# **horizontal lineThe Property Tax: What the City Should Do *Now* to Make the Property Tax More Fair, Easier to Understand, and More Predictable Even Before any Possible Court-Mandated or Legislative Overhaul**

By Martha E. Stark

New York University Clinical Professor, Co-Director NYC 2025

March 2022

**SUMMARY**

**QUESTION: WHAT ADMINISTRATIVE AND POLICY CHANGES CAN NEW YORK CITY MAKE TO PROMOTE FAIRNESS, EQUITY, TRANSPARENCY, AND PREDICTIBILITY IN THE NEW YORK CITY PROPERTY TAX—ESSENTIAL ELEMENTS FOR A FAIR AND JUST ECONOMIC RECOVERY?**

**–––––––––––––**

**WHY IMPORTANT:**

**—**

1. This fiscal year, New York City will raise almost 46 percent of its tax revenue; 27.6 percent of all revenue from the property tax. Yet, the property tax system is universally perceived as unfair, unnecessarily complicated, unpredictable, and discriminatory-racially and by income and property value.
2. The property tax affects everyone from homeowners to owners of commercial office and residential rental buildings and their tenants to store owners and operators to utility companies. Everyone pays the property tax, not just property owners.
3. Given the importance of the property tax to the economy, the City should utilize all its existing tools to ensure that the property tax structure is as fair as the current law allows.

**—**

**RECOMMENDATIONS:**

**Department of Finance**

1. Finance should lower the assessment ratio for small 1-3 family homeowners to three percent (3.5%) so that assessments are uniform[[1]](#endnote-1) within the tax class. Similarly, the assessment ratio for buildings with 4-10 apartments should be lowered to ten percent (10%) so that the assessments for similar properties are uniform.
2. Finance should use sales prices to estimate market value where it is allowed to, such as for vacant land. In addition, sales prices should be reviewed as a quality control check for properties such as cooperatives and condominiums where Finance is required to value properties as if the properties are rental buildings. Even without using sales prices to value property, Finance’s market values should bear some relative (and perhaps uniform) relationship to sales prices.
3. Finance should stop using a hybrid method to value properties that have been renovated and should instead value those properties consistent with the pre-existing method used before the renovation.
4. Finance’s ombudsperson should be charged with providing easy to understand materials about the property tax to the Public Advocate, the Borough Presidents, and the City Council, State Assembly, and State Senate by their respective districts. The ombudsperson should provide information about the market value, assessed value, assessment ratio, the taxes (before exemptions), resulting effective tax rate (taxes divided by market value), and the dispersion in the assessments.
5. Finance should publish quality control information about its market values and assessments. For all property types, Finance should provide information such as market value compared to sales prices; taxes as a percent of estimated gross income where relevant; and assessment ratios by borough, neighborhood, and political districts. When it comes to income-producing properties Finance should show taxes as a percent of the gross income that was estimated and there should be some clearly articulated consistency among property types.

**The Mayor and City Council**

1. The Mayor and the City Council should adopt “truth in taxation” principals for the property tax levy and the process for setting tax rates. Between 2011 and 2021, the Mayor and City Council have increased property taxes (the property tax levy[[2]](#endnote-2)) by more than 82 percent. Yet the City Council members in office during that time have claimed that they did not raise taxes. Truth in taxation laws seek to bring much needed clarity to the property tax process by making sure everyone understands what drives tax changes. Every year before adopting the property tax rates, the City Council should review information and share with taxpayers the impact of 1) not increasing the property tax levy; 2) increasing the property tax levy by 2 percent (2%), the maximum increase allowed in the rest of New York State; and 3) increasing the property tax based on overall growth in assessments—the current method. This will help both the public and City council members understand the vital role that the Council plays in determining their constituents’ property taxes.
2. The City Council should ask the State Attorney General for a ruling to determine whether the current method of estimating the Constitutional limit on the amount of property taxes that can be raised for operating purposes is legal. Individual taxpayers cannot request such a ruling from the Attorney General.
3. The Mayor and City Council should phase out reliance on the commercial rent tax that is imposed only on commercial tenants who lease property south of 96th Street and north of Canal Street in Manhattan. The tax is a double tax on commercial tenants as in most cases those tenants are also responsible for a proportionate share of property taxes on the space that they lease.
4. The Mayor and City Council should discontinue the practice of selling tax liens. Liens should not be sold on properties when the assessment ratio for those properties exceed what would be a uniform assessment ratio.

**The Tax Commission, Law Department, and the Courts**

1. Given the important role that the Tax Commission plays in ensuring the fairness and legality of the City’s property tax structure, the Tax Commission must stop denying small home and small apartment building owners the right to challenge their assessments as unequal. To do this, the Tax Commission should independently determine the ratio that would lead to a uniform assessment ratio for these property owners and hear any case where the property owners’ assessment exceeds that ratio.
2. The Tax Commission should include a summary of the reasons for its determinations in the annual report that it publishes. To ensure a continuous learning process and more accurate future assessments, the public should be apprised of whether, for example, Finance’s income, expense, or capitalization rate estimates were incorrect for income producing properties; the comparable properties that Finance used were incorrect for properties that are owner occupied or cooperatives or condominiums; the square footage of the property was incorrect; the property was over assessed compared to similar properties; or some other clearly delineated reason.
3. The Tax Commission should provide a report summarizing the results of its determinations overall and by each of the hearing officers and commissioners to weed out any favoritism and ensure consistency.
4. The Law Department sees its role regarding the property as protecting the city’s revenue. However, the Tax Commission can only protect the city’s revenues if the property tax system and structure is fair. The Law Department should review and resolve outstanding cases in a much shorter timeframe and should abandon the “de novo” rule that it uses that ignores the values and assessments determined by Finance and instead by sleight of hand determines a completely new and unrelated value as the basis of its settlement negotiations.
5. Since property tax cases provide substantial revenue for the courts, the number of judges assigned, and calendar dates allotted to the review of property tax actions should be increased. In Brooklyn for example, property tax actions are heard only 3 or 4 times a year by one, now retired judge. The court should both expand its expertise and availability to review property tax actions with a goal of moving cases through the process in less than one year.

**The New York City Comptroller**

1. While the Comptroller has limited formal authority in property tax matters, he can play a vital role in ensuring that the property tax system is fair and equitable. The Comptroller should independently produce an annual report on the Constitutional limit on the amount of property taxes that can be raised for operating expenses that is like the one that the Comptroller’s office produces summarizing the Constitutional limit on the amount of City debt.
2. The Comptroller should implement a claimstat-like program for property tax matters bringing together the three agencies-Finance, the Tax Commission, and the Law Department-to resolve outstanding property tax actions in a timelier and coordinated fashion for cases that have been pending for more than two years.

**The Public Advocate and the Borough Presidents**

1. While the Public Advocate and Borough Presidents do not have formal authority over property tax matters, they can use the power and bully pulpit of their respective offices to coordinate and better understand the impact of the property tax by borough and citywide. These elected officials should at least two times each year bring together and ask for a briefing from the Department of Finance and Tax Commission about the property tax issues affecting their constituents and should require a report in an easy-to-understand format that highlights the significant property tax issues and challenges in their respective boroughs and citywide.

**The State Department of Taxation and Finance-Office of Real Property Tax Services**

1. The Office of Real Property Tax Services, a division within the New York State Department of Taxation and Finance, must fulfill its role as the overseer of local assessment administration, including New York City, to improve the fairness of property assessments. The process for overseeing the various ratios used to determine whether assessments are fair, uniform, and equal must be revamped to reflect the increasing availability of information and data and more available technology.
2. The Governor should appoint a New York City property tax representative to the State Board of Real Property Tax Services to fill one of the two current vacancies. New York City has not had a representative on the State Board in almost 25 years.

**The State Comptroller**

1. The State Comptroller should exercise its oversight authority to review and report on the City’s property tax system. The State Comptroller should include information about New York City in its Fiscal Stress monitoring system as well as report on New York City’s compliance with the State constitutional limit on the amount of taxes that can be raised for operating expenses. The State Comptroller should, as authorized by law and if appropriate, withhold certain local assistance payments to the City if taxes have been levied at an amount that violates the Constitution.

**—**

**CONSTRAINTS:**

1. Although the inequities in the property tax are acknowledged, the City is relying solely on recommendations from a December 2021 property tax commission report to implement changes. The recommendations from the report cannot be implemented without changes in state law.
2. The property tax is so complicated that the status quo has prevailed. As a City where a majority of residents rent rather than own, many mistakenly believe the property tax does not affect them.
3. Most property owners do not pay their property taxes themselves if they have a mortgage. As a result, taxpayers are often unaware of the property taxes that they pay until it is too late to challenge and change them.
4. There is little incentive for City agencies to address property tax fairness since owners are required to pay their property taxes timely even if they believe their taxes are inaccurate and unfair or face an exorbitant interest rate for not paying.
5. Changes to the property tax could lead to some people paying higher taxes and elected officials are reluctant to implement necessary changes.

**–––––––––––––––––––––––**

**INTRODUCTION**

As New York City emerges from the pandemic, reviving the economy must be at the forefront of the minds of the next set of leaders who assumed office on January 1, 2022. While we know cities can help to drive the national economy, the research is limited about what factors contribute to actual positive economic activity in cities.

The best tax policies for state and local governments seeking to grow their economies are those that (1) offer long-term certainty to businesses and individuals, (2) are coupled with wise public investment, and (3) are designed with the principles of efficiency, simplicity, and equity in mind. Policies—based on economic principles, not political whim—also have the best chance of promoting fairness across the board.

As is true in most cities across the country, the property tax in New York City is the financial backbone of the budget[[3]](#endnote-3) accounting for 28.5 percent of the budget revenues of more than $102.8 billion in the fiscal year that will end on June 30, 2022. The property tax is a significant source of revenue that funds public education, police, fire, parks, and libraries; and shapes local housing markets by influencing the cost of buying, renting, developing, or investing in, homes, apartment buildings, or commercial buildings.

The leaders-Mayor, City Council, and Comptroller-who assumed the reins of New York City’s budget have significant control over the property tax. Local officials can ensure that the property tax offers certainty, predictability and that it is as fair as possible under current laws. While officials should simultaneously seek structural changes to the property tax through litigation and legislation, this paper recommends changes that the newly elected City officials, from the Mayor to the Comptroller to the City Council, should implement immediately to promote fairness and predictability in the property tax system.

**—**

**BACKGROUND**

New York City plans to raise more than 51% or almost $33 billion of its tax revenue from property-related taxes[[4]](#endnote-4) for the current fiscal year that started July 1, 2021. The property tax alone will account for $29.4 billion or almost 46% of the City’s tax revenue; and 27.6% of all revenue.



Despite the important role that the property tax plays in the City’s budget and economy, the system is broken. The problems with the property tax structure are well documented:

* The system is complicated;
* The market and assessed values estimated by the City are not transparent and are rarely related to the sales prices of properties;
* owners of small homes in majority-minority areas and in areas with more modest sale prices pay taxes at a higher percent of those sales prices than owners with more valuable properties;
* The taxes on rental apartment buildings that are borne primarily by tenants who have lower incomes subsidize the very low taxes paid by higher income cooperative and condominium owners;
* The owners of commercial properties including office buildings, hotels, factories, warehouses, and stores pay unpredictable and comparatively high taxes; and
* To build much needed affordable housing, New York City subsidizes new construction and even rehabilitation and renovation with expensive and decades-long tax programs that exist primarily to compensate for the broken property tax system.

The property tax system needs a complete overhaul. The City has changed dramatically since the State created New York City’s property tax structure in 1981. The structure was created in large part to overturn a Court of Appeals ruling that the State’s property tax structure was unconstitutional. The current law that governs New York City’s property tax structure was enacted despite Governor Hugh Carey’s veto. One of the most important changes has been the growth in vertical rather than horizontal homeownership options. In 1981, the concept of a condominium did not exist and there were just 100,000 cooperative apartments. Now, there are almost 627,000 cooperatives and condominiums - almost as many as the almost 636,000 one-, two-, and three-family homes in the City. Yet the current property tax structure taxes these properties using vastly different and complicated methods that result in tax burdens that bear no relationship to sales prices and that are not transparent.

**—**

**LAWSUIT AND PROPERTY TAX COMMISSION**

While the property tax structure has been widely acknowledged as broken since its inception, little has changed. The State legislature has been unwilling or unable to act and the disparities between homeowners and frustration with the inaction led Tax Equity Now New York (TENNY), a coalition of property owners, tenants, and social justice organizations, to file a lawsuit[[5]](#endnote-5) against New York City and State challenging the property tax system in 2017.

After TENNY filed the lawsuit, Mayor de Blasio and City Council Speaker Corey Johnson appointed an Advisory Commission on Property Tax Reform in May 2018 acknowledging the problems with the property tax while simultaneously arguing to the court that the lawsuit did not state a cause of action. The Advisory Commission issued a [draft report](https://www.dropbox.com/s/02my94o1rrfnj2o/NYC%20Advisory%20Commission%20Preliminary%20Report.pdf?dl=0)in January 2020 with ten recommendations and resumed public hearings on the report in May and June of 2021. A [final report](https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:de49c856-3084-4a0a-bec4-b0ab7d1e506c)issued two days before Mayor de Blasio and Speaker Johnson left office is almost identical to the draft report. The recommendations from the de Blasio/Johnson Commission are also very similar to those made by a [commission](https://www.dropbox.com/s/g7ulegv3c3rx3xa/Grayson%20Report%20NYC%20Real%20Property%20Tax%20Reform%20Commission%2012-30-93.pdf?dl=0)that was appointed by Mayor David Dinkins in the early 1990’s. Like the Commission set up by Mayor Dinkins, the de Blasio/Johnson Commission recommendations require significant and complicated State legislation.

**—**

**ACTIONS BY THE NEW ADMINISTRATION**

Even before the Court of Appeals decides whether the lawsuit can move forward and before the legislature decides whether to act on the recommendations contained in the de Blasio/Johnson Commission, there are several things that the new administration can do to build and restore the public’s faith in the property tax and pave and ease the way for any future changes.

The mayor oversees and appoints the leaders of three agencies responsible for the property tax—the Department of Finance, the New York City Tax Commission, and the Law Department. The Mayor and City Council have almost unfettered authority to determine how much money to raise from the property tax. The City Council has a vital role in overseeing the several City agencies that administer the property tax. The Comptroller too has a role in auditing and independently reporting on whether the City is abiding by the law and Constitution. The Public Advocate and Borough Presidents have an important role to play in understanding and ensuring equity citywide and by borough.

The new Administrations should follow the advice attributed to President Abraham Lincoln who said: *“The best way to get a bad law repealed is to enforce it strictly.”*[[6]](#endnote-6)The property tax laws make it difficult to have a fair and transparent tax structure but the City’s unwillingness to [follow the law makes matters worse](https://www.bloombergquint.com/onweb/how-new-york-property-tax-benefits-the-rich-investigation-takeaways)[[7]](#endnote-7).

**The Department of Finance**

In the mid-1970’s the Court of Appeals ruled in Hellerstein v. the Town of Islip that the State Constitution required properties to be assessed at full market value, changing a pervasive practice where elected assessors valued small homes at less than full value while valuing commercial properties at full value.

The State Legislature was concerned that implementing the Court ruling would lead to higher taxes for homeowners and decided instead to overturn the court decision. The legislature adopted specific legislation for New York City and Nassau County that did five things:

1. Established four tax classes.
2. Allowed assessors to value property in each tax class at less than market value provided assessments are uniform in each tax class.
3. Required assessors to value cooperative, and later condominiums, at no more than the value they would have if they were operated as rental apartment buildings.
4. Implemented caps for small homes that limited assessment (not market value or tax) increases to 6% per year and no more than 20% in five years.
5. Froze the share of taxes to be paid by each of the four tax classes while allowing for annual incremental shifts in shares between the classes each year. This meant the tax burden borne by small homeowners would be much lower than the class’s share of market value and that commercial owners would bear a disproportionate share of taxes.

The Department of Finance’s Property Division (“Finance”) values more than one million properties in the City every year to produce the assessment roll; determines the appropriate tax class for properties; administers exemption and abatement programs that can lower property owners’ tax liability; and maintains the official tax maps of New York City. The Department of Finance has strayed from the changes that were implemented between 2002 and 2009 to make the property tax system more transparent, accessible, and customer friendly.

**—**

**STEP 1: GET THE MARKET VALUE AS RIGHT AS POSSIBLE! THE DEPARTMENT MUST DO ALL THAT IT CAN TO VALUE PROPERTY IN A WAY THAT IS ACCURAT, FAIR, AND CONSISTENT.**

*Valuing-Small Homes, Co-ops and Condos, Vacant Land, Renovated Properties—Computer Models, Sales Price Quality Control Check, Consistency and Transparency.*

**Market Value of Property**

What makes the property tax different from other taxes like the income and sales taxes is that the government controls all three parts of the tax equation:

|  |  |  |  |
| --- | --- | --- | --- |
| **Equation** | **Market/Assessed Value** | **\* Tax Rate** | **= Property Tax Levy/Revenue** |
| **Responsible Agency** | **Department of Finance** | **City Council** | **Mayor/ City Council** |

If the City needs revenue, the Department of Finance can be directed to raise market values, or the City Council can raise the tax rate or the Mayor and the Council can increase the property tax levy. As a result, taxpayers are understandably cynical and skeptical about the property tax. To mute or address taxpayer cynicism that the City is increasing the value of property only to raise revenue, the Department of Finance must set market values in a way that is transparent, easy to understand, and fair. New York City market values are far from that standard for all property types.

**Small Homes**

For **small homes**, market values are estimated using computer models based on house sales that occurred for the 12-18 months before the assessment roll is released. However, the computer models are biased and tend to under value high-valued homes and over value low-valued homes.



**Cooperatives and condominiums**

For **cooperatives and condominiums**, Finance’s method for estimating market value is limited by State law. Rather than relying on sales prices like in the case of small homes, market values are estimated based on the value that the cooperative or condominium would have if it were operated as a rental apartment building. Finance’s market values for cooperatives and condominiums bear no relationship to sales price.

**Sales Prices for Quality Control and Relative Market Values**

While Finance cannot use sales prices to value cooperatives and condominiums, using sales prices to illustrate potential outliers and as a quality control mechanism is not forbidden. For example, according to a City Realty report about the luxury condominium market in 2020, the average sales prices for apartments at 220 Central Park South were the highest in the city--$7,177 per square foot. Meanwhile, Finance’s average market value per square foot for the building was $509, just 7% of the average sales prices.

A look at the top 25 condominium buildings based on average sales price per square foot highlights the problem with Finance’s market values. State Law limits Finance’s ability to value cooperatives and condominiums using sales prices. However, Finance can ensure that there is at least some relative relationship between and among the market values that it estimates for condominium (and cooperative) buildings and sales prices.

For example, a possible quality control check would uncover that while City Realty[[8]](#endnote-8) ranked 220 Central Park South first because the building sales that occurred in 2020 were the highest based on sales price per square foot, Finance’s market value estimate for the building ranked 34th. A quality control check would have shown, for example, that City Realty ranked 520 Park Avenue’s sales prices per square foot as third among condominium buildings. While Finance’s market value per square foot also ranked the building third, the market value for 520 Park Avenue was 48 percent higher than 220 Central Park South’s even though the building’s average sales prices per square foot were 34 percent lower.

520 Park Avenue’s market value per square foot was inexplicably higher than the top 25 luxury condominium buildings on City Realty’s 2020 list. The only condominium with a higher market value per square foot than 520 Park Avenue was 10 Sullivan Street which was not ranked by City Realty in 2020 because there was just one sale in the building. The average sales price per square foot for apartments that sold in 2019, 2020, and 2021 at 10 Sullivan Street was a little more than $3,000 per square foot.



This problem exists in every borough and between boroughs. Another possible quality control mechanism is to use sales prices as a barometer to gauge the fairness and relative values estimated by the Department of Finance. One might compare the Finance market value to sales prices for condominiums, or the resulting taxes as a percent of sales price.

Such an analysis would reveal that Finance’s market values for condominiums are regressive and that the method used results in values that capture a much higher percentage of market value for condominiums with lower sales prices. For example, Finance’s market value represents more than 25 percent of the less than $200,000 median sales price in the Bronx but captures just 9.5 percent of the median sales price for Manhattan condominiums that sold for more than $30 million.



Another example, Finance valued Ken Griffin’s condominium at 220 Central Park South that he purchased for $238 million in 2019 at just $12 million on the fiscal year 2021 assessment roll[[9]](#endnote-9) or just 5 percent of the sales price. Meanwhile, for lower priced condominiums in the Bronx, Brooklyn, and Queens, Finance’s median market value as a percent of sales prices is 25.3, 18.5, and 19.5 percent, respectively.

**Comparable Rental Buildings Used to Value Cooperatives and Condominiums**

When it comes to valuing cooperatives and condominiums under the current law, the most important task that Finance has is to identify comparable rental properties. Finance has made that task much less transparent and opaque because the agency does not use the actual income and expenses from the rental buildings but instead makes inexplicable adjustments to the comparable rental buildings that the agency chooses.

For example, 218 East 72nd Street was used as a comparable rental building to value 20 condominium buildings. First, it is not clear how Finance defines comparability since the building was used to value condominium buildings built between 1900 and 2015. The rental building was built in 1975 and has 145 apartments. Second, and most importantly, while citing the same building Finance’s rent estimates for the condominiums valued based on 218 East 72nd Street range from $37 to $87 per square foot. Meanwhile, according to Finance’s records, the actual income estimate for 218 East 72nd Street was about $58 per square foot.



In addition, Finance has not publicly released information about the comparable rental buildings that are used to value the condominiums with the highest sales prices in the City. The release of information about comparable buildings was started after 18 assessors were arrested in 2002 for illegally manipulating assessments. The current practice of excluding properties from the list and varying the income used to value cooperatives and condominiums from the actual income in the comparable rental buildings is a prescription for potential abuse and unequal estimates of market value.

For **vacant land and transferred air rights**, Finance can use sales prices to estimate market values but does not. As a result, vacant land is significantly undervalued when compared to sales price. Advocates who believe in the Henry George theory [[10]](#endnote-10)of taxing land and not buildings could persuasively argue that undervaluing land makes it easier for owners to keep the land undeveloped. Traditional vacant land in New York City is scarce which makes building housing for example very expensive. While the City undervalues traditional vacant land, vacant land in the sky in the form of transferred air rights is not taxed for property tax purposes at all.

During his unsuccessful campaign for Mayor, Andrew Yang highlighted the undervaluation of traditional vacant land as a significant problem and potential source of revenue[[11]](#endnote-11). An analysis of sales of vacant land that occurred for the 12-month period between February 2020 and January 2021 illustrates the point that the Yang team highlighted—Finance undervalues vacant land compared to the sales prices that occurred during that period. Nothing in current law prevents Finance from using sales prices to value vacant land, yet Finance’s market values capture just 41 percent of the sales price of residentially zoned vacant land and about 12.5 percent of the sales price of commercially zoned vacant land. If Finance valued the 76 commercially zoned vacant land parcels that sold during that 12-month period using a sales price method based on comparable sales instead of whatever method they have been using, the taxes due from those property owners would have increased from $1.6 million to more than $13 million.

|  |
| --- |
| Analysis of Taxable Vacant Land Parcels that Sold During the 12-Month Period from February 2020 through January 2021 |
| **Vacant Land Type** | Residentially Zoned Class 1 | Commercially Zoned Class 4 |
| # of Properties | 310 | 76 |
| Square Footage | 2,507,454 | 2,351,017 |
| Finance Market Value | $94,467,167  | $46,569,400  |
| Sales Price | $231,130,575  | $371,030,426  |
| Market Value Per Square Foot | $38  | $20  |
| Sales Price Per Square Foot | $92  | $158  |
| Finance Market Value as Percent of Sales Price | 41% | 13% |
| Total Current Taxes | $628,474  | $1,643,698  |
| Taxes if Using Sales Price Estimate | $1,537,673  | $13,095,763  |

For example, if you extrapolated the results from the comparable sale values derived for the 76 properties that sold to estimate the amount of taxes that could be paid if that methodology was used to value all taxable commercially zoned vacant land parcels on the assessment roll, the City could have netted $800 million more revenue--$924 million rather than $122 million.

|  |
| --- |
| Taxes if Sales Price Used to Value Vacant Land  |
| Vacant Land Type | Residentially Zoned Class 1 | Commercially Zoned Class 4 |
| # of Properties | 14,273 | 4,391 |
| Square Footage | 75,013,770 | 76,965,860 |
| Finance Market Value | $3,752,402,450  | $3,286,761,049  |
| Sales Price Based Market Value | $9,180,913,998  | $26,186,473,353  |
| Total Current Taxes | $12,394,846  | $122,553,731  |
| Taxes if at Sales Price | $61,079,100  | $924,268,838  |

**Renovated Properties**

For **renovated properties**, Finance uses an additive hybrid method to estimate market value that over assesses owners who invest in renovating and upgrading their properties. This policy can discourage renovation and improvements or lead to potential safety-related issues because owners may be incentivized to underreport renovations and improvements to the Building Department.

As previously noted, property appraisers use three distinct methods to estimate market value—cost, income, or sales. Depending on which approach was used, appraisers will do the following when valuing renovated properties:

|  |
| --- |
| Property Built 30 Years Ago and Valued for $400,000 is Renovated at a Cost of $200,000 |
| **Original Appraisal Method Used** | **How Renovated Properties Should Be Valued** | **How Finance Values Renovated Properties** | **Impact on Finance’s Market Value** |
| Cost | Increase Cost-Based Value if Renovation Extends Property’s Useful Life | Cost of Renovation is Added to Pre-Existing Cost-Based Value | Increase in Market Value of $200,000 |
| Income | Change Income-Based Value if Renovation Would Lead to Additional Income, Lower Expenses, or Lower Capitalization Rate | Cost of Renovation is Added to Pre-Existing Income-Based Value | Increase in Market Value of $200,000 even if no new income, nor lower expenses. |
| Sales | Change Sales-Based Value if Renovation Would Lead to Increase in Property’s Sales Price | Cost of Renovation is Added to Pre-Existing Sales-Based Value | Increase in Market Value of $200,000 even if renovation would not increase sales price by $200,000. |

Overestimating the market value of renovated properties also inflates the cost of several exemption programs like the Industrial and Commercial Incentive Program and J-51 that seeks to encourage renovations and upgrades in the City’s aging building stock. The program dollars can be used to provide a real reduction in owners’ taxes rather than just defraying the cost of taxes associated with a phantom increase in market value.

**Income Producing Properties**

For **income producing properties like rental apartment buildings, office buildings, factories, warehouses, and stores**, unlike most assessing jurisdictions, New York City has been receiving relevant income and expense information from property owners since 1989. Since these properties are typically valued using an income approach to value, Finance need only develop the capitalization rates (or gross income multiplier)—the estimated rates of return that an investor would hope for or expect on the income that the property generates.

Yet Finance’s values are inconsistent and difficult to explain. Finance should implement an easy-to-understand quality control system that checks for variations in its values. A simple mechanism like comparing the resulting taxes to Finance’s gross income estimates will illustrate inequities and inconsistencies. For example, taxes as a percent of income for apartment buildings should fall within a tight range say 18 to 22 percent of income. Yet some apartment building owners benefit from lower taxes as a percent of gross income (12-15 percent) while other owners pay taxes as a percent of gross income that are much higher (30-35 percent).

Finance can also look at its market value estimates compared to sales prices for arms-length commercial transactions. As is true for condominiums, Finance’s market values capture a higher percentage of sales prices in the boroughs and for lower valued commercial properties.

**—**

**STEP 2: ENSURE ASSESSMENT EQUITY AND FAIRNESS—ADOPT UNIFORM ASSESSMENT RATIOS FOR SMALL HOMES**

The City’s property tax structure is complicated. In addition to valuing every property in the City annually, the Department of Finance must:

* Assign each property to one of four statutorily defined tax classes.
* Calculate exemptions and credits in accordance with different program’s requirements with benefits that can last for as many as 30 years.
* Follow the assessment rules, including calculating the limits on assessment increases for some property types and phase-ins of assessment changes for others.
* Ensure that assessments are uniform within each tax class.
* Issue and collect taxes, and where applicable refund overpayments.

While every aspect of the Department of Finance’s responsibilities is important, ensuring assessment uniformity is paramount. When the legislature overturned the Court of Appeals decision in Hellerstein v. The Town of Islip which held that assessments in New York State had to equal full or 100 percent of market value; the sine qua non for the new system was uniformity. Assessments must be uniform within each tax class.

The legislature wanted to address the concern that the Hellerstein decision would have resulted in significant shifts in tax burden from commercial property owners to small homeowners. So, the State legislature authorized four different tax classes that purportedly mimicked the then existing tax structure. New York City and Nassau County were authorized to assess property at a fraction of market value provided assessments were *uniform* within each of the four tax classes.

Monitoring the uniformity and health of an assessment system is like what my niece, who is a type 1 diabetic, must do to monitor her blood sugar level. For sure, the legislature’s property tax scheme and rules do not make it easy for tax administrators to achieve uniformity; but uniformity is possible and required.

For small homes, assessment increases are capped at no more than 6 percent per year and 20 percent over 5 years. The City must simultaneously comply with the assessment cap rules and ensure uniformity. Assessors, like my niece and other diabetics, have some leeway: uniformity is defined by the State and professional assessing organizations as assessments with a coefficient of dispersion of no more than 10 percent; just as for diabetics one can have blood sugar levels between 100 and 200. For assessments, uniformity is acceptable if the coefficient of dispersion is between 10 and 15 percent. Assessments are not uniform if the dispersion is greater than 15 percent.

Since 1981 when the property tax structure was adopted, to ensure uniformity, New York City has adjusted the assessment ratio (assessed value as a percent of market value) just three times: from 18 to 12 percent in 1989; 12 to 8 percent in 1992; and 8 percent to 6 percent in 2006. Adjusting the assessment ratio reduces dispersion-and by extension increases uniformity. That is why Nassau County by comparison has adjusted its assessment ratio almost every year since 1985.

**—**

**THE UNIFORM ASSESSMENT RATIO REQUIREMENT IS NOT ASPIRATIONAL**

A uniform assessment ratio is not an aspirational target. It is an assurance to taxpayers that their property is assessed at a level that is the same as their neighbors and fellow New Yorkers. The assessments for New York City homeowners are not uniform and have not been for several years. While the resulting inequities are acknowledged, City officials have done nothing over the last 15 years to change the assessment ratio even though that would significantly reduce the disparities between and among homeowners. The question that the Commissioner of Finance must answer is whether the 6 percent assessment ratio, that has been in place since 2006, after implementing the required assessment caps is uniform—whether the coefficient of dispersion from a 6 percent assessment ratio is within the acceptable range of 0 to 15 percent. If not, what assessment ratio would result in a coefficient of dispersion of less than 15 percent?

Homeowners who are over assessed are paying a substantial cost. As the table below shows, assessments are no longer uniform at the 6 percent assessment ratio that was adopted in 2006. The coefficients of dispersion in New York City from the 6 percent stated uniform assessment ratio exceed the 15 percent State and professional standards. Citywide the coefficient of dispersion is over 32 percent and in the boroughs the coefficient of dispersion ranges from a low of 19 percent in Staten Island to a high of almost 54 percent in Brooklyn. Assessments would be uniform if the Department of Finance lowered the assessment ratio to 3.5 percent; the coefficient of dispersion Citywide would be less than 8 percent.

Some homeowners pay almost $900 million more in taxes this fiscal year than they should because of the lack of uniformity and resulting inequities.

**Class 1—Homes with 1-3 Apartments-Current Coefficient of Dispersion and at 3.5% Assessment Ratio—Acceptable Dispersion Citywide and in the Bronx, Queens, and Staten Island**



For assessments to be completely uniform within class one where the coefficient of dispersion of less than 15 percent in every borough, the assessment ratio would need to be lowered to 2.0 percent. The cost to homeowners of not having citywide uniformity is close to $2.4 billion.

**Class 1—Homes with 1-3 Apartments-Current Coefficient of Dispersion and at 2.0% Assessment Ratio—Acceptable Dispersion Citywide and in All Boroughs**



**—**

CLASS 2A, 2B AND 2C – RENTALS, COOPERATIVES, AND CONDOMINIUMS WITH LESS THAN 11 APARTMENTS

The assessment rules and caps for small residential Class 1 properties were established when the original legislation was adopted in 1981. However, as would be expected other property owners sought preferential treatment shortly after the law was adopted. In 1985, the legislature extended the assessment caps to properties with 4-6 residential apartments; and then in 1987, extended the assessment caps to properties with 7-10 residential apartments. Finally, in 1994, the legislature extended the assessment caps to cooperative and condominiums with 2-10 residential apartments.

For the new subclass of properties with 4-10 apartments or 2-10 cooperative or condominium apartments, assessments are capped at an 8 percent increase per year and no more than a 30 percent increase over 5 years. When the legislature made these changes, the properties with less than 10 apartments were not moved to tax class 1 with 1-3 family properties but instead remained in tax Class 2.

While it is easier to create uniformity within tax Class 1—all properties are in the same tax class; it is harder to create that uniformity within tax Class 2 because the class includes both capped and uncapped properties.

According to the Department of Finance, assessments in tax Class 2 are uniform at a 45 percent assessment ratio. As is true for tax class 1, the coefficient of dispersion exceeds 15 percent in every borough and citywide for properties with 4-10 apartments. In fact, to achieve uniformity for these smaller residential properties, the assessment ratio must be lowered from 45 to 10 percent.

The difference between tax class 1 and tax class 2 properties is that small homes with 1-3 apartments are valued using sales prices whereas properties with 4-10 apartments are valued based on the income that the properties generate or in the case of cooperatives and condominiums could generate if they were operated as rental properties. As a result, Finance’s market value estimate is significantly lower than sales prices.

Regardless, the table below shows that Finance would need to lower the assessment ratio from 45 to 10 percent to achieve uniformity for properties with 4-10 apartments and 2-10 cooperatives or condominiums. The inequity costs homeowners more than $700 million each year.



**—**

**STEP 3: THE PROPERTY TAX LEVY—TRUTH IN TAXATION AND THE CONSTITUTIONAL LIMIT ON PROPERTY TAXES FOR OPERATING EXPENSES**

**Truth in Taxation[[12]](#endnote-12)**

The property tax is one of the most reviled taxes in the country[[13]](#endnote-13); it is the tax everyone loves to hate. There are lots of reasons why: income rarely increases at the same rate as property values; assessors charged with estimating the underlying base for the tax—market value—often describe the valuation process as an art, not a science; and property taxes rarely decrease.

To address the fear that rising values will lead to increased taxes, several jurisdictions have adopted what they call “truth in taxation[[14]](#endnote-14)” measures. These efforts seek to sever the relationship between how much revenue will be raised from the property tax and increased property values. Since the government controls both determinations, if property tax revenue increases when market values increase assessors are often accused of “fixing” the numbers just to raise revenue. Such cynicism can undermine the effectiveness of, and confidence in, the property tax. Moreover, blaming assessors for the increasing property tax burden gives local legislators a pass and allows them to be less accountable for taxing decisions.[[15]](#endnote-15)

**—**

**PROPERTY TAX LEVY CAP**

In 2011, New York State adopted a property tax levy cap[[16]](#endnote-16)—the amount of revenue raised from property taxes cannot increase by more than the lesser of 2 percent or inflation each year. New York’s law is different from the most effective truth in taxation laws, but it does take an important first step by separating growth in property values from growth in revenue. Unfortunately, the law does not apply to New York City, but perhaps it should.

Since adopted, the property tax levy for New York State local governments, except New York City, has grown by just 15.5 percent. New York City’s property tax levy has grown by 82 percent from 2011 through 2021; $12 billion more than if the State property tax cap had applied.



Opponents of truth in taxation and property tax levy caps argue that the beauty of the property tax is that it is the only source of revenue controlled by local governments and that such caps negatively affect much needed funding for services including schools. That is true. However, these mechanisms do not limit local government’s authority to raise taxes. In fact, the legislative body can override the New York State property tax cap by a supermajority vote. This requirement that elected officials vote to raise property taxes by overriding the cap forces elected officials to make the decision in a public and accountable way rather than by hiding behind civil servant assessors who should not be raising revenue but should instead have a responsibility and obligation to accurately and transparently value property.

**—**

**CONSTITUTIONAL PROPERTY TAX LIMIT**

New York City and other local governments rely heavily on the property tax because it is the one tax that is for the most part within local government control. The overall property tax structure and rules are set at the State level, but the City administers the tax and can decide how much revenue it wants to raise from the property tax. That is why the property tax has been dubbed the “gap closer”—the City determines how much it wants to spend; estimates the revenue that will come from other sources like the income, sales, business, and transfer-related taxes; and makes up the difference by plugging the gap with the property tax.

While the City does have a lot of leeway to raise the property tax, there is a State Constitutional limit on the amount that can be raised for operating expenses[[17]](#endnote-17). The City can raise as much from the property tax that is needed to pay the debt service on bonds because when issuing bonds, the City pledges the full faith and credit of its property tax revenue as collateral.

In April 1977, the [State Attorney General](https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:e47c8d1b-b735-433b-b58f-46c09c8aba24) was asked to opine about the Constitutional provision that affected New York City’s property tax levy. The question that was posed by Hugh Carey, the then head of the Financial Control Board was whether the City could ***include as part of the debt service portion that is not limited by the Constitution an amount for anticipated uncollectible taxes***. In other words, let us imagine that the City planned to raise $2 billion from the property tax. Of the $2 billion, $500 million was to pay for the debt service on outstanding bonds; $1.5 billion was for operating expenses. The question was whether New York City could exclude an additional $100 million in debt service to cover tax amounts that might not be collected because owners did not or were unable to pay during that fiscal year. That would mean only $1.4, not $1.5, billion would be subject to the Constitutional operating expense limit. The Attorney General opined that:

“A tax levy by the City of New York ***for debt service*** may include an amount for anticipated uncollectible taxes and the entire amount of such levy would be excluded from the City's tax limit.” (*Emphasis added.)*

Starting in 2005, the City unearthed the 1977 Attorney General letter and interpreted it to mean that the total cost of abatement programs did not count towards the Constitutional operating expense limit because those amounts for programs were “anticipated uncollectible taxes” that could be excluded from the City’s tax limit. The City did not seek guidance from the Attorney General or State Comptroller about its interpretation. Instead, every year when the City Council adopts the tax rate there is an easy to miss footnote included in the Tax Fixing Resolution that explains the City’s interpretation.[[18]](#endnote-18)

If the interpretation of the Constitution is as narrowly construed as what was articulated in the Attorney General’s 1977 letter, the City has violated the State Constitution eight times since 2005 raising $5.4 billion more from taxpayers than was allowed by law for operating expenses.



**—**

**STEP 4: PROPERTY TAX REVIEW PROCESS—TAX COMMISSION, LAW DEPARTMENT, COURTS, COMPTROLLER**

Since the government sets the base for the property tax, owners are given an opportunity to challenge the government-derived market value and resulting assessment. New York City owners can challenge their property value: 1) by filing a request for review with the Department of Finance; and/or 2) filing an application with the New York City Tax Commission, an independent body. Typically, an owner files an application with Finance to correct descriptive errors such as square footage, the number of apartments, or the wrong building classification. An owner can file simultaneously with both Finance and the Tax Commission.

The Tax Commission is responsible for reviewing Finance’s assessments to determine if: the property is classified in the correct tax class; the assessment is illegal; the property is over assessed; or the assessment is unequal—at a higher value than other properties in the same tax class. While the Department of Finance has the authority to correct errors going back as far as six years, the Tax Commission can reduce assessments for just two years.

The methodology used by Finance is irrelevant and ignored in Tax Commission proceedings. Instead, the Tax Commission is designated with de novo ab initio review authority—they review each case anew every year. Not only does such a review lead to confusion for taxpayers, it does not result in continuous improvement and consistency in assessments as Finance often ignores the Tax Commission determination the following year and reverts to the original methodology.

In January 2020, Phoenix Marino wrote a piece that was published in the New York Law School Law Review entitled “New York City Property Taxes and Appeals: A Systemic Subversion of Constitutional Rights[[19]](#endnote-19).” She argues that “the property tax appeal process—rather than providing relief to taxpayers whose properties have been misclassified or unequally assessed—is a violation of taxpayers’ substantive and procedural due process rights under New York law and the New York and U.S. Constitutions.”

**The Tax Commission**

Owners who want to challenge their assessment with the Tax Commission must file an application by March 1st, about six weeks after the Department of Finance issues the tentative assessment roll[[20]](#endnote-20). While anyone can file an application, the Tax Commission has implemented rules that deny/discourage small homeowners from filing an application to challenge their assessments as unequal. Small homeowners must prove that the actual market value for their property is lower than Finance’s value and cannot show inequality—that their property is assessed at a higher ratio than similarly situated homeowners.

For example, on the recently released assessment roll Finance valued 170 homes in the Bronx for $650,000. The assessment ratio for those homes ranged from a low of 1.3 to a high of 5.5 percent. The owners will pay taxes of as little as $1,700 to as much as $7,200.

As indicated in an earlier section, the City’s stated 6 percent assessment ratio is not uniform. A ratio of 3.5 percent would be uniform citywide and in three boroughs. However, a homeowner with the median or average assessment who wants to challenge the assessment on their property before the Tax Commission would be required to show that their property is worth not less than $650,000 but less than $450,000 or $476,000. This requirement effectively denies owners the opportunity to challenge their assessment as unequal. The cost to taxpayers is substantial. If assessments were uniform, the taxes for the owners at the median, average, and maximum assessments should be reduced to $4,542. In the case of the homeowner whose house is assessed at a 5.5 percent ratio, the tax savings would be $2,632.



Unlike the New York City Tax Commission, the Nassau County Assessment Review Commission allows homeowners to challenge their assessment and the body independently determines whether the actual level of assessment is different than that stated by the assessing agency. In other words, Nassau County would not accept the Department of Finance’s assessment ratio as correct and uniform at 6 percent without independently reviewing it[[21]](#endnote-21). Thousands of small property owners are denied any meaningful review of their assessments because the Tax Commission refuses to independently review the Department of Finance’s assessment ratio.

It is impossible to understand how the Tax Commission reached its determinations and to ensure that there is consistency between and among the decisions made by hearing officers and that all lawyers and individual owners are treated consistently and fairly.

The Tax Commission provides a summary of its decisions but does not provide any details about the reasons why a reduction was granted. Providing an explanation for the reduction could perhaps lead Finance to continue the reduction in the following year so that owners do not have to file an appeal annually.



Since the Tax Commission has the authority to reduce the assessment for two years, the 2020 report shows that the Tax Commission also reduced assessments for fiscal year 2019.



In keeping with Mayor Adams recently issued [Executive Order #6](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b93f5bfe-acb7-31f5-8f2a-6e3af7e38dfb) about transparency, the Tax Commission should make more information about its proceedings publicly available. This includes summary information about the reductions granted by borough, property type, and hearing officer. The Tax Commission used to share information about the income and expenses filed by applicants because the information is not protected by tax secrecy like the filings with Finance. However, the Tax Commission only released the data once and has not since that time.

For example, when issuing a decision to reduce the assessment for a property that is income producing, the Tax Commission should indicate whether the decision is because: a) the applicant’s actual income is lower than Finance’s estimate; b) the applicant’s actual expenses are higher than Finance’s estimate; and/or c) the Tax Commission used a capitalization rate that is higher than Finance’s.

When a decision involves a cooperative or condominium, the Tax Commission should indicate the same information as for an income producing property but should also indicate the list of rental buildings that were used as comparables.

Finally, to do that, the Tax Commission must make greater use of technology. During the pandemic, the agency accepted emailed filings using a rather complicated “box” process. That was at least movement in the right direction. However, the Tax Commission just announced that it would not allow email filings this year but would instead resume paper submissions only by mail or in person. Paper submissions make it more difficult and costly to provide the public with information about the Tax Commission process. It is imperative that the assessment review process become more transparent and fairer. The courts have had an electronic filing system for several years as has the judges who review hundreds of thousands of parking ticket challenges at Finance. Yet, this year, the Tax Commission filing process depicted below says it all.



**—**

**FILLING AN ACTION IN COURT—ARTICLE 7 OF THE REAL PROPERTY TAX LAW**

If an owner does not receive an acceptable offer from the Tax Commission, the owner can file an action under Article 7 of the New York State Real Property Tax Law. Once an Article 7 petition is filed[[22]](#endnote-22) with the New York State Supreme Court, the New York City Law Department takes over to represent both Finance and the Tax Commission in the case.

When an owner petitions the court, more than two years will have elapsed since the assessment was originally determined. Taxpayers are required to pay their taxes even as they pursue a reduction at the Tax Commission or in the courts. The City has little to no incentive to resolve these cases in a timely manner.

The court process is lengthy and inefficient. In addition, the rules of engagement shift again in favor of the City. First, the Law Department sees its role as protecting the public’s fiscal coffers, not as ensuring that the property tax system is fair and legal even though they are not mutually exclusive. Second, the legal standard of “de novo ab initio[[23]](#endnote-23)” review allows yet another sleight of hand change in how the fairness and legality of the assessment is challenged as the Law Department is not bound by Finance’s or the Tax Commission’s determinations. The Law Department like the Tax Commission estimates a completely new and often unrelated value.

Owners are required to: submit a third set of financials[[24]](#endnote-24), hire an appraiser, continue to pay taxes, and file a fee with the court for every tax year that is being challenged. Given the substantial amount of fees that are paid to the court each year, it would be helpful to have more court personnel assigned to review property tax cases. Instead, there is just one judge assigned to these cases in each borough and the dates available where the court reviews and considers property tax cases are limited. In Brooklyn, for example, property tax cases are heard just three to four times a year.

|  |
| --- |
| **Citywide Summary, Open Article 7 Petition Court Fees[[25]](#endnote-25)** |
| **Year**  | **# of Petitions** | **Fees** |
| 2021 | 34,379  | $7,219,590  |
| 2020 | 28,937  | $6,076,770  |
| 2019 | 24,969  | $5,243,490  |
| 2018 | 22,628  | $4,751,880  |
| 2017 | 20,451  | $4,294,710  |
| Before 2017 | 93,646  | $19,665,660  |
| Article 7 Petition Court Fees for Just 2021 By Borough |
| Borough | # of Petitions | Fees |
| Manhattan | 15,387  | $3,231,270  |
| Bronx | 3,991  | $838,110  |
| Brooklyn | 7,770  | $1,631,700  |
| Queens | 6,567  | $1,379,070  |
| Staten Island | 664  | $139,440  |
| Citywide Total | 34,379  | $7,219,590  |

Finally, even when the court schedules a conference on a case, the Law Department delays any substantive review of the case for months or even years. In a recent preliminary conference on a property tax case that is pending in Manhattan, the judge issued a scheduling order to set forth a time frame for the exchange of appraisals and a potential trial date. Here is what the timeline has looked like so far and the likely time when the case might be able to go to trial.

| **This timeline illustrates the length of time it takes for a property tax action to wend its way through the process. Owner started challenging the assessment and paying taxes on the unequal assessment in March 2019, the earliest date for a trial is January 2023. Meanwhile, the owner has paid all taxes.** |
| --- |
| **Action** | **Date** |
| Owner Challenges FY’2020 Assessment at Tax Commission | March 2019 |
| Owner Files Article 7 Petition for FY’2020 Assessment with the Court | October 2019 |
| Owner Challenges FY’2021 Assessment at Tax Commission | March 2020 |
| Owner Files Article 7 Petition for FY’2021 Assessment with the Court | October 2020 |
| Owner Submits Required Audit Report Form to Challenge FY’2020 and FY’2021 Assessments | October 2020 |
| Request for Judicial Review Filed with Court to Challenge FY’2020 and FY’2021 Assessments | November 2020 |
| Owner Challenges FY’2022 Assessment at Tax Commission | March 2021 |
| Court Conference for FY’2020 and FY’2021 Held with Law Department | April 2021 |
| Owner Appraiser Completes Draft Appraisal | April 2021 |
| Court Check-In Sessions Held | April 2021-December 2021 |
| Court Sets “Aggressive” Scheduling Order:Law Department Information RequestsAppraisal Exchange | December 2021May 2022October 2022 |
| Owner Challenges FY’2023 Assessment at Tax Commission | March 2022 |
| Earliest Date for Trial | First Quarter 2023 |

**—**

**THE ATTORNEYS REPRESENTING OWNERS IN PROPERTY TAX ACTIONS**

While the attorneys who represent owners in property tax actions are universally frustrated by the processes at the three review agencies, they also benefit from the dysfunctional system. Attorneys representing property owners typically earn a fee on a contingency basis that ranges from 10 to 25 percent of the tax savings because of the reduction.

In 2020 for example, property tax attorneys could have earned between $85 and $213 million representing property owners based on analyzing reductions that were granted at the Tax Commission[[26]](#endnote-26).

|  |
| --- |
| **Possible Attorney Fees from Tax Commission Assessment Reduction in 2020** |
| Class | Reduction | Tax Savings | **Fees @10%** | **Fees @25%** |
| 1 | $1,084,516 | $229,560 | $22,956 | $57,390 |
| 2 | $1,799,329,702 | $224,430,394 | $22,443,039 | $56,107,598 |
| 3 | $7,085,000 | $888,176 | $88,818 | $222,044 |
| 4 | $4,255,589,953 | $448,411,513 | $44,841,151 | $112,102,878 |
| All Classes | $6,063,089,171 | $673,959,642 | $67,395,964 | $168,489,911 |
| 2019 Reductions | $1,440,287,769 | $176,910,547 | $17,691,055 | $44,227,637 |
| Total Reductions in 2020 | $7,503,376,940 | $850,870,189 | $85,087,019 | $212,717,547 |

The attorneys who practice in the property tax arena could do much more to recommend substantive changes in the system, to encourage the use of technology and more transparent determinations, and to advocate for changes in the way that the property tax is administered. Among some of the changes that the lawyers might advocate for is to push the City to acknowledge that the assessment ratio is not uniform, that properties are irrationally assessed, and to share more data that transparently indicates which properties are benefitting from reductions.

In the negligence world, attorneys who work on a contingency basis are negatively referred to as “ambulance chasers.” Some might use similar words to describe the tax certiorari industry as lawyers in this area benefit more if the property tax system is not fair or legal. The work of attorneys in this field is too important to New York’s fiscal health for silence.

**—**

**STEP FIVE: OTHER IMPORTANT PLAYERS—NEW YORK STATE COMPTROLLER, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE—OFFICE OF REAL PROPERTY TAX SERVICES, NEW YORK CITY COMPTROLLER, PUBLIC ADVOCATE, AND BOROUGH PRESIDENTS**

Because the property tax affects all New Yorkers, it is important that those with any political authority be invested in understanding the impact of the property tax on the people they serve.

* The New York State Comptroller plays a fundamental role in determining whether the City has overtaxed property owners by ensuring that the City raise no more than the amount that is allowed under the State Constitution.
* The New York State Department of Taxation and Finance through its Office of Real Property Tax Services plays a vital role in ensuring that the property tax practices and procedures are consistent and fair. Publishing numbers and ratios is just the first step. It is incumbent on the agency to explain the ratios and to make the public and elected officials aware of the implications that flow from the numbers they publish.
* The New York City Comptroller has limited official responsibilities for the property tax. However, the Comptroller can do two very important things. First, the Comptroller should monitor the City’s compliance with the Constitutional operating expense limit in the same way that the office monitors compliance with the debt service limit. Second, the Comptroller should ensure that property tax cases are resolved in a timely fashion. A recent report shows that there are almost 315,000 open property tax petitions; 125,000 in Manhattan[[27]](#endnote-27); 44,000 in the Bronx[[28]](#endnote-28); 75,600 in Brooklyn[[29]](#endnote-29); 63,000 in Queens[[30]](#endnote-30); and 8,000 in Staten Island[[31]](#endnote-31). The Comptroller could consider implementing an expedited review process in conjunction with the Law Department to resolves the open cases.
* The Public Advocate plays a vital role as the ombudsperson for the City. Since the property tax is the largest source of revenue for the City, nothing could be more important than the Public Advocates role in using his bully pulpit to push for fairness and transparency. The Public Advocate should work closely with Finance’s Taxpayer Advocate to monitor user-friendly data about the property tax in every neighborhood in New York City and by property type.
* The Borough Presidents, like the Public Advocate, should also serve as the vocal advocate for changes within in the borough. No one knows the neighborhoods within their respective boroughs like the Borough Presidents and they should use their knowledge to ensure that property taxes are fair and transparent. They too should work closely with Finance’s Taxpayer Advocate and should be armed with data to enable them to explain the property tax to their constituents.

**—**

**CONCLUSION**

Everyone in New York City acknowledges that the property tax structure is broken. Everyone believes the system must be reformed. And while the reform effort should be pursued in earnest through the courts and the legislature, the City can implement changes today that will make the property tax fairer and most importantly easier to understand, more consistent and transparent. The power to make those changes rests with all the newly elected officials including the Mayor, the City Council, the Comptroller, the Public Advocate, and the Borough Presidents.

In the early 1990’s, the then Finance Commissioner presented information about the problems with the City’s property tax structure to the late great Deputy Mayor Bill Lynch. His response was that “there were no rumblings,” no political uproar about the system. If the City does everything in its power to administer the current property tax system in a way that is fair, transparent, and consistent, in a way that makes what we have the best that it can be, then the courts and the legislature will have no choice but to implement the systemic reforms that are also so desperately needed.

The new Administration should do its part.

1. Uniformity for purposes of the property tax means the coefficient of dispersion from the City’s stated assessment ratio is less than 10 percent. To achieve uniformity citywide and in every borough, the current 6 percent assessment ratio must be lowered to 3 percent. [↑](#endnote-ref-1)
2. The property tax levy is the total amount billed to property owners-it includes a reserve (an estimated amount of money for people who do not pay their property taxes or who will successfully challenge their property taxes and receive a refund) as well as the amount of revenue the City wants to raise from the property tax. [↑](#endnote-ref-2)
3. Four Year Financial Plan Revenues and Expenditures ($ in millions): <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7ca2d570-fd39-4411-b6bb-e1e2359530bc> [↑](#endnote-ref-3)
4. Property-related includes the property tax, commercial rent tax, real property transfer tax, and mortgage recording tax. [↑](#endnote-ref-4)
5. Both New York City and State have fought the lawsuit arguing that the plaintiffs failed to state a cause of action and that the issues should be fixed by the legislature. The lower court refused to dismiss the suit. However, upon appeal the Appellate Division dismissed the suit ruling that the tax structure is the purview of the legislature. The plaintiffs plan to appeal to the Court of Appeals in the summer of 2021. [↑](#endnote-ref-5)
6. See an explanation of the President Lincoln quote in these articles:

[https://www.heritage.org/report/the-presidents-duty-faithfully-execute-the-law#](https://www.heritage.org/report/the-presidents-duty-faithfully-execute-the-law) <https://www.barrypopik.com/index.php/new_york_city/entry/the_best_way_to_get_a_bad_law_repealed_is_to_enforce_it> [↑](#endnote-ref-6)
7. Grotto, J. (2021, October 14). Five key takeaways from Bloomberg's study of NYC property taxes. BloombergQuint. Retrieved December 29, 2021, from https://www.bloombergquint.com/onweb/how-new-york-property-tax-benefits-the-rich-investigation-takeaways [↑](#endnote-ref-7)
8. See “Buildings in the [City Realty 100 Report](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:f7eb67da-8df1-3e61-b65c-7c3aa82dee8a)” published December 2020. [↑](#endnote-ref-8)
9. According to Finance, the market value for the Griffin condominium was low because the building was not complete and ready for occupancy. The assessment roll released last month (for fiscal year 2023) reflects the completed building. Finance’s market value estimate for the Griffin condominium increased from $12 million to $15.1 million. That value is still just 6.34 percent of the record-setting sales price. [↑](#endnote-ref-9)
10. The Lincoln Land Institute prepared a [primer](https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:adee71b6-1006-344a-b621-891057b7fbfd) on Henry George’s several theories about land. The gist of his claim is that land should be taxed higher than buildings because its supply is inelastic. [↑](#endnote-ref-10)
11. Raising Revenue for New York City: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:82c0c632-d386-4604-975c-2cf66625a75e> [↑](#endnote-ref-11)
12. Truth in Taxation Laws are Gold Standard of Property Tax Reform: <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:ec845440-1a98-400e-ae64-8c937601fc92> [↑](#endnote-ref-12)
13. 7 Things You Should Know About America’s Most-Hated Tax by Dan Caplinger: <https://www.fool.com/retirement/2017/02/28/7-things-you-should-know-about-americas-most-hated.aspx> [↑](#endnote-ref-13)
14. Truth-in-Taxation Laws are Gold Standard of Property Tax Reform: <https://www.dailysignal.com/2021/04/29/truth-in-taxation-laws-are-gold-standard-of-property-tax-reform/>; Statement of Principles on Truth in Property Taxation: <https://www.alec.org/model-policy/statement-of-principles-on-truth-in-property-taxation/> [↑](#endnote-ref-14)
15. As Policy Director for Tax Equity Now New York, I have met with almost two dozen City Council members to educate them about the property tax system. The Council members did not understand that they decide how much money to raise from property taxes and instead claimed increases were because of assessments. [↑](#endnote-ref-15)
16. Property Tax Cap-Legislation, Laws of New York, 2011 Chapter 97 (Part A): <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:a1659388-89ea-4048-b7cb-9be66a5b3c95>;Property Tax Cap, Summary of the Legislation: <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:498e4a28-6244-4173-b872-a50a794d882e> [↑](#endnote-ref-16)
17. Article VIII, §10 of the Constitution limits the amount that can be raised by real estate taxes for operating purposes to a specific percent of a five-year average of market values in the locality. In the rest of the State, localities must limit the amount they raise for operating expenses to two percent (2%) of this five-year market value average. In New York City, the limit is two- and one-half percent (2.5%) of the five-year market value average. This 2.5% limit for New York City only applies to the amount to be raised to pay for operating expenses.

Specifically excluded from the Article VIII, §10 limit are any amounts that local governments need to raise to pay for debt service on capital borrowings. That is because the properties in a jurisdiction and the property tax thereon serve as collateral for borrowing and capital spending. [↑](#endnote-ref-17)
18. “The amount to be raised by tax on real property for purposes of the Operating Limit determination is equal to the real property tax levy as reduced by the net reductions in amounts collected as authorized by New York State law.” New York City Fiscal Year 2022 Tax Fixing Resolution. [↑](#endnote-ref-18)
19. See Pheonix Marino, [New York City Property Taxes and Appeals: A Systemic Subversion of Constitutional Rights](https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:ab88b276-7716-3b60-b1f6-2ec223b52d9f), 64 N.Y.L. Sch. L. Rev. 151 (2019-2020). [↑](#endnote-ref-19)
20. The deadline for small homeowners to file an application is March 15th. [↑](#endnote-ref-20)
21. According to the Assessment Review Commission’s website in response to the question “Is the uniform level subject to appeal?” The answer is: “Yes. The Department of Assessment converts the estimated market value into an assessed value by selecting and applying a uniform level for each tax class. In response to appeals filed by taxpayers, the Assessment Review Commission (ARC) may determine that the actual level of assessment is different than that stated by the Department of Assessment. If ARC determines that the actual level is different than that stated by the Department of Assessment, it will apply this finding to all protested assessments for that year and tax class.” [↑](#endnote-ref-21)
22. Typically, the Law Department will not move forward on a case until an owner has exhausted the Tax Commission’s authority to review assessments for two fiscal years. In other words, if a taxpayer filed an action with the Tax Commission in 2019, the Law Department will not entertain the case until the Tax Commission has had an opportunity to review the case in 2020. [↑](#endnote-ref-22)
23. The standard of review in which the review is anew as if there was not an earlier decision or determination. [↑](#endnote-ref-23)
24. By the time a taxpayer’s property tax case reaches the court, the owner will have filed three income and expense forms. Property owners are required to complete an [income and expense form](https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:6e9573f1-f0bd-3d3b-acf5-81af471a8734) with the Department of Finance every June. The owner must file another [income and expense form with the Tax Commission](https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:9c8134c5-eaad-3379-baf7-c224ab7272ba). Yet another income and expense form-[an audit report form](https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:4e00bde8-ac26-3acb-89a7-5978eff6142a)-is required by the Law Department should a taxpayer decide to pursue a case in court. [↑](#endnote-ref-24)
25. The numbers represent the total number of [open Article 7 petitions](https://data.cityofnewyork.us/City-Government/Open-Article-7-Petitions/aht6-vxai), not all petitions that were filed in the applicable years. The numbers for fiscal year 2021 are likely closer to the number that has been filed every year. Petitions for all years must be discontinued if an owner accepts an offer of reduction from the Tax Commission. [↑](#endnote-ref-25)
26. The actual fees paid could be substantially higher as some attorneys’ bill in a way that is not always transparent for owners. For example, if the property assessment is reduced for a tax class two or four property since assessment changes are phased-in over five years, the owner will only receive savings equal to 20 percent of the offer. However, some attorneys bill the owners upfront for the full assessment reduction. So, an owner who receives a $100,000 reduction in class four should save $10,000. But the savings in the year of the reduction would only equal $2,000. Attorneys who collect fees based on 25 percent of the savings could issue a bill for $500 or $2,500. [↑](#endnote-ref-26)
27. Manhattan report as of January 11, 2022 at <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:d63f3091-d50c-3d6a-b3e2-831799be2f84>. [↑](#endnote-ref-27)
28. Bronx report as of January 11, 2022 at <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:89a687f3-6e24-318a-b1c3-a398049536e6>. [↑](#endnote-ref-28)
29. Brooklyn report as of January 11, 2022 at <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:10064aa4-808d-3495-a4cd-b72a6b80fb41>. [↑](#endnote-ref-29)
30. Queens report as of January 11, 2022 at <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:27747826-37a5-35bc-a2f6-907e107a4f5f>. [↑](#endnote-ref-30)
31. Staten Island report as of January 11, 2022 at <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:13a054bc-9f07-3655-a4a3-e410c5eab659>. [↑](#endnote-ref-31)