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Contributing Authors

New York City unexpectedly slashed assessments, but big increases could be on the horizon

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While real estate valuation for tax purposes is frequently more art than science, the past six months in New York City have left most valuation and real estate tax professionals perplexed. In January, I opined that a preemptive slashing of 2021/22 New York City tax assessments was unlikely as it would result in billions of lost revenue without a corresponding increase to the tax rates as an offset. It was also prior to the commencement of President Biden's term and the fate of nationwide municipal economic assistance was thereby unknown. Here we are, though, many months later and the New York City Department of Finance did the unthinkable; assessments were slashed in January for the 2021/22 tax year and the New York City has now announced relatively stable tax rates for 2021/22 as well.

Of course it is impossible to blame the New York City Department of Finance for recognizing many properties were suffering catastrophic losses both in terms of rents collected and occupancy rates due to COVID's wrath. The New York City assessors lacked sufficient information for each individual property as they only possessed the 2019 financial data via the RPIE. The storefront registry could have helped, but it was brand new and replete with delays and errors. Field inspections, to review new construction, demolitions and the like weren't performed for many months. In fact, New York City assessors worked from home nearly exclusively from March of 2020 through the spring of 2021.

As a result, year-over-year assessment roll reductions for commercial properties often range to just over 30%. Depending on the borough, many cooperatives and rental apartment buildings received 10% reductions. Mixed-use buildings with at least 11 total units received reductions ranging from 10% to upwards of 30%. For those attentive to the bottom line that necessarily means the city left billions on the table.

Obviously, the Federal Government's assistance to municipalities have led to some unexpected surpluses, but many arguably questionable if not downright irresponsible fiscal approaches have resulted. Needless to say, unless the local economy and collectable taxes—other than real estate taxes—skyrocket, New York City will require a multi-billion dollar infusion again in 2022 or the city will be facing a massive shortfall. That is unless the city plans on enormous assessment and tax rate hikes in 2022.

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Based on the 2020 calendar year performance for many properties, the preemptive reductions granted by the Department of Finance went way too far in a substantial number of instances. In other words, windfalls were provided to many property owners by way of the city's blindfolded "pin the tail on the donkey" methodology. The multi-billion dollar question at the moment is whether the Department of Finance will revert, more or less, to business as usual for the 2022/23 tax year? A return to a more typical valuation model suggests properties could see 50%+ sized actual assessment increases at a precarious time in the economic recovery. Property owners that fared better than anticipated in 2020 but lost a critical tenant or tenants in early 2021 will be in danger should this approach be taken.

If the Department of Finance decides to err on the side of caution, much like the Fed at the moment, tax rates will have to soar to make-up the taxable assessment shortfall. This approach would further exacerbate the chasm between the winners and losers unintentionally manufactured by the Department of Finance's across the board valuation model for the 2021/22 tax year. In other words, properties negatively impacted by COVID would likely end up paying a larger percentage of their gross income to New York City real estate taxes than properties that remained essentially unchanged economically. As the assessments for 2022/23 are being promulgated now, with an outgoing mayor and numerous lame duck City Council members, all bets are off with respect to the 2022 roll's construction. Similarly, there are few leading politicians left to face the music should assessments suddenly leap ahead in January.

With rental activity increasing, many new commercial tenants will have real estate tax overage clauses with a 2021/22 base year. If the building received a dramatic but not wholly called for 2021/22 assessment reduction, the new tenant is likely to be impacted very quickly if assessments reverse course in January. New tenants with overage clauses may be facing very large unexpected additional rent in the second half of 2022 (2022/23 tax year commences July 1st, 2022). With the seemingly never ending stream of variants causing further economic impediments, the recovery for each property is far from certain. In January, it is essential to consult with your certiorari counsel to ascertain whether any increase or decrease is appropriate relative to 2021 performance and occupancy as of January 2022.

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