

Tax Certiorari

Int. No. 1472-B: A cyber-watchdog for commercial and mixed-use landlords



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After over twenty years in New York City real estate, I would have never dreamed the city's own legislators would endeavor to amputate the multi-billion dollar hand that feeds it. As if the recent rent law transformations in Albany weren't damaging enough to owners of multifamily, now the New York City Council has birthed their own cyber-watchdog for "greedy" commercial and mixed-use landlords.

Meet "Int. No. 1472-B" that was enacted in late August "in relation to requiring owners to submit registration statements regarding ground floor and second floor commercial premises." To be blunt, it is intended to be New York City's electronic commercial vacancy Gestapo! I know, perhaps this sounds like complaining about a simple filing, but you have not seen the details the city council expects. Some of the details required during your commercial registration include start, expiration and renewal dates for any leases on the ground or second floor; a schedule of rent

escalations; if any concessions were granted and a list of such concessions; the average monthly rent per square foot; the date any commercial space became vacant and the duration of the vacancy; and the monthly rent per square foot of the most recent tenant should a space become vacant.

Now, if you think that's onerous, how about having to report whether any construction took place for the three preceding years and if so, the start and completion dates of each project. Those familiar with the Real Property Income & Expense (RPIE) might think, at first glance, that the new requirements are more of the same. In fact, the most recent RPIE's required some vacancy reporting (typically only a vacancy lasting an entire year was reported) and in older permutations, larger buildings even had to provide full rent rolls, albeit in the landlord's format. However, the new expectations are far from the usual considering the city now expects you to submit a "supplemental registration statement" to report any vacancy that arises from January 1st through June 30th of any year.

Probably most disturbing of the new requirements is that commercial property owners will now have to pay the city to file their own prior year income and expenses and vacancy data!

There was never a charge for the RPIE, in the past, because the city council would always seek to avoid onerous

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requirements and charges on owners of small properties in particular. Well, the current city council apparently has no such concerns because they just fired an arsenal at the smallest of them all: tax class one.

Class one properties (up to three total units, one commercial maximum, with at least 50% of square footage devoted to residential) have always been exempt from the RPIE, regardless of whether they have commercial space, but now will have to file an RPIE just to satisfy the new commercial registration requirement. This means tens of thousands of property owners - that never filed an RPIE before - will first have to figure out they have

this legal requirement. Many will need to hire someone to navigate the detailed filing to avoid potential

pecuniary ramifications for not filing fully or correctly.

Those pecuniary ramifications can be staggering because the city Council connected them to the City's RPIE non-compliance laws. In other words, penalties for commercial registration non-compliance will be equivalent to those levied for RPIE non-compliance. Recently, the city has stepped up their pursuit of RPIE non-compliance "repeat offenders." Properties that fail to comply three straight times can be assessed an extra fine equal to 5% of your assessed value! For example, Property X owned by ABC LLC intentionally or unintentionally fails to file 3 straight RPIE's and is assessed at \$1 million.

The city will fine ABC LLC \$50,000 for this repeated failure. Now, if property X files the RPIE in full, but omits the commercial registration it will be treated as if you never filed at all and incur the \$50,000 fine.

Starting to feel a bit uneasy, well it gets even worse as it appears the city council managed to pass this onerous legislation with very little, if any, public comment. A city council operating under cloak and dagger to monitor all commercial landlords should be disconcerting to say the least. Has New York City declared war on an industry it is more dependent on than ever? Rather than come up with systems to maintain real estate data, it's easier for city officials to pass the work, cost and risk to property owners already questioning why they continue to do business in New York City. It would seem the sinister intent here is a new massive revenue generator and potential catalog system to fine landlords (that fail to lease vacant spaces fast enough in the future).

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