



## **Question of the Month: How will lawmakers' initiatives impact owners' property taxes? - by David Wilkes**

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As if property owners in New York don't have enough uncertainty to cope with. Well-intentioned lawmakers perennially tinker with an existing dysfunctional property tax system only to create deeper problems. The only law that usually succeeds when this occurs is the one of unintended consequences. Recent state and local legislation, both that which has already been passed into law and bills that await further action, will result in increased tax burdens and more onerous processes to achieve a fair assessment.

It's anyone's guess whether laws that were drafted before the current health crisis will see the light of day this year. Much of those reviewed by this commentator would amount to cruel and unusual punishment for many owners and depress real estate sectors that were already ailing, and seem to ignore the need for all sectors of real estate to thrive for a healthy economy rather than pitting one against another.

What follows is a by-no-means-exhaustive selection of approved legislation and pending bills for owners to consternate about amidst the current calamity. You may wish to read this from a comfortable recliner with your favorite bourbon close at hand. Due to rapidly changing news concerning tax-related deadlines, this column refrains from discussing local measures aimed at tax relief from deadlines during the crisis.

### **New York City's Storefront Registration Requirement**

New York City modified the requirements for preparation of the Real Property Income and Expense (RPIE) filing beginning with the 2019 filing that must be electronically filed (as of this writing) by June 1st, 2020. This local law requires all filers, including those normally able to claim a filing exemption, to register and disclose all first and second-story commercial space. Owners must submit quite detailed information about their tenants' occupancy and lease terms, and a failure to file the statements can generate the same steep monetary penalties that would be imposed on properties that do not file the RPIE.

### **Valuation of Coops and Condos**

The assessment of cooperatives and condominiums has been a perennial source of angst for

assessors and owners alike for decades. Currently, New York State law generally requires that these properties be assessed as if they were rental buildings (following an income approach to value) rather than as if the units were capable of being offered for individual sale. Long-established real estate markets—and the purchase and sale decisions that are the foundation of those markets—have developed based largely upon this legal scheme (remember what I said about the law of unintended consequences?).

Potentially upending these markets with the likelihood of astronomically higher property taxes, a proposed bill in the State Legislature would allow municipalities outside of New York City and Nassau County to choose to value new cooperatives and condominiums based on sales and ignore the income approach that has been the rule. In effect, the Legislature would allow municipalities to upend markets in the hope of raising more tax dollars from those who chose to purchase a condominium or cooperative; this will undoubtedly result in a depression of values for those same properties and significant losses for owners, many of whom are seniors and young families.

### “Comparable” Properties

One proposed bill in Albany directs assessors to value properties using comparable transactions “within the same real estate market segment.” This might seem vague and mysterious if you didn’t know that in the past several years some assessors have valued institutional drug store chains and big box retail stores based on leases and sales that include non-assessable business components that do not add real estate value.

In short, it has been argued by some assessors that the trade in leases, for instance, for national drug store chains, constitutes a “real estate market segment” that can be relied on in valuing a similar property. The reality is that investors don’t purchase those leases for their underlying real estate structure but rather based on the credit of the company that made the lease. In other words, there is no such “segment” of the real estate market.

The proposed bill, if passed into law, would give cover to assessors who are searching for a justification for an excessive tax assessment, and would do an injustice to the established legal principle that properties are to be valued in fee simple rather than on a leased fee basis.

### Speedier Proceedings – Greater Costs

One bill now pending would require that commercial tax appeals outside of New York City be placed on the Court’s calendar within two years rather than the current four-year requirement. Sounds great, except that it’s rare to find the municipality prepared to resolve a tax appeal within two years, and the vast majority of tax appeals are resolved without the need for expensive trial appraisals. The problem with this is that rather than allow the Court to tailor a schedule to the needs of the parties, the proposed law would require both parties to invest in and prepare for trial when the matter could have been resolved amicably. In many cases, especially for small businesses that are already struggling to make ends meet, obtaining tax relief may become more costly than the savings achieved.

This is only a sampling of what lawmakers have in store for owners this year. In light of our current health crisis, which has adversely affected many real estate sectors, perhaps one good thing to come from the Coronavirus will be that some of the most punitive tax measures will be saved for a future legislative session.

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