



NYC Dept. of Finance proposing changes to NYC Charter and Title 19 of the RCNY to limit taxpayer options - by Peter Blond

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New York City is supposedly a liberal, sanctuary city, but that clearly doesn't apply to real estate owners considering the preposterous proposed rule changes recently released by the New York City Department of Finance. The proposed rules may be the most anti-taxpayer clauses ever suggested, much less approved, during my nearly thirty years as an attorney in this field.

To be specific, the New York City Department of Finance (DOF) is proposing changes to both the New York City Charter and multiple sections of Title 19 of the Rules of the City of New York (RCNY) to severely limit the options of the very taxpayers DOF claims to be protecting. Moreover, it not only limits taxpayer options but directly slices in half critical protections afforded by the same city agencies just years ago! In 2016, former commissioner of finance Jacques Jiha introduced into law clear, and equitable taxpayer initiatives designed to correct city errors on real estate tax assessments.

The program, as it presently stands, includes providing up to six years of retroactive corrections so long as all requirements are met. Typical errors include inventory discrepancies such as apartment counts, building size, construction increases attributed to the wrong parcel, erroneous tax class, etc. The program's intended purpose has been working and it provided a new avenue for taxpayers to more rapidly rectify multi-year errors without court intervention. While the program is working to assist many taxpayers, it unfortunately can also move at a very slow pace and an already secretive agency fails to adequately communicate in timely fashion with many complainants.

Nonetheless, current DOF personnel are attempting to promulgate anti-taxpayer changes to this program while hundreds, if not thousands of existing applications languish and many more will only receive half of the remedy previously available from 2016 until now. The aforementioned six-year statutory maximum will be cut to three years under this proposal. If the city has made an error and collected far more taxes than appropriate, why would they suddenly cut the prior limit in half unless they've been making too many expensive errors? This is a good government provision, created to provide appropriate relief to unassuming taxpayers. Yet the DOF release states that "the rule amendments are designed to reorganize and consolidate the ways that taxpayers may challenge the assessment and taxation of their property." The easiest explanation for these changes is to pass the buck back to the taxpayer for the city's error. DOF is only providing a few weeks before these hostile and irreparable changes will pass public commentary.

The proposed rule changes are a laughable example of modern government drafting legislation. For example, the DOF Statement of Basis and Purpose of Proposed Rule states that errors can be "remedied through this process if they can be unambiguously resolved by reference to documents or information on the DOF website." Essentially, the government is telling you that if they are mistaken about your property's inventory or square footage, they can only amend it if you show them proof via their own flawed data?!? I can't even begin to fathom what servants of the people came up with that brilliance!

More frightening are DOF's follow-up comments such as, "this rule would not correct any error resulting from a discretionary act, an act based in whole or in part on an individual's judgement, or an interpretation of law, regulation or policy." Sounds an awful lot like a get out of jail free card for any error DOF makes. Does this sound like an agency ready and willing to assist taxpayers with errors the city made? It only gets worse as the DOF goes on to say "Chapter 53 has been misapplied to seek windfall benefits for past errors..."

How dare any DOF representative suggest their errors, which are frequently confiscatory in nature, provide windfalls to taxpayers! That is called being made whole in the law, not a windfall. How twisted have things become at DOF that these are the mindsets of public officials. When you consider the ongoing TENNY lawsuit and endless admissions from everyone including mayors, commissioners of finance – including former commissioner Martha Stark who is a participant in the ongoing legal proceeding – and more, that New York City real estate taxes are inequitable, and an overhaul is desperately needed.

Instead, the very agency tasked with taxing all New York City property owners fairly is seeking to limit their financial exposure, limit their work and pass all of it off on the citizens and property owners of this city.

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