CITY COUNCIL
CITY OF NEW YORK

------------------------X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON FINANCE

------------------------X

April 23, 2013
Start: 10:15 am
Recess: 11:34 am

HELD AT: 250 Broadway
Committee Room, 14th Fl.

B E F O R E:
DOMENIC M. RECCHIA, JR.
Chairperson

COUNCIL MEMBERS:
Leroy G. Comrie, Jr.
Julissa Ferreras
Lewis A. Fidler
Vincent Ignizio
G. Oliver Koppell
James S. Oddo
James G. Van Bramer
Mark Weprin

A P P E A R A N C E S (CONTINUED)

David Frankel
Commissioner
Department of Finance

Timothy Sheares
Assistant Commissioner for Property Valuation
Department of Finance

Eric Munson
Director of Intergovernmental Affairs
Department of Finance

George Sweeting
Deputy Director
New York City Independent Budget Office

Mary Ann Rothman
Executive Director
Council of New York Cooperatives & Condominiums

Fran Schloss
President
DC 37 Local 1757

Donald Liebman
Chairman of the Tax Certiorari and Condemnation
Committee
New York City Bar Association

Mike Slattery
Real Estate Board of New York

CHAIRPERSON RECCHIA: Good morning. Testing one, two, are we good?

SERGEANT-AT-ARMS: Yes, sir.

CHAIRPERSON RECCHIA: Good morning; welcome to today's Finance hearing. My name is Domenic Recchia; I'm the chairman of this committee. I'd like to introduce my colleagues who have joined us today: We have Council Member Lewis Fidler, Council Member Jimmy Oddo, Council Member Vincent Ignizio.

COUNCIL MEMBER IGNIZIO: Good morning.

COUNCIL MEMBER ODDO: Good morning.

CHAIRPERSON RECCHIA: Today we hear first on the Proposed Intro 906-A, legislation relating to the notification of property owners about the valuation of their property and income and expense statements filed by incoming-producing properties. Last year, the Council introduced this legislation at the request of the mayor. The original bill presented by the administration contained enforcement provision designed to compel compliance with the RPIE, filing requirements contained accuracy provisions designed to allow the Department of Finance to gain a better understanding of the characteristics of property, which would, in turn, allow the Department of Finance to more accurately determine a property's value in setting assessments.

Since the bill's introduction, through extensive negotiation with the administration and still for further negotiations to take place, the legislation at this time has been amended with an eye towards compliance, accuracy, as well as greater transparency and more responsive to the needs of taxpayers. All right? Just want to make it very clear--the bill is still not acceptable, in my opinion. The legislation now contains provisions to ensure the DOF has the time to adequately and accurately review income and expense statements, property owners comply with RPI filing requirement and the new exclusion form requirement; property owners are given proper notice and certain protections; transparency in the way DOF determines market and assessed values.

Before I go into the bill, I want to thank my Finance staff for the good work that they have been doing. I want to thank Ramon

Cortines, Preston Niblack, Tanisha Edwards, Emre Edev, and Ray Majewski, who have worked tireless on and continue to work on this bill.

We will hear from Commissioner Frankel shortly. I will only summarize the more notable provision of the bill in this opening statement. My counsel, Tanisha Edwards, e-mailed members and invited guests legislation on Saturday and its briefing paper yesterday and both documents are available today.

Before I go over what is in the bill, I want to highlight what is not in the bill. For people who were concerned about the provision in the original bill that required a CPA certification of certain RPIs, accountants that were CPAs had to certify it, which could have cost property owners between 2,500 and 25,000 in accounting fees, that provision is no longer in the bill.

Now we'll talk about what's in the bill. For accuracy and the way DOF in values property and reviews data submitted by property owners, the bill gives DOF an additional three months to review the RPI by changing the RPI filing date from September to June, which requires an exclusion form from owners of income producing properties that do not have to file an RPI or do not meet certain criteria. The exclusion form is due on June 1st. To enforce compliance with the RPI and exclusion form requirement, the bill imposes interest on penalties imposed for failing to file the RPI or exclusion.

Requires the non-payment of the penalties to result in a lien that will be eligible for lien sale. I want to be clear that an RPI or exclusion form lien alone will not make an owner eligible for the lien sale. A property with a RPIE or exclusion form lien will only be eligible for the lien sale if they also have delinquent property taxes, water charges, or emergency repair charges.

This also requires website publication of a list of owners who failed to file an RPI or exclusion form.

For transparency in the way DOF determines market values of the properties, the bill requires publication of the factors used by DOF to determine market value and assessed values.

For taxpayer protections and responsiveness to their needs, the bill provides longer time extensions to Class 2 co-op or condos to file their RPI or exclusion form, and the extension would be considered timely filed for the purpose of filing an appeal with the Tax Commission.

It also requires the penalties for failing to file the RPI and the exclusion form to impose after an owner has been given an opportunity to be heard and an opportunity to cure the failure to file.

It also contains an innocent new purchaser provision that allows DOF to waive penalties and cancel any liens imposed for failure to file an RPI or exclusion form if the notice given or the penalty was not listed on the DOF's website or on a property tax bill the property before the owner closed on the property.

That's the bill in a nutshell. More details are available in the briefing paper, including a chart on the last page that compares the amended bill to the original bill. We will now hear from Commissioner Frankel.

DAVID FRANKEL: Good morning. Good morning, Chairman Recchia and members of the Committee on Finance. I'm David Frankel, Commissioner of the Department of Finance. With me today is Timothy Sheares, Assistant Commissioner for Property Valuation, and Eric Munson, our director of Intergovernmental Affairs.

Thank you for the opportunity to testify today regarding Introductory Number 906-A, which would move the deadline to file annual Real Property Income and Expense statements from September 1 to June 1. This small adjustment will mean better, more accurate, and more transparent assessments for all Class 4 and many Class 2 taxpayers--hundreds of thousands of residential condominium and cooperative owners, in addition to tens of thousands of businesses. The bill would also make some additional changes to the process by which Finance administers the RPIEs, which are mandated by Local Law. The Bloomberg Administration strongly supports this bill's enactment.

By way of background, Real Property Income and Expense statements are the primary source of information Finance uses when assessing income-producing property. Required filers generally include commercial properties, residential rentals, office buildings, factories, and hotels. In addition, because state law requires that we assess residential condominiums and cooperatives as if they were income-producing properties, we also use the data contained in the filings for those assessments. All told, we use information in the 80,000 RPIE filings we receive to assess approximately 350,000 properties. Based on the filings, we calculate each filer's property's net operating income, which we then divide by the appropriate capitalization rate to determine the market value for the property. As you know, market values are used to calculate the assessed value, which is multiplied by the tax rate set by the Council and the mayor to create the tax bill.

Ensuring that we receive timely, complete, and accurate filing is critically important to our ability to produce a fair assessment roll, which is one of our agency's core responsibilities. Today, I will review our efforts to meet these goals, as well as how Introductory Number 906-A will greatly enhance these efforts.

Just to give you a sense of our current assessment timeline, once we receive the RPIE filings in September, we first transfer them into our assessment data systems and check the validity of the filed data, making adjustments as necessary. Once the processing and review of the data is complete, we then develop guidelines based on the filed information and use the data as the baseline for modeling, quality assurance, and development of individual assessments. As I previously mentioned, due to state law, we cannot even begin assessing residential condominiums and cooperatives until this process is complete since those assessments are based on comparable properties that filed RPIEs. The process for assessing these 350,000 properties requires tens of thousands of hours of staff time, all compressed into less than four months. All the while, work on the other 750,000 properties is ongoing.

In the past two years, the tight

timeframe I just outlined was shortened even further by major storms. In fiscal year '12, Hurricane Irene, and fiscal year '13, Hurricane Sandy. Sandy in particular imperiled our ability to process the data and prepare the assessment roll prior to our January 15th deadline. And even though our property division was able to pull it off, our time constraints required us to do much of our auditing and review after the tentative assessment roll had been released.

Clearly, the time we have to perform these tasks is too short. An earlier filing deadline would enable us to evaluate more thoroughly the information in the RPIEs prior to the release of the tentative assessment roll. Moving up the date to file the RPIE was a key finding of a Manhattan Grand Jury report issued in August of 2012, which found the current deadline does not allow us adequate time to evaluate information in the filings. The Grand Jury report recommended a filing deadline of no later than June 1st, which is the date set forth in this bill. In addition to providing us with the time necessary to audit our own work and check our assessments for outliers, it also enables us time to review the RPIE filings themselves and spot any incorrect or missing information.

Each year, once the deadline to file RPIEs has passed, we send property owners a letter reminding them of their filing requirements and offering them an opportunities to submit their forms without penalty. This year, we also posted the RPIE instructions and form a full six months prior to the deadline, providing ample time to file and enabling owners to familiarize themselves with the requirements far ahead of the deadline. Despite our letters and outreach efforts, however, some owners still fail to file. In 2010, we began imposing penalties to ensure compliance with the requirement to file RPIEs by the required deadline.

Our goal with these penalties has never been to raise revenue or to punish property owners; it is simply to motivate property owners to file. The first year, our penalty structure was a modest flat rate that started at $200 for properties with the lowest assessed value and progressively increased for higher valued properties. Since then, our penalties have increased to an amount equal to a percentage of the property's assessed value. We are still not charging anywhere near the maximum penalties authorized under the law, but again, our focus has been to improve compliance. So far, our outreach and penalties have resulted in a dramatic increase in owners meeting their filing requirements from 67% before the filing program to 91% in our current fiscal year.

Some property owners are not required to file RPIEs, but have to inform us of their exempt status. Owner-occupied properties, as an example, are not required to file, but because we would not know that the property was owner-occupied, we would expect an RPIE. For those properties, we require a simple form which requires little more than contact information and a checked box. This is called a Claim of Exclusion. Introductory number 906-A would create a small penalty for property owners who are required to file the Claim of Exclusion for failing to file. It also would require us to provide a notice on the January Property Tax Bill and the annual Notice of Property Value informing property owners of their requirements to file the appropriate form.

Introductory 906-A also would require Finance to provide information regarding the results of our data analysis and valuation, including how we determine capitalization rates and how values have changed from year to year. We include much of this on our newly improved website at nyc.gov/finance, and we are happy provide additional information, per the legislation, to improve our transparency even further.

I'd like to thank the Council for working with us on these provisions and on the bill itself to ensure that it meets our operational needs while also addressing the needs of property owners who are required to file. Thank you again for the opportunity to testify. I would be happy to answer your questions.

CHAIRPERSON RECCHIA: Thank you. Thank you. We've been joined by Julissa Ferreras. Okay. First, I want to just start off and ask you a few questions, then I know my colleagues have questions.

In here, in your testimony, you do not talk about the exclusions for people not to file. Could you go into those, please?

DAVID FRANKEL: Sure. In the law, there are a number of categories of exclusions that people have and you are either automatically excluded or you need to send us--what's it called, notice--the Claim of Exclusion. So those who don't have to file anything are those property owners whose property has an assessed value of $40,000 or less, is exclusively residential with ten or fewer apartments, or is primarily residential with six or fewer apartments and no more than one retail store. We can basically figure that out for ourselves.

However, as I said during the testimony, there are many categories where we can't tell ourselves and we need owners to tell us their information. So if you're owner-occupied, your rent--do you want me to read all of the various exclusions? I mean, I can go--

CHAIRPERSON RECCHIA: [Interposing] Yeah--

DAVID FRANKEL: Okay.

CHAIRPERSON RECCHIA: --because, you know, the exclusions are very important--

DAVID FRANKEL: Okay.

CHAIRPERSON RECCHIA: --and the fact that you left them out of your testimony, I don't understand why. I mean, it's important for my colleagues to understand exactly all the exclusions.

DAVID FRANKEL: None of these were changing under the current law, they remain as they have remained for a long time.

The other exclusions are you're a residential cooperative apartment building with less than 2,500 square feet of commercial space, not including garage space; an individual residential condominium unit that is not part of a group of rental units that makes up the majority of the development; property that's rented exclusively to a related person or entity; a property that is occupied exclusively by the owner but is not a department store with 10,000 or more gross square feet, hotel, or motel, parking garage or lot, power plant or theater; property that is owned and used exclusively by a fully exempt not-for-profit organization or government entity and generates no rental income; a property that is vacant or uninhabitable and non-income producing; a property that is vacant, non-income producing land; a property that is--

MALE VOICE: Acquired.

DAVID FRANKEL: --acquired on or after--

MALE VOICE: March 1st.

DAVID FRANKEL: I'm sorry. That doesn't make any sense. I think those are basically all of the categories that I have.

CHAIRPERSON RECCHIA: Okay. The exclusion part dealing with the assessed value of 40,000 or less, how long has that been the exclusion?

DAVID FRANKEL: I don't know the exact number of years, but for a long time.

CHAIRPERSON RECCHIA: Okay. Is it more than 20 years?

DAVID FRANKEL: I don't know, it may be.

CHAIRPERSON RECCHIA: Is it more than 30 years?

DAVID FRANKEL: I don't know.

CHAIRPERSON RECCHIA: Is it more than 40 years?

DAVID FRANKEL: Again, my answer is I don't know. I believe it's certainly more than 20 years.

CHAIRPERSON RECCHIA: Okay. And why did you pick that number, 40,000?

DAVID FRANKEL: Well I wasn't around when we picked the number, obviously, but it gives us--what it does is gives us a representative sample of properties to allow us to do a fair and accurate assessment. The fewer properties we have, the less data we have, the less accurate our assessment--

[Crosstalk]

CHAIRPERSON RECCHIA: [Interposing] I understand how many properties, you need more information and you need, you know… I understand all of that. But my question is why did you pick the number 40,000?

DAVID FRANKEL: I tell you, I was not here when it happened so I can't tell you why the 40,000 was originally picked.

CHAIRPERSON RECCHIA: Okay. Now this has been around for many years, correct? Like you just testified.

DAVID FRANKEL: Yes.

CHAIRPERSON RECCHIA: Okay. And over this time period of years, properties have gone up, the assessed values have gone up.

DAVID FRANKEL: That's right. And they've gone up and down, but as a general trend, assessed values have gone up, that's correct.

CHAIRPERSON RECCHIA: So a property has gone up, the taxes have gone up, the water bill has gone up, okay? So that same property that you're valuing 20, 30, 40 years ago to be exempt at 40,000, everything else has gone up, but for those small property owners not to file an RPI, bringing that 40,000 up has never been raised. So everything else could go up, but the building that gets assessed, all right, more does not move up, that 40,000 number has not increased. And I want to know why it has not been increased so those small property owners do not have file an RPI.

DAVID FRANKEL: The better data and

the more data that we get, Mr. Chairman, the better accuracy we will have for everybody's valuations. In my view, it is not beneficial for somebody not to file an RPIE, it helps all property valuations.

CHAIRPERSON RECCHIA: You keep on using the excuse it's better for the property owner to file this, it's better, you know… That's your opinion, okay? Not everybody agrees with you on this, okay? In the outer boroughs, you have a lot of small properties, you have small property owners, okay, and they're looking at all this stuff, additional paperwork that they have to do now, okay, and they're wondering just why, all right? So my question is in the exclusions, okay, why the number of 40,000 has not been raised since that has been the number going back 40 years or more, but to be excluded, why that number has not risen with the--as property values have risen and everything else that exclusion has not increased, and I want to know why.

DAVID FRANKEL: Well as I've said, first of all, I'm not using it as an excuse for anything.

[Crosstalk]

CHAIRPERSON RECCHIA: I didn't say it's an excuse, I just want to know why you're raising it to be excluded. You know, a property 30, 40 years ago that assessed value of 40,000 is no longer--has increased.

DAVID FRANKEL: So we're balancing the question of a property owner's requirement to do a certain amount of paperwork for the department being able to come up with more accurate assessments.

CHAIRPERSON RECCHIA: No, I'm just saying that's one of the issues here, okay? And it's not about paperwork, okay, it's just about people in this city, people--small property owners in the outer boroughs want to know why that 40,000 was not increased and you have not answered that question.

DAVID FRANKEL: I think I have answered the question. I'm telling you I think--

CHAIRPERSON RECCHIA: All right, then--

DAVID FRANKEL: --it's an appropriate level to keep because the more information--raising that level would give us less information. I'm looking for as much information as we possibly can get--

CHAIRPERSON RECCHIA: [Interposing] Isn't it true that you could go look on the--

DAVID FRANKEL: --so that we can--that we can accurately assess properties, and I think that that does it.

CHAIRPERSON RECCHIA: So in other words, you're saying that people--nobody should be excluded because your office is not able to do the work and figure out how much income that property is doing, is that what you're saying? That if you don't have this paperwork, your office is not capable of doing that, is that what you're telling the people of the City of New York?

DAVID FRANKEL: I'm saying, Mr. Chairman--

CHAIRPERSON RECCHIA: [Interposing] Answer my question, is that what you're telling the people of the City of New York?

DAVID FRANKEL: No.

CHAIRPERSON RECCHIA: That your office is not capable of doing that?

DAVID FRANKEL: No. I'm saying that the more information we get, the more transparent our values are--a goal that both the Council and we in the administration have--and that the result of getting more information is better values for everybody and more accurate values. If I have less information, then we are doing more guess work and we like to do as little guess work as possible.

CHAIRPERSON RECCHIA: But, Commissioner, you have access to people's tax returns, all right, they file city tax returns, state tax returns; you have other information available, all right? It's, again, it's a small little property owners that are being inconvenienced and everything else raises except for the exclusions, all right? And this exclusion of 40,000 of assessed value has not been raised, okay? And the only reason you could say that it hasn't been raised is because you need more information.

DAVID FRANKEL: It's not the only--it's the basic core of what we do. The more information we have, the better and more accurate our assessments will be, and that benefits every property owner in the city.

CHAIRPERSON RECCHIA: All right, well I disagree with that, and that exclusion is a problem. Who has questions? Any members have questions?

[Off mic]

CHAIRPERSON RECCHIA: All right, Vincent Ignizio.

COUNCIL MEMBER IGNIZIO: Good morning, Commissioner.

DAVID FRANKEL: Good morning.

COUNCIL MEMBER IGNIZIO: With regards to what they call sponsor units, units that are migrating from rentals to co-ops or condos, the Department of Finance says that the co-op board can, in essence, opt out by saying that they've tried and they couldn't get the information. You know, what proof though does the co-op or condo board have to show you to accept that due diligence was made and you guys are, in a sense, okay with them not providing that information?

DAVID FRANKEL: I mean, we

generally ask you to check a box, there's not very much that we come back to you and say did you do this and did you do that. For the most part, it's sort of a self-certification that you've done.

COUNCIL MEMBER IGNIZIO: Okay. And how does that affect the rent roll information for those properties?

DAVID FRANKEL: Well if we don't have the rent roll information from the sponsor, we have to look to comparable property, sometimes that's--

COUNCIL MEMBER IGNIZIO: [Interposing] Okay.

[Crosstalk]

DAVID FRANKEL: --higher or lower, you know, but what we're looking for, as I said, is the most accurate information we can get, so if you can give it to us, we'll use it; if we can't, we've got to look elsewhere for the information.

COUNCIL MEMBER IGNIZIO: Right, so, in essence, you're saying, look, provide us the information, we can give you the better assessment of your property, and if you don't, you know, then you're subject to the market.

DAVID FRANKEL: Well it could be higher or it could be lower depending on--

COUNCIL MEMBER IGNIZIO: Right.

DAVID FRANKEL: --what comparables we find. I can't tell you exactly what would happen at the end of the day, but that's why we're looking for as much information as we possibly can.

COUNCIL MEMBER IGNIZIO: Understood. Okay. Thank you, Mr. Chairman.

CHAIRPERSON RECCHIA: We've also been joined by Council Member Oliver Koppell, Council Member Jimmy Van Bramer, Council Member Leroy Comrie.

In your testimony, Commissioner, you said that our penalties have increased to an amount equal to a percentage of the property's assessed value. What is that percentage?

MALE VOICE: Point 75.

DAVID FRANKEL: I think it's point--

CHAIRPERSON RECCHIA: Page four.

DAVID FRANKEL: --.75 for first-time offenders, and 1 1/2%, I believe--is that right?--for repeat offenders. I will point out that in the legislation, the authorizing legislation, we could impose penalties of 3, 4, or 5% of assessed value. When we first started this program a couple of years ago, we made a decision that this is not in the least bit about, as I said in my testimony, that this is not about raising revenue at all, this is about trying to assure compliance. We have been criticized in audit reports about not charging the maximum that we could possibly charge--that's not our goal. And we believe that, at least so far, this program has proved enormously successful. As we said, we've gone from 67% compliance two years ago to 91% compliance in the current year.

CHAIRPERSON RECCHIA: And--

[Off mic]

CHAIRPERSON RECCHIA: Thank you. And so you said a report said that you're not increasing them enough?

DAVID FRANKEL: We were audited by the comptroller's office, who criticized us for not charging the maximum penalties that we possibly could. We've responded that that was not our goal and we think we've made the right decision.

CHAIRPERSON RECCHIA: Okay.

DAVID FRANKEL: And initially, when we decided to impose penalties, we actually kept them very low. We were concerned that--we did extraordinary amount of outreach, but we were still concerned that some people might not have gotten the message. And as I said, our goal, we'd like not to collect a penny from this, we'd just like everybody to do what they're required to do.

CHAIRPERSON RECCHIA: In addition to the penalties, so right now what would be the procedure once this bill is passed for people that did not file? Could put the lights on.

DAVID FRANKEL: Well I don't think it changes much, other than we will be publishing on our website lists of people who are subject to the penalty. But we want to make sure that people who are required to file and don't know exactly who they are. The penalties remain in the discretion of the commissioner of Finance. As I said, our goal is to just continually increase compliance.

CHAIRPERSON RECCHIA: So there is no other way to get this accurate information besides doing the RPIEs? No, for some… All right, the Council has heard there can be up to a two-year lag time the, you know, between the RPIE penalty accrues and/or is assessed and the time that the penalty is entered on the tax records, therefore, a purchaser who closed on a property prior to the date will not have known about the penalties which now constitute a lien against the property. Our bill requires DOF to waive penalties and cancel any liens imposed for failure to file an RPIE or exclusion form if the notice of the lien or penalty was not listed on DOF's website or on a property tax bill before the owner closed on the property. What process do you currently have in place to protect new purchasers who bought properties before the lien showed up on the tax records?

DAVID FRANKEL: I'm sorry, we agree with this provision of this legislation, I'm not quite sure what the question is. My apologies.

CHAIRPERSON RECCHIA: But what process do you have so at the closing that all this is complied with, that they could find out about this?

DAVID FRANKEL: I apologize, Mr. Chairman, I'm just not sure what your question is. My fault, but I'm just not following.

CHAIRPERSON RECCHIA: New purchasers, they want to--they're at a closing, okay? It's not they can't find the tax lien, they're going to be… All right? What protections are you putting in place that they will not penalized?

DAVID FRANKEL: Under the legislation, if we haven't published this on our website, then they won't be penalized. That was the suggestion that I think we all made together and I think it's a very good one.

CHAIRPERSON RECCHIA: But if a title company wants to find out information before this just to make sure, all right, they--

DAVID FRANKEL: [Interposing] We have a list up now on our website if somebody wants to come and take a look.

CHAIRPERSON RECCHIA: Okay. Can you explain the notice of property values, okay, a big issue is that you no longer have put description of properties on your assessments. And do you plan to put those back on the bills?

DAVID FRANKEL: It's not our plan to put those back on the bills, we do have them up on our website. Quite bluntly, the reason we took them off is we have very old systems that every time we change something, in regression analysis, it becomes very difficult to check whether everything is still accurate. So we have them up on our website and that's where, you know, we are--we have just issued an RFP, hopefully, for a new property tax system, we're in the final stages of negotiating a contract now. Hopefully, when we get a new system, it'll be much easier to change things than it is now, that's really a process issue. But all the information is available on nyc.gov/taxbill.

CHAIRPERSON RECCHIA: But there are many people who do not have computers, okay? So what are those people supposed to do?

DAVID FRANKEL: They can call 311 and we can mail it to them.

CHAIRPERSON RECCHIA: You're going

to call 311. Will the new system your agency is currently evaluating allow you to again provide this information in the notice of property value mailing?

DAVID FRANKEL: It's one of the considerations that we have, we're still in the middle of it.

CHAIRPERSON RECCHIA: Well, you know, I just feel that people should know exactly how you're assessing this, what you're basing it on, and if not--if the information, for you to take off the information on the bill is not just, you know, I feel it's just not right, you know, and you should put that information back on.

Any questions?

MALE VOICE: Leroy.

CHAIRPERSON RECCHIA: Leroy Comrie, have a question.

COUNCIL MEMBER COMRIE: Thank you, Chair. A lot of property owners are not aware of the timeline to submit the RPIE or they're not even aware that they have to do it. How are you notifying property owners of their responsibilities for filling this out?

DAVID FRANKEL: Respectfully, I think the vast majority of property owners are because we now have over 90% compliance with the RPIE filings so--

[Crosstalk]

COUNCIL MEMBER COMRIE: [Interposing] Is it part of the closing statement or is it part of the--how does a new property owner know that they're supposed to fill out a RPI? Is it something that goes out to them on a yearly basis? Is it part of the closing that they're supposed to do--

DAVID FRANKEL: [Interposing] Well if they look at the notice of property value that's submitted for any property that they buy, they would see that that's an obligation that they have. So I assume when people are trying to do their due diligence in purchasing a property, they would want to understand all the obligations that they have and go through those documents. I mean, we're obviously not there at the closing--

[Crosstalk]

COUNCIL MEMBER COMRIE: [Interposing] That's a big assumption. I mean, is there something that the City is doing to ensure that people are doing that as part of their closing or as part of the taxes that they're paying to…? Is there a bump out or a notification that's sent to people? Since the rules are changing? I'm trying to understand, you know, why is the--I'm trying to understand what the problem is here with the change and timing. You're saying there's a 90% compliance rate, but you're asking for a change from--well we're asking from a change to move the date, so--and I realize I came a little late, but what is this adjustment--how does this adjustment help you?

DAVID FRANKEL: Well we'll have a tremendous amount of--I mean, the next RPIE filing date, this doesn't affect this current year's filing date so--

COUNCIL MEMBER COMRIE: [Interposing] It won't affect--

[Crosstalk]

DAVID FRANKEL: --this year will be September 1st, so this won't be until next June 1st, and we'll--assuming that the bill passes--and we'll be able to do a tremendous amount of outreach between now and then. So there's nobody who obviously has to file an RPIE in the next five weeks; the current requirement remains in place.

COUNCIL MEMBER COMRIE: And what's the current requirement now for file--isn't there an RPIE due in May?

DAVID FRANKEL: September 1st, no.

COUNCIL MEMBER COMRIE: Is there any update that commercial or retail owners have to file with you between now and June?

DAVID FRANKEL: No.

COUNCIL MEMBER COMRIE: And so when would they normally file this, in--

DAVID FRANKEL: [Interposing] September 1st.

COUNCIL MEMBER COMRIE: So you're going to give them an extension from September 1st, 2013, to June 2014?

DAVID FRANKEL: No. The filing for September 1st will be for the next fiscal tax year, which will be '14-'15.

COUNCIL MEMBER COMRIE: Right.

DAVID FRANKEL: And then they'll have to file another one on June 1st for the tax year '15-'16.

COUNCIL MEMBER COMRIE: Okay.

DAVID FRANKEL: I think I have the years right.

COUNCIL MEMBER COMRIE: And the valuation, you know, as you know, in Queens, we have a lot of co-ops and condos that are concerned about the evaluation and the amount of taxes that are due. What is being done to go over with them how their valuation is being assessed and whether or not they have an opportunity to impact or to make a update on the assessment that's being done on--based on the evaluation?

DAVID FRANKEL: Well anybody who gets a notice of property value from us has essentially two avenues for challenging that assessment: One is to come back to us and ask for a review, and the other one is to challenge our values before the tax commission, and many properties do that as well.

COUNCIL MEMBER COMRIE: Right, but that's what they have now, but is there a new opportunity to show them what you're using for assessment or--

DAVID FRANKEL: [Interposing] We're happy to talk to anybody who comes and talks to us, and we've done many outreach sessions. We have a million 50,000 properties that we assess every year and we try to talk to anybody who has questions. Our goal is no different, honestly, from your goal, we would like this to be as transparent as possible. If people have issues with it, we're happy to hear them, we will agree or disagree, but our goal is as much communication as we can get.

COUNCIL MEMBER COMRIE: And you've been working with and talking to those co-op and property owners that have been having complaints and concerns about their evaluations and--

DAVID FRANKEL: [Interposing] Well we certainly did back in 2010, I guess, or when the Queens co-op owners were obviously very upset with the values that they saw.

COUNCIL MEMBER COMRIE: Well my understanding is they're still upset, so--

DAVID FRANKEL: [Interposing] Oh, everybody, my guess is if you--

COUNCIL MEMBER COMRIE: So I'm

trying to get to how you feel that you're in a happy place when I know they're not so--

DAVID FRANKEL: Well I mean, in that year, the vast majority of co-ops challenged our assessments with the Tax Commission, and I may not have this right, but I believe there was something like 957 or 56 co-ops in Queens, and if I'm right, I think seven of them or eight--a very small percentage, 1 or 2% or maybe even less, won the challenges before the Tax Commission, and I think the number is similar in the year since then. So I appreciate that people are upset, and as we've discussed many time, the real problem with the Queens situation was that our values fluctuated significantly. As the values that we produced for the '11 year were actually no different than they were three years earlier, it's just that they had gone through this big dip and increase. So they were essentially exactly the same values that they were. We recognized and said at the time that we didn't think that was good process and took a legitimate hit for that, but we think they are where they belong now and I think that the challenge process has essentially shown that that's the case.

COUNCIL MEMBER COMRIE: And you feel that the challenge process, as you said earlier, is as clear and as transparent as possible so that they can have time to meet those deadlines to make the challenge--

[Crosstalk]

DAVID FRANKEL: [Interposing] I certainly think so, I mean, the Tax Commission is a completely independent body and they have a complete shot--as a matter of fact, when the Tax Commission makes a decision, we don't--that's the end of it, we don't get to make a--we don't get to challenge that. All the Tax Commission can do is lower your assessed value, it can't increase your assessed value. And even if we think the Tax Commission is wrong, the Department of Finance has no ability to challenge that decision, it's essentially over.

COUNCIL MEMBER COMRIE: Okay. And it's approximately a six-week period of time in that the assessments go out and the opportunity for challenges, correct? You think that's enough time for people to be able to make those challenges and to be heard by the Tax Commission?

DAVID FRANKEL: Yeah, I think the vast majority of buildings who challenge their values do so every year, it's essentially a free option, and they know the process. So I don't think we've found many people at least who didn't know that. And we say it on all of our publications, here's your deadline for doing this, is you get your notice of property value. As you get all this, it tells you what these dates are. And we do tremendous outreach throughout this period in all the communities to try to get the word out. We're not looking for people not to challenge or challenge, we want to make sure that people understand what their rights are.

COUNCIL MEMBER COMRIE: Okay. All right, and 'cause, again, I still, you know, as I've been moving around, I'm still getting a lot of concerns and complaints from the co-op and condo community. They feel that they have not been able to have their assessments done at the rate that their properties are actually reflecting. So I believe there's still some disconnect in how--

[Crosstalk]

DAVID FRANKEL: [Interposing] If you have a group, we'd be happy to meet with them.

COUNCIL MEMBER COMRIE: I'll--

DAVID FRANKEL: Happy to meet with them.

COUNCIL MEMBER COMRIE: --we have a couple of groups that--

[Crosstalk]

DAVID FRANKEL: [Interposing] That'd be fine.

COUNCIL MEMBER COMRIE: --get in contact--

DAVID FRANKEL: We'd appreciate the opportunity.

COUNCIL MEMBER COMRIE: And then I appreciate the opportunity to get back to you in writing about it 'cause--

DAVID FRANKEL: Sure.

COUNCIL MEMBER COMRIE: Thank you, Mr. Chair.

COUNCIL MEMBER KOPPELL: Thank you.

CHAIRPERSON RECCHIA: Anybody else have questions?

[Off mic]

CHAIRPERSON RECCHIA: Commissioner, how do you ensure that the data you get on the RPIE statement is accurate, who checks that? How do you follow up on that?

DAVID FRANKEL: Well most of it, I mean, we do spot audit checks and we look at outlier numbers for the most part. I mean, obviously, we get 80,000 filings a year about we don't check every single one, but the vast majority of them fit within a certain range. Those that don't, we look very carefully at those. Those who are repeat offenders seeming to have data that's always outside the lane, we'll get back in touch with them.

CHAIRPERSON RECCHIA: And the data you use in the RPI is usually a couple years old than the year you are trying to value. For example, the FY '12 roll used income and expense data from 2009. How do you deal with this same time lag?

DAVID FRANKEL: Right, we trend separately both income and expenses from the time we get the data, and it's a fairly complicated, I mean, complicated explanation, although I'm happy to explain it to you. We do it based on a model. The model is a one-year forward forecast based on a two-year history. The one-year forecast model is back tested, we start it back in 2005 and we see whether we've actually modeled the correct results each year, and, assuming that's right, then the model becomes--or the trending becomes acceptable and we use that. And we do that separately for income and expenses since they might move at different rates.

CHAIRPERSON RECCHIA: All right. The Tax Commission uses a very similar form to the RPIE called the TCIE, the Tax Commission Income and Expense statement. More, the TCIE is due before the RPI is due. Even with the proposed earlier due date, does Department of Finance make use of this Tax Commission Income and Expense--

DAVID FRANKEL: [Interposing] TCIE is not actually due before the RPIE, it's actually the other way around. If you look at the--you just have to think about the individual years. The TCIE is used for valuing, let's take this year's RPIE, and by this year's, I mean for the values we're producing for the tax year '13-'14, were due in September '12; the TCIE for that same year is due in March or April of '13. And then the RPIE for the tax year '14-'15 will be due in September '13. About a year or so ago when trying to help everybody, we tried to model--we made some changes to our RPIE to try to make it look more like the TCIE so people could do it, it was easier for people to fill out the forms, we still have a few differences, but for the most part, they're very similar.

CHAIRPERSON RECCHIA: So I want to set the record clear that the Tax Commission Income and Expense form is due after the RPIE is due?

DAVID FRANKEL: If you're going to challenge your property, you're going to submit a TCIE, so let's take this year, for example, right? Our RPIE was due last September, we then sent you your notice of property value. You want to challenge your property value--and this is our notice of property value for the year beginning July 1st of 2013--if you want to challenge that, you'll submit your TCIE as you submit your challenge.

CHAIRPERSON RECCHIA: So that's why you're saying the TCIE is because that's if you only challenge the Tax Commission?

DAVID FRANKEL: No, let me just--let me try to go through this again 'cause I appreciate that it's complicated.

CHAIRPERSON RECCHIA: No, no, it's--I just want to, you know what I mean? You made a statement that it's the TCIE is due before the RPIE.

DAVID FRANKEL: No--

CHAIRPERSON RECCHIA: Okay?

DAVID FRANKEL: --TCIE, if you want to challenge your property, you submit that six months after you've submitted your RPIE.

CHAIRPERSON RECCHIA: Oh, six, so the RPIE is filed first.

DAVID FRANKEL: That's what I've said, yeah. RPIE comes in September, then if you decide you want to challenge our property value, which you hear about in January, with the Tax Commission, you could either just use your RPIE or you could submit a new TCIE, which you would do in

February or March or before your challenge.

CHAIRPERSON RECCHIA: Okay. Does anybody else have any further questions?

[Long pause]

CHAIRPERSON RECCHIA: How will the Department of Finance use the 90 days to make the roll more accurate?

DAVID FRANKEL: Well as I've said in my testimony, we can go through the data much more comprehensively, we can--it's just another three months to do what we're now--we're now essentially valuing over a million properties in just three months, four months, we don't get the data even to begin it, at least many of the properties, until September. As I've repeated in my testimony time and time again, the more time we have, the more time we have to check the data. We're getting 80,000 different filings--that allows us to do much more quality control, allows us just the--I mean, this is the biggest source of revenue in the city, we want to make sure that we have produced the best values we possibly can, and the additional time gives us a chance to do that even better than we currently do.

CHAIRPERSON RECCHIA: Okay. Council Member Mark Weprin.

COUNCIL MEMBER WEPRIN: Thank you. Commissioner, how are you? So I apologize, I was late. I know, I think it was brought up earlier, I understand, but I just was curious. The issue of sponsors, sponsors units that these co-op boards had been complaining that they don't always have that information and getting a hold of sponsors is very difficult and they don't have a, you know, a full assessment on that. Now there was a check-off put in on the RPIE that would allow co-op boards to say we tried, we couldn't get this. When was that put in and exactly what does that entail?

DAVID FRANKEL: When did we put it in? It was this year that we put it in. And, essentially, it's basically a self-certification that says we've done everything we can to try to get this information from the sponsor and the sponsor refuses to produce it for us.

COUNCIL MEMBER WEPRIN: And then--

DAVID FRANKEL: [Interposing] And remember, we're only looking at buildings where more than, I think it's 10% of the units are still owned by the sponsor.

COUNCIL MEMBER WEPRIN: Right. And when that's done, how do you account for those units, I mean, on your calculation?

DAVID FRANKEL: We do it based on comparable buildings that we find.

COUNCIL MEMBER WEPRIN: Right.

DAVID FRANKEL: And the rental and then it could be--that's basically… And our comparables basically are looking for size, location, and age.

COUNCIL MEMBER WEPRIN: Okay.

DAVID FRANKEL: We agree that it's not, you know, it's not ideal and that's why we'd like to get as much information as we possibly can.

COUNCIL MEMBER WEPRIN: Yeah, that was a complaint we do get from a number of our co-op boards that, you know, we really can't get this and, you know, we're a volunteer board, we can't start tracking down sponsors, we have enough problem with our sponsor sometimes as is, so I'm glad that that box was put in there and, hopefully, this isn't, you know, we could do this fairly and in a good manner.

Okay. I apologize, I don't have anything else at the moment so…

CHAIRPERSON RECCHIA: All right. Okay. Thank you, Commissioner, no further questions.

DAVID FRANKEL: Thank you, Mr. Chair.

[Long pause]

TANISHA EDWARDS: We will now hear from people in the public who wish to testify: George Sweeting from IBO, Mary Ann Rothman, Donald Liebman, and Fran Schloss.

[Long pause]

TANISHA EDWARDS: Whenever you're ready.

[Long pause]

GEORGE SWEETING: Good morning. Good morning, Chairman Recchia and members of the Finance Committee. I'm George Sweeting, Deputy Director of the New York City Independent Budget Office, and I thank you for the opportunity to testify today.

There's no question that requiring the filing of income and expense statements is a burden for landlords, but there is also a real benefit both to landlords and to the City if the information submitted is used appropriately to generate more accurate and consistent assessments for income-producing properties. In general, the changes proposed in Intro 906-A should result in more uniform assessments while also increasing information for taxpayers about how properties are assessed.

Given the complexity of our City's property tax system, such changes are particularly welcome. Still, the proposed changes raise some issues that merit further consideration. I'll discuss three of these changes.

First is moving the date forward. Moving the filing deadline forward by three months will make it more certain that the City is able to base assessments on the most current information. Keep in mind that the assessments for the upcoming fiscal year are largely completed six months before the start of that fiscal year. Thus, the tentative assessments for the 2013-'14 fiscal year were completed and released in early January 2013. The field work and analysis that went into these assessments began in the late summer of 2012.

Currently, owners of income-producing properties have a September deadline to file returns reporting their income and expenses for the prior year. Thus, in 2012, when assessments for 2013-'14 were already underway, they reported their 2011 income and expenses. Given the time needed to process the RPIEs, the data filed in September 2012 was received after work on the 2013-'14 assessments had begun. The Finance department is forced to scramble to take advantage of the newer data. And, despite these efforts, in at least some cases, it appears that the latest data assessors had to work with had been filed in September 2011 covering 2010 income and expenses. Moreover, this lag in when the information is available affects the development of the assessment guidelines that provide the assessors with crucial information and guidance for estimating income information if none is available and for aligning incomes with the department's capitalization rates.

Moving the filing deadline from September to June should reduce the lag in the availability of the most up-to-date income and expense results. It should also make it possible to develop the guidelines using more recent data. However, we wonder if June is early enough. To increase the chance that assessors will have data from the most recent year available, a May deadline might be more preferable. While this would reduce the time for property owners to complete the return, at that time of the year, many property owners are already completing, or in many cases, have already completed a parallel Tax Commission income and expense statement in order to protest their assessments at the commission.

Another important change is that the non-filing penalty becomes lienable. Failure to file has been a persistent problem since income and expense reporting began in the late 1980s. Although the law has always allowed for a penalty up to 4% of the property's assessed value if not filed within four months of the filing deadline, for many years, the penalties were very rarely charged. Beginning with the 2007-2008 assessment roll, the department attempted to improve filing compliance without explicitly charging penalties. The Finance department tried to encouraging filing by assigning the highest possible income and the lowest possible expense when assessing properties that had not submitted the information. The department promised to redo a property's assessment with updated information if it were submitted on time. That year, about 35,000 properties received this treatment--roughly 12% of the properties subject to the filing requirement. Compliance improved, but not by as much as IBO and others expected. This suggested that for some owners, the higher assessments under the department's more aggressive approach were still lower than they expected to face if they submitted the required information. That means less tax revenue for the City and higher tax rates for everyone else.

Beginning with the 2012 assessments, the Finance department resumed using the penalty for failure to file returns. The Finance department assessed $27 million in penalties against properties whose owners failed to file returns due in September 2011--about 21 and a half million of those penalties remain outstanding. Since these initiatives began, compliance has improved, and based on Finance department data, it appears that there were only about 10,300 owners who did not file last September.

Intro 906-A would make the non-filing penalty a lien against the property, and such liens would be eligible to be included in the City's periodic lien sales. IBO expects this change to further increase compliance with the filing requirement.

Finally, there's the additional reporting and information. Intro 906-A would require the Finance department to post additional statistical reports on its website, presenting data on changes in market values, assessments, and the distribution of incomes and expenses by geographic areas and property types. The Department of Finance would be required to post much of the information used in developing the assessment guidelines by February 15th each year. Finally, the department would be required to provide information about the specific factors used to determine market value of each property.

Over the last decade, the Finance department has gradually moved towards making such information available and the legislation would codify a requirement to continue doing so and set a required date for release of the information. Improving the transparency of the property tax system for property owners is an objective that our office has long supported. Still, there are some aspects of the proposal where we suggest further consideration.

The new section 11-207.1 describes statistics that are relevant for the income-producing properties but not for properties in Class 1 or for co-ops and condos in Class 2. It would be helpful to tailor additional data items relevant to these property types and perhaps spell out a requirement to segregate the statistics by tax class. Of lesser consequence, Section 1.a.3 refers to income and expense data from the required income and expense filings, but it is common practice within the Department of Finance to combine data from these returns with those filed with the Tax Commission. If the goal is to have comprehensive information about expenses and incomes in the city, it would be preferable to describe reports combining these two sources.

Again, thank you for the opportunity to testify and I'd be happy to try to answer any questions you may have.

CHAIRPERSON RECCHIA: Thank you. Next person?

MARY ANN ROTHMAN: Good morning, Chairman Recchia and members of the Committee. My name is Mary Ann Rothman; I'm the Executive Director of the Council of New York Cooperatives & Condominiums, a membership organization whose 2,200 member co-ops and condos are the homes of more than 160,000 New York families. CNYC members span the full economic spectrum of home ownership in our city, and property taxes are a very big issue for us.

We appreciate the efforts of the City Council to amend this bill with regard for the needs of New York families who strive to maintain the affordability of their homes. Gone from this version are some of the more burdensome requirements that the legislation previously contained--thank you.

We're also optimistic that the additional information that the Department of Finance will be required to provide will help our members understand the complexities of their property tax bills.

Intro 906-A changes the date for filing RPIE forms from September 1st to June 1st. After hearing the commissioner and Mr. Sweeting, I understand the rationale behind this, but I'm very pleased to note also that the legislation authorizes the commissioner to grant 60-day extensions to cooperatives and condominiums. The commissioner mentioned that his work for co-ops and condos can't be done until he's compiled the other data, so this is appropriate and I hope that these extensions will be readily forthcoming.

My read of the legislation was that it also required RPIE forms or Claims of Exclusion from virtually all multiple dwellings of more than ten units, but when you questioned the commissioner, Mr. Recchia, he read the full list of other exceptions that was in the former rule, so I think there's a tiny bit of a disconnects, or I misread. So--

CHAIRPERSON RECCHIA: He said ten units.

MARY ANN ROTHMAN: He went through a whole list that included ones that I thought had been excluded, namely, a co-op with less than--a cooperative building with less than 250--2,500 square feet of commercial space and so on. That wasn't in the list in the legislation, I don't think, but he read it as still qualifying for the certificate of exemption, I think.

CHAIRPERSON RECCHIA: I'm going to have my attorney--go ahead, what is it?

TANISHA EDWARDS: I think the list that the commissioner read from qualified for the RPIE--

MARY ANN ROTHMAN: [Interposing] Certificate of--

[Crosstalk]

TANISHA EDWARDS: --certificate rather than the exclusion form, I think that's what he was saying during his testimony.

MARY ANN ROTHMAN: So the forms are

--so then I'm right that forms are--

[Crosstalk]

TANISHA EDWARDS: [Interposing] No, you're absolutely right, you will be--

MARY ANN ROTHMAN: --from almost everyone.

TANISHA EDWARDS: --required to file the exclusion form.

MARY ANN ROTHMAN: So my suggestion is simply that real care be given to repeat notification, particularly of those buildings that now are required to do this, and may not read their tax bills as carefully as we'd hope.

CHAIRPERSON RECCHIA: So you're saying that the co-op should not have to file the tax--the exclusion form?

MARY ANN ROTHMAN: I'm perfectly happy with the exclusion form for co-ops with less than 2,500 square feet of commercial space, that's the way it's been. We thought that that was eliminated and that they would have to file a more complex form, but it's clear that more buildings--that every effort is being made in this legislation to have more buildings comply. I would like every effort made to let those for whom this is new be notified and re-notified until they tune in and are not penalized.

Finally, when the Department of Finance put forward rules for RPIE filings, there was this--we testified about the subject that Mr. Ignizio and Mr. Weprin have talked about, namely, that when a co-op or condo has more than 10%--it has 10% or more of its units owned by a sponsor, the form asks for income and expense information on those units. If a co-op has a good relationship with the sponsor, piece of cake, no problem; if there's an adversarial relationship between the board and sponsor, then there has--there's often a quid pro quo; in order to get the information, the co-op will have to make some concession to the sponsor. So we have very respectfully suggested that the form require that the entity that owns that 10% or more of the units be required to provide the income and expense forms.

And I thank you.

CHAIRPERSON RECCHIA: Thank you. Next, Fran?

[Pause]

FRAN SCHLOSS: Good morning, Chairperson Recchia and members of the City Council. My name is Fran Schloss and I am the President of DC 37, Local 1757. Local 1757 represents assessors, appraisers and housing development specialists.

Today I am speaking on behalf of the assessors, of which I am one. I am going to relay the assessors' thoughts on two specific suggested changes that are being proposed to amend subdivisions of Section 11-208.1 of the Administrative Code of the City of New York.

The assessors, as a group, overwhelmingly support changing the filing deadline for the submissions of Real Property Income and Expense statements from September 1st to June 1st. A June 1st submission deadline will help to afford assessors within the Department of Finance the additional time that has long been needed to analyze these income and expense statements of income producing properties, and then value the related property.

There is, however, a concern with

regard to the amended penalties proposed for failure to either file a Real Property Income and Expense statement or cure a defective one. I am the former administrative assessor for the long-defunct income and expense unit that once functioned within the Department of Finance's property division. This unit examined these RPIE submissions for defects, sent out letters to cure, determined exclusions, transposed and transcribed the information given on the Real Property Income and Expense statements, analyzed that information for valuation guideline purposes, and pre-audited flagged properties. I am, therefore, testifying that the newly proposed penalties will only have teeth if hearings are carried out and the liens, when warranted, as penalties are actually applied.

In the past, the Department of Finance has balked at conducting hearings and imposing penalties that were permitted under the existing statute. What strategy is in place to enforce any agreed upon amendment pertaining to an owner having failed to properly file? For example, will there be a budget set aside for hearings? Will a staff be needed to oversee the process? This is perhaps more complicated than what the meets the eye and the Department of Finance has testified to.

DC 37, Local 1757 thanks you for the opportunity it has been given to testify regarding both a proposed change to the RPIE submission deadline and its concern with regard to any newly proposed action to be taken due to a property owner failing to properly file. Once again, I thank you; I'll be happy to take any questions.

CHAIRPERSON RECCHIA: Thank you. Next.

DONALD LIEBMAN: Thank you. Good morning, my name is Donald Liebman, I'm the chairman of the Tax Certiorari and Condemnation Committee of the New York City Bar Association. I also happen to be on the board of an international property tax policy think tank that advises government agencies and other entities on tax policy reform, tax procedure reform, and so on. And I also am the chair of an assessment review board in a county outside of New York City. So while I'm not an expert, I think I've seen the property tax system from a number of perspectives.

I just want to highlight a few items, I won't read all my testimony out to you. And in the interest of full disclosure, Chairman Recchia, I did not go to John Dewey High School, I went to Lafayette, but I lived across the street from John Dewey, and I remember as a kid when it was being built.

The first point I'd want to address is--

[Crosstalk]

CHAIRPERSON RECCHIA: --this legislation or you're against this legislation?

[Laughter]

DONALD LIEBMAN: Well first thing I want to say is I think that this amendment has come an extraordinary distance from the earliest version, and I think that it shows a tremendous amount of effort by this Committee and by staff and by everybody else who worked to get it to where it is this morning, and we thank you for that.

The first thing I want to talk about very briefly is the non-filer list. People of a certain age will remember an expression that goes something like, well if they can put a man on the moon, why can't they do such-and-such? Under the legislation, it would still appear that Finance is not required to file a non-filer list until all the way after the next tentative assessment roll is published. If, as Finance has testified, their chief goal is to get the information, then they should be seeking the information or publishing a non-filer list, which is going to encourage curative filings, and, hence, the information, as soon as possible after the original RPIE filing deadline.

And as far as if they can put a man on the moon, I am not aware of any reason why a non-filer list cannot be generated within a day or so of the filing deadline. This would give repose to title companies, new purchasers, mortgage servicers, and other parties who are interested in keeping the property lien-free.

Secondly, there doesn't appear to be an enforcement mechanism in the legislation should DOF not file a non-filer list. Perhaps just send out individual letters, but not ultimately file and put on its website a complete and accurate non-filer list.

CHAIRPERSON RECCHIA: No, the big issue here is, just from what you're saying, is that not all property owners get the letter to cure, okay? And that's a problem.

DONALD LIEBMAN: That is a problem.

CHAIRPERSON RECCHIA: Right? Wrong addresses, lost in the mail, many issues, you know? And, you know, everybody thinks just because we have technology today that it's not their responsibility anymore, it's the owners responsibility to go on the website and check. Well it's not their--you know, a lot of these owners, they don't realize that and a lot of people, they, you know, do not have computers. So this whole thing with the getting a letter and the curing of this, you know, and it should be you should have a time, a period to cure without being penalized.

DONALD LIEBMAN: I would agree with that. And I would agree that it's an unfair expectation that property owners should be looking at the DOF website every day for their tenure of ownership of the real property.

I just want to move on to the innocent purchaser provision. That is very, very, very good work. It says that DOF may waive penalties in the event that a property is purchased before the defect list is made public. We don't see any reason why DOF may waive penalties as opposed to must waive penalties. We feel that innocent bona fide purchasers must be protected. A number of years ago, I believe it was in 2007, tax year 2007-2008, DOF raised many assessments by severe order of magnitude that happened to have been RPIE non-filers. To couple that with things that a bona fide purchaser may not have any redress on, we felt was very unfair.

Which leads me to my next point, which has, I don't think, been addressed today, but it has to do with another penalty that's in Admin Code 11-208.1, and that is the penalty of the loss of a hearing before the Tax Commission. That doesn't seem to be addressed. The statute as written provides that a property for which an RPIE is required but not filed will not obtain a Tax Commission hearing in the upcoming tax year.

Again, this is something that severely disenfranchises the innocent new purchaser. We don't see any rationale for decoupling the two penalties. If the monetary penalty can be cured and gone away or waived and go away, we think that the penalty that is based on the loss of a Tax Commission hearing should be disposed of also.

I've heard it said that you need to have some penalty remaining even after cure, otherwise, you're going to have a lot of late filings. We don't see it that way. We believe the majority of property owners in New York are not scofflaws, they are diligent, they are professional, they have a business to run. We don't believe they would reprogram their business to intentionally file late and hope that they file within that little 30-day cure window or incur penalties.

CHAIRPERSON RECCHIA: So they should file 30 day if they're getting the cure letter.

DONALD LIEBMAN: That's what it presently says, but what my point is that we don't believe that if there is the ability to get all penalties removed upon cure, that taxpayers are going to wait for the cure period, that they're going to intentionally not file, intentionally file late during the cure period. We don't believe that; we believe that everybody has a business to run and is still going to program their business operation to comply on time.

And my last point, which is also something that I don't believe was addressed this morning but I want to just mention, is pretty much the first line of the statute as written, and even as amended, says that a property owner must disclose all income derived from the operation of the property and all expenses attributable to the operation of the property--all expenses. And now what I'm talking about is re-legislation by form. Last year, I believe it was last year, the RPIE form posted by DOF had five pages of expenses that would not be allowed to be reported, and property owners and CPAs struggled a great deal with that. And we believe if there are statutory obligations to report everything, they should be permitted to report everything. A valuer, a property valuer--and by that I mean a tax assessor or a real estate appraiser--is going to ask for all the expenses, they want to know all the expenses, they may then make adjustments or disallow certain things, but the property owner should not be prevented from giving Finance what the property owner thinks are the expenses attributable to the operation.

And I'll take any questions if there are any.

CHAIRPERSON RECCHIA: Thank you very much. Any questions? No. I want to thank the panel for testifying today. We have one more person.

DONALD LIEBMAN: Thank you.

TANISHA EDWARDS: Mike Slattery.

[Long pause]

MIKE SLATTERY: Thank you.

CHAIRPERSON RECCHIA: Okay. Turn on.

[crosstalk]

CHAIRPERSON RECCHIA: No, no, in the front; in the front.

MIKE SLATTERY: There it?

CHAIRPERSON RECCHIA: Yeah.

MIKE SLATTERY: Thank you. Thank

you very much for the opportunity to testify here representing the Real Estate Board of New York.

First and foremost, this version of the bill introduces a welcome and needed element of transparency and disclosure, critical decision making information by the Department of Finance into the assessment process. These modifications will be a benefit to individual taxpayers, organizations like REBNY, which regularly analyze real property tax roll, and the City Council. This bill is a good start in codifying and providing sunlight on the assessment process.

We'd like to identify a few problems, a number of which have already been identified so I won't belabor them, but first of all, even though the bill adds some safeguards for property owners, making RPIE penalties a lien is extremely punitive relative to the problem it's trying to address. Both people who don't pay taxes and people who don't file information about their taxes are subject to the same penalty. People who don't file RPIE forms are certainly being taxed and, as was testified to, perhaps maybe even more harshly as a way of getting them to file.

Secondly, DOF has shown great success in getting people to file their RPIE forms, so I think going to a lien process is problematic, and, as Don pointed out, is also problematic to, you know, innocent buyers makes this an unreasonable penalty, in our judgment.

Also, and this is somewhat of a minor issue, but it does seem unreasonable to be telling someone who is exempt from the tax that if you don't file an exclusion of a tax we've told you you're exempt from, that you're going to be penalized. We know the penalties are small, however, but, you know, why do we need to impose this requirement on a church or an owner of an--owner-occupant of a repair shop on Coney Island Avenue, a dentist in a 300 square foot condo unit, or a builder on Staten Island with a Class 4 vacant lot. And also for larger property owners where there's a new owner, again, this poses a burden on them.

Just a few points that was also made about the Tax Commission hearing. Yes, we think it's somewhat of both an onerous penalty and also somewhat kind of counterproductive. The Tax Commission hearing not only corrects current assessments but provides feedback to Finance for the next year so it is not over assessing again. And here's another way of getting income and expense information that's certified that to forego that possibility, I think, seems to be running contrary to the intention of this legislation.

Also, as Don had mentioned, the notice about--excuse me--publishing defects sooner. Again, if the purpose here is to try to get as much information about properties as possible, we should be taking all steps possible to get that information and giving people an opportunity to cure.

A number of our members, however, don't think the bill as written specifically requires what is now provided on page two of the Notice of Property Value. This bill should require that all the calculations made available for all property types, or at least Class 2, 3, and 4. There needs to be an enforcement mechanism to make this at all meaningful. As we have seen, this information has not been released in a timely manner, and this is crucial for owners who must decide to incur the cost of filing an audit income and expense statement at the Tax Commission to challenge their assessment.

Unlike other taxes where the rate and the taxable base is established clear and fixed for extended periods of time, the real property tax has its rate and taxable base established annually and entirely by the City. For these reasons we should mandate complete transparency on the methods and sources of information used by DOF to value property and should seek appropriate and effective rules to guarantee that there is complete compliance.

Thank you.

CHAIRPERSON RECCHIA: Thank you very much, thank you for testifying. Anybody have any questions? No questions. Thank everyone for coming today, this concludes our hearing.

[Gavel]

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature Tammy Wittman

Date _May 8, 2013_