

Local 1757, District Council 37
Assessors, Appraisers, and Housing
Development Specialist
125 Barclay Street, 4th Floor
New York, N.Y. 10007



David Moog, President
Mathew Joseph, Vice President
Shirley Jin, Treasurer
Sylvia Heller, Secretary
September 19, 2007

Good Morning to the members of the City Council Finance Committee. I am David Moog, President of Local 1757, and Vice President of DC 37. Thank you for allowing me to speak at this hearing concerning Intro 597

My Local represents the City Assessors employed at the Department of Finance as well as the Tax Commission and the Law Department. At the Tax Commission we have 10 City Assessors serving as hearing officers for tax protests. On average each hearing office analyzes and provides hearings on 3200 to 4000 tax protest applications each year. When compared to other hearing offices in the various agencies throughout the City the Assessors at the Tax Commission hear more cases with higher complexity and with a greater financial impact than any other adjudicating officer. Millions of dollars of assessed valuation are reviewed and analyze every day during the hearing season by each assessor. And for as long as the Tax Commission has been an independent agency in the City there has never been a recorded incident of corruption involving Assessors acting as hearing officers.

My present position at the Law Department involves constant interaction with the same lawyers that file applications at the Tax Commission. I have only heard the highest regard given to the assessors at the Tax Commission. Their hearings are conducted professionally, are considered accurate, and are provided in a timely manner. The outstanding work performed by assessors at the Tax Commission saves both the City needless labor costs associated with lengthy litigation and provide timely relief and equity to taxpayers.

That is why I cannot believe that the proposed legislation includes language that would remove the assessor title from appointment to hearing offices positions. Nestled within the proposal to merge the Tax Commission with the Tax Appeals Tribunal, which by itself is a fairly good idea, are changes that strip away civil service protection and

professional requirements for hearing officers. Changes to City Charter Section 164 that the Mayor wants would make it easier to appoint unqualified people to the position of hearing officer. Without having the protection of a civil service title the President of the Tax Commission would be able to appoint anyone as a hearing officer. If you happen to be a cousin of someone powerful on the Real Estate Board you can be hearing officer. If you are a retired postal worker you would be qualified for appointment as a hearing officer. Anyone, regardless of your educational background, could be appointed as a hearing officer. The proposed wording of this intro would allow the President of the Tax Commission to go outside to City Hall Park and round up the first ten people he sees and appoint them as hearing officers. This stripping away of professionalism and impartiality of hearing officers involved in the adjudication of property tax disputes is really quite disturbing.

The present wording set forth in Section 164 guarantees that the hearing officers appointed have real estate valuation experience. The average hearing officer at the Tax Commission has over 25 years of assessment experience. None of them were appointed to the position of hearing officer until they had at least five years of assessing experience. And with recent changes to the State Real Property Tax Law they will all have to be certified by the Office of Real Property. If this intro is passed with the proposed changes to Section 164 then all new appointees will have to learn the complexities of the New York State Property Tax system or be fired within three years. This will create a revolving door of political appointees serving at the whim and will of the President. In many cases I would see that in the future such a change will open the door to the real estate industry to try to place bias hearing officers at the Tax Commission leading to a corruption of the hearing process.

When City Officials amended Section 164 of the City Charter in 1984 with the wording "assessor thereunto authorized by the commission" they did so for two important reasons. First it guaranteed that a real property tax professional would be performing the hearing and secondly it insulated the hearing officer from political influence by giving that person civil service protection.

I believe in the underlying benefits of Intro 597 with the merging of the Tax Appeals Tribunal and the Tax Commission. By having all tax adjudication within one independent agency the City could see cost saving and increase service to tax payers. But the proposed change to Section 164 is a disservice to the tax paying public by allowing the potential corruption of the hearing process. Creating a loophole for political hacks to serve as hearing officers would be a grave mistake. I know that every member of our local as well as all the members of DC 37 is against this stripping away of professionalism from public service.

Thank you for your time and I am more than happy to answer any questions.

NEW YORK
CITY BAR

COMMITTEE ON
CONDEMNATION AND
TAX CERTIORARI

September 19, 2007

Re: Testimony in Opposition to Proposed Into #597 Amending the Charter of
the City of New York in Relation to Tax Appeals

Dear Council Members:

We write on behalf of the Committee on Condemnation and Tax Certiorari of the Association of the Bar of the City of New York to comment on the proposed modifications of the New York City Charter. The proposed changes would significantly alter the structure of the both Tax Commission and Tax Appeals Tribunal. Our members are opposed to the amendments as proposed, and recommend that the Tax Appeals Tribunal remain completely independent from the Tax Commission, as each has been since both were created by this body.

The Committee on Condemnation and Tax Certiorari generally consists of attorneys who represent owners of real property both within New York City and elsewhere. Our collective clients include a broad spectrum of owners of every type of property, from small residential buildings to large office towers. We routinely present our clients' claims of excessive assessment to the hearing officers at the Tax Commission, and our clients are deeply affected by this proposal. Our experience tells us that the proposed Charter revision will unnecessarily change this well functioning agency, which was created and continues to provide a quick and fair review of tax assessments.

Since 1965 the Tax Commission's experienced members and staff have been knowledgeable and effective in their sole function, which is to fairly and impartially review challenges to real property tax assessments made by the New York City Department of Finance. Although our membership strongly supports the City's objective to adequately strengthen and fund a highly trained and professionally staffed Tax Commission, this bill is flawed and will not achieve this purpose in its present form.

Administrative law judges are not qualified to render determinations in property tax review matters, nor are Tax Commission hearing officers knowledgeable in the general corporate, excise and other tax issues handled by the Tax Appeals Tribunal. Indeed, Tax Commission hearing officers do not deal with "taxes" at all, but rather with the valuation of real property. Commissioners and Administrative Law Judges in the Tax Appeals Tribunal, on the other hand have jurisdiction, under Section 168 of the New York City Charter, to hear and determine non-

property taxes. Only the Tax Commission, the highly effective body with the specific knowledge and expertise to make fair and equitable decisions, should undertake property tax review.

The two entities are vastly different in their functions, standard of evidence and methods of review of their determinations, which further supports their independence from each other. For example, Article 7 of the New York State Real Property Tax Law provides for the filing of Petitions directly to the Supreme Court. Decisions by the Tax Appeals Tribunal, which, unlike those of the Tax Commission, are required to be in writing, must be challenged by in Article 78 proceedings under the Civil Practice Law and Rules. These two entities are subject to vastly different rules, which will not and cannot be merged because they perform vastly different functions.

Our committee is also concerned because the proposed amendment eliminates the minimum level of experience and education and real estate valuation background that has been required of Tax Commission hearing officers. Inexperienced personnel that do not have the requisite background and experience as assessors or appraisers will not be effective or able to adequately review the assessments that they are charged with reviewing.

The proposed amendment to Section 156 would permit “any individual designated by the president” entry upon private property, and proposes severe penalties for refusal by the owner. This expansion of who is permitted to inspect property is overly broad and may raise serious Constitutional issues, and should not be enacted.

Although we have no objection to combining the budgets for the two separate agencies and the joint administration for clerical purposes, we strongly urge that the Tax Commission’s review functions remain independent and separate from the Tax Appeals Tribunal.

In conclusion, the Committee opposes the adoption of Proposed Intro #597 as currently drafted. Different rules, laws, standards of review, and qualifications of its reviewing personnel govern the Tax Commission and the Tax Appeals Tribunal, and each administers a substantially different review system. The proposal eliminates vital standards for hearing officers and those given the ability to inspect private property, and should not be enacted.

Respectfully submitted,

Willa I. Lewis
Chair

Testimony of The Real Estate Tax Review Bar Association
Israel Schechter
September 19, 2007
Committee on Finance
Introductory Bill No. 597

Chairman Weprin, Council Members, Good Morning. My name is Israel Schechter and on behalf of the Real Estate Tax Bar Review Association, of which I am President, I thank you for the opportunity to share the Association's views on Bill No. 597. The Association believes that the bill should not be adopted. I would like to outline our concerns regarding certain provisions of the bill.

First, the only thing that the Tax Commission and the Tax Appeals Tribunal have in common is the word "tax". The Tribunal's function is to provide a forum for and adjudicate disputes between taxpayers and the Department of Finance for all non-property tax impositions. This involves an extensive and detailed process including the conduct of formal evidentiary hearings resulting in a written determination setting forth findings of fact and conclusions of law, normally within six months after trial. According to the Tribunal's annual report for fiscal year ending June 30, 2005, a total of 175 substantive determinations were made between October 1, 1992 and June 30, 2005, or about 15 per year.

The Tax Commission's review of real property tax assessments, in the main, involves determination of the market value of real estate and the correctness of the tax assessment based on the market value. The Tax Commission's 2006 annual report indicates that it completed substantive review of over 18,500 applications during calendar year 2006. The Tax Commission process is designed to afford taxpayers a plain, speedy and efficient review of the required annual valuation placed on property consistent with

management of the City's fisc. One need only to look at how the failure to have an effective administrative review of real property assessments contributed to Nassau County's recent budgetary crisis to see the benefits of the current system to the City.

It is not coincidental that current law provides for certain minimum qualifications for Tax Commissioners and other persons authorized to make determinations of real estate value at the Tax Commission. The Tax Commission recognized this needed expertise in its posted "Job Vacancy Notice", dated 7/23/07, which specifies a "minimum of two years satisfactory full-time experience in real estate work involving the valuation of real property such as assessor, appraiser, valuation data manager, real property appraisal aide or the like."

The proposed bill removes the requirement that persons authorized to act upon applications possess real estate valuation qualifications. Based on the volume of applications and the time period for review, this would likely complicate, slow down and render inefficient the process of assessment review to the detriment of taxpayers and the City. In the opinion of my association this is a sufficient basis to merit rejection of the proposed bill.

The bill contains other troubling provisions. Its authorization of entry onto private property by "any other individual designated by the president" is broad enough to raise serious concerns. Its provision that the newly created Office of Administrative Tax Appeals "shall operate pursuant to a written agreement between the president of the tax commission and the president of the tax appeals tribunal..." is vague and may not be consistent with legislative constraints placed on other City agencies. Finally, the failure of the bill to clearly delineate the impact of the merger of administrative functions upon

clearly separate and defined substantive functions could result in unintended and drastic changes to the detriment of the substantive review of real property assessments.

Thank you again, Chairman Weprin, for allowing us the opportunity to express our concerns regarding this legislation.

Testimony of Glenn Newman on Intro. 597
New York City Council Finance Committee
September 19, 2007

I am Glenn Newman, President of the New York City Tax Commission and the New York City Tax Appeals Tribunal. Thank you for inviting me to testify today in support of Intro. 597, a local law to amend the New York City Charter by combining the Tax Appeals Tribunal and the Tax Commission under the umbrella of the Office of Administrative Tax Appeals - a merger that has the support of the Council. To do so, the legislation repeals the provision of the Charter placing the Tax Appeals Tribunal within the Department of Finance. This is an initiative that has been urged by Council members for several years in an effort to maximize the efficiency and minimize taxpayers' confusion on where tax appeals are heard.

This proposal does several things that will improve the services provided to taxpayers of the City of New York who file appeals of their City taxes. First, it will enhance the efficiency of the two agencies that hear these appeals by allowing cross-utilization of resources and more efficient use of staff. Second, it will remove the Tax Appeals Tribunal from within the Department of Finance where it has been since 1992. Although the Tribunal has been comfortably ensconced at Finance among some of the most dedicated and professional people to be found inside or outside of government, being administratively part of the agency that issues the tax deficiencies that are adjudicated by the Tribunal is something I believe should be changed. Finally, the proposal eliminates some of the anachronisms that the Tax Commission has been burdened with to enable it to better handle the appeals.

I was asked to first address the budget implications of the proposal. There are no immediate budget implications for the creation of OATA or merging the Tax Commission and Tax Appeals Tribunal for administrative purposes. Neither agency is seeking additional funding. We do not expect immediate savings from this reorganization. Over time, there will be economies of scale and efficiencies that may be attained and possible savings through attrition. Staff will have greater opportunities to learn different areas of tax law and procedure, greater opportunity for training and advancement and by combining space, law libraries and technological resources, we expect savings over time.

As to the merits of the proposal, simply put, the two agencies have as their mission one common goal—providing fair, efficient and knowledgeable forums for taxpayers who protest their City taxes. Placing the two agencies that hear taxpayer appeals together so that taxpayers know where their protests will be heard, what to expect at the hearing and how best to understand the tax system that supports the City they live in just makes sense. In addition, although the procedures for property and business tax appeals differ significantly, the ethical and administrative issues involved in ensuring a fair, open, efficient and knowledgeable forum and the opportunities to learn from the best practices of other adjudicative bodies will help keep the agencies' focused on and committed to innovation and improvement that will benefit all New Yorkers.

Before I stop and take questions I think it would be helpful to provide more background about how the two tax appeals agencies are different as well as what they have in common in order to place all of the proposed changes in the proper context.

The NYC Tax Appeals Tribunal hears challenges to the determinations of the Commissioner of the Department of Finance relating to the City-administered non-property taxes (i.e., general corporation tax, unincorporated business tax, bank tax, commercial rent tax, real property transfer tax, etc.). The Tax Appeals Tribunal was established in 1988 and took its current form after State legislation effective in 1992. The result was the removal of the adjudication process from the Commissioner of Finance who was responsible for both tax audits and hearings and creation of an independent tribunal. The Tribunal consists of three Commissioners who hear appeals after a full evidentiary hearing held before an Administrative Law Judge. At those hearings the parties are almost always represented by tax professionals who present evidence on the record that is transcribed and a written determination issued. Either party may appeal the Administrative Law Judge's determination to the full Tribunal. The Tribunal's decisions are appealable by the taxpayer (currently the City has no right to appeal) directly to the Appellate Division of the Supreme Court since the 'trial record' was already made at the hearing before an ALJ. The case is reviewed by the Court for 'substantial evidence' that is: Is there sufficient evidence in the record to support the decision; a standard of review that gives great deference to the Tribunal Commissioners' decision. The Tribunal had a staff considered too small to efficiently organize as a separate

agency and therefore, administratively the Tribunal was placed within the Department of Finance with Charter section 1504-a keeping it autonomous.

The Tax Commission traces its history back to 1854. Through 1968, the Tax Commission was responsible for both the assessment of real property throughout the City as well as review of property tax protests. With the creation of Greater New York in 1898, the Tax Commission incorporated representatives of the five boroughs with a President who had to be from Manhattan and Commissioners from each borough. These Commissioners supervised the assessors from each borough and districts within the boroughs as the City grew. Back then, it made sense to mandate that Commissioners be from each borough in recognition of the boroughs' distinct profiles: the Commissioners from Queens and Staten Island would be familiar with the farmland that used to be common in those areas. More importantly, the maps and assessment records (in large books and file cards) were maintained in the districts where the assessors worked and where the protests were filed and heard.

Charter revisions effective in 1938 established the present system of a Tax Commission President and Commissioners from each borough with a central office in Manhattan. But the books and records were still maintained in the boroughs. In 1968 with the creation of the Finance Administration, the assessment and review functions were separated although the borough tax commissioners and district assessors continued to hear protests locally.

The use of the term 'assessor' to hear protests is a remnant from the pre-1968 era when the same staff that placed an assessment on a property heard the protest. The City has moved away from that concept over the years for many reasons, not the least of which is the generally accepted idea that taxpayer appeals should be heard by someone disinterested in and not connected to the original assessment. This provides for a fair hearing and is essential for both the appearance and reality of a fair and impartial hearing.

The provision amending the Charter to provide a right of entry onto property is meant to permit anyone who hears appeals to inspect the premises in order to determine the properties' character and use.

There are many skills that may be required in fairly deciding assessment appeals including knowledge of real estate but also the ability to listen and carefully consider the arguments of self-represented taxpayers as well as

their representatives. Also, for different types of property different skills may be required to arrive at a correct value. For example, a utility property may require an engineer to determine replacement cost for lines, mains and generating equipment or an architect or someone with construction experience may be best suited to arriving at a value for property when it is proper to use the cost method of appraisal. The charter ought not to be so limiting or specific that appropriate persons hearing cases can not be used for the valuation of a particular parcel.

The issue of part-time Commissioners from each borough is also a vestige from the 1898 Greater New York Charter and the old ways of hearing protests. No longer do Commissioners hear appeals of properties only from the borough of their residence nor are the boroughs so dissimilar in the nature of the properties subject to tax.

There are no more working farms in the City; the commercial and residential properties that compose the neighborhoods in the City are more similar than they are different. The Finance Department promulgates one assessment roll for the entire city and uses City-wide assessment guidelines that are based upon economic data and the condition and use of the various types of properties. Both the Finance Department and the Tax Commission strive for fairness and consistency assessing properties throughout the City based upon conditions and use. A Citywide perspective of valuation that applies similar standards for similar properties throughout the City results in the fairest, most accurate assessments. Parochial considerations or political loyalty to one part of the City or another is harmful to the perception and reality of a fair City-wide assessment system.

We expect Commissioners to hear fifty calendars of cases per season that requires about fifty days of preparation and another fifty days for consideration and determination of the cases. In addition, since the part-time Commissioners are paid about \$25,000 per year, they all have outside income. Most have legal, accounting or real estate businesses. Both the agency and the part-time Commissioners recognize it is inappropriate to hear a neighbor's protest or hear cases involving potential client's tax appeals that come before him or her. We assign cases (after clearing for conflicts of interest) to part-time Commissioners for properties throughout the City. We provide them with data and guidance on the economic conditions of various areas and particular types of properties throughout the City. A specialized knowledge of a particular borough or neighborhood is not necessary since

we analyze economic conditions and data on City-wide income, expense and capitalization rates to be used based on the condition and use of different types of properties. It is in keeping with the current practices of the Commission, and its centralized operation, that we're proposing to remove the borough requirement for the part-time Commissioners.

Similarly, the use of the word 'assessor' in the provision of the Charter describing who can act on applications for correction is left-over from a time in which the assessors in the Tax Commission assessed properties in their district and then heard the appeals of those assessments. Part of the proposal is to broaden the skill set of qualified people to hear cases. Since the Commission hears cases that deal with a variety of topics, those with education or experience in a variety of areas including real estate, property valuation, law, accounting, engineering, architecture or and construction could use their expertise to hear and determine appropriate matters. Clearly, using the word 'assessor' when there is another civil service occupational group 'appraiser' (also represented by DC37) with similar educational or experiential qualifications makes no sense. I believe that the Charter should give the maximum flexibility to allow presidents of the Tax Commission to explore every possibility for improving customer service and efficiency and to bring the people with appropriate skills and use the right resources to get the work of the agency done properly.

The two agencies that are charged with the duty to hear tax appeals strive for fairness and consistency in their determinations. We want cases to be determined based upon objective criteria with room for the hearing officers to exercise professional judgment and discretion. Placing these two agencies under a common 'umbrella' reinforces and strengthens their common goal of having a fair, open, efficient process where, although everyone may not get what they want, all taxpayers get a full and fair hearing of their cases.

Once again, I thank you for allowing me to testify today. I look forward to working with the Council to codify this legislation into law, and I will be happy to answer your questions at this time.