential tenants with sticker shock in a glutted marketplace.

While Property X may present a worst case scenario, an amazingly similar fate could befall owners of income producing properties that did timely provide their accurate annual records. This is mainly due to the RPIE's inexplicably flawed vacancy section. The flawed logic behind the instructions will cause irreparable harm to many distressed properties. The flaws include "half-baked" ideas (you can have a vacancy rate above 100%!) coupled with poor appraisal technique (only full year vacancy is weighed). RPIE-17 and RPIE-18 "Worksheet and Instructions" dictate that to count as vacant, the space must be "unoccupied and un-leased, generating no income," on two successive January 5th taxable status dates. So, if your property was either occupied or under a valid lease on January 5th, 2018 – even if you were vacant for the remainder of 2018 and as of January 5th 2019, DOF says you had no vacancy.

Property X, by RPIE rules, should indicate the property was fully occupied – or 0% vacant – simply because the space was leased. What landlord or real estate investor would consider this example as all systems normal? Making matters worse, DOF will assume equal or increased gross income for 2018 based on a full year of 2017 collections and a 0% vacancy reporting. Translation, the only meaningful difference between Property X as compliant, or non-compliant, is the eligibility of Property X to obtain substantive review of their new “hatchet-job” assessment.

At the New York City tax commission, similar obstacles for property owners continue to be caused by discrepancies between their tax commission income and expense filing as compared to the same reporting period for the DOF RPIE. RPIE data covering the same fiscal period should correspond to tax commission data identically. If an error or omission is detected, subsequent to the tax commission filing, an amended income and expense report should be submitted by your chosen counsel.

If there is any doubt, the RPIE should be filed (this includes properties eligible for an RPIE exclusion). Make certain the filing party actually clicks the “submit” button and maintains a copy, indicating the date and time the RPIE was officially filed. If you have any questions, contact your tax certiorari counsel or accountant. Pursuant to law, RPIE filings should be on-line only at nyc.gov/rpie.

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