

Tax Certiorari

TC309 Accountant's Certification: Knowledge is power, stay in contact with your certiorari counsel



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Not many – if any – things in life remain exactly the same for long. Consider that statement in the context of real estate. What happens to a piece of real estate over several decades? Of course, without proper maintenance, the property would severely change in appearance and functionality. Certainly property values change from year to year, but over several decades, it's possible the values increase many fold. How about a legal requirement that remains exactly the same for almost five decades? What if that legal requirement was permanently fastened to the value of real estate in 1973; and effectively precluded you from challenging the city assessor's annual real estate tax guesstimate? What you have is a not so warm welcome to New York City tax certiorari.

Since 1973, New York City Administrative Code Section 11-216 (b) requires the owner of income producing property – assessed at one million dollars or more – to obtain a certified statement of income and expenses from a certified public accountant or

“no reduction shall be granted.” In practice, without the certified statement (officially known as a TC309 Accountant's Certification), the New York City Tax Commission will not even grant substantive review of your annual real estate tax assessment protest. The Tax Commission requires, in conjunction with Section 11-216 (b), that an audit be performed according to the standards generally accepted in the U.S. Furthermore, the preparing CPA must acknowledge that “those standards require that I plan and perform the audit to obtain reasonable assurance about whether the schedule is free from material misstatement.” It is critical to note that certification by regular accountants, or in-house bookkeepers, is legally insufficient. Due to the burden of an audit, many property owners incur large and otherwise unnecessary annual expenses.

The one million dollar valuation threshold has been in place – as of the time of this writing – for those same 45 years without any adjustment for inflation, or any other “measuring stick.” Visualize the typical property worth one million dollars in 1973 versus properties worth one million or more today. Any inflation calculator indicates \$1 million in 1973 is equivalent to between \$5.5 million and \$6 million today. Similar in one main

way to the federal government's Alternative Minimum Tax (AMT), the Accountant Certification requirement

\$1 million but at the time of printing, legislation is pending to raise the threshold to \$5 million. Check the

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ensnares many more victims than originally intended. And, unlike the AMT, keeping this threshold stagnant does not mean more tax revenue for the government. What it has meant, to thousands of property owners every year since 1973, is a large audit expense without any guarantee of corresponding benefit.

Thanks to the efforts of many, the New York City Council is expected to vote on a pending bill (Int. 1038-2018) that would finally modernize the threshold from one million to five million, immediately. In fact, the New York City Tax Commission's Supplemental Application form (officially known as TC150 2019/20) currently states: “Note: The current threshold is

tax commission website for current information.” While the note is well intentioned and obviously necessary under the circumstances, the average taxpayer is unlikely to appreciate the full impact of the situation.

As is frequently the case in life, timing is everything. The New York City Department of Finance will release the 2019/20 assessment roll on or about January 15th. The release of the annual roll opens the Tax Commission protest period. As of the time of writing, no vote by the council is anticipated prior to January 24th, 2019. In other words, prospective protest applicants (assessed from \$1 million to \$4,999,999) will not know at the outset whether they must retain a CPA

to perform the required audit. The application filing deadline for class two and four properties is March 1st, 2019. In light of this tight timing, attorneys will have to forward the Accountant Certification to effected clients on the original one million dollar basis, or risk prejudicing their client's rights should the legislation fail (no TC309 = no substantive review).

Interestingly, due to the pending legislation, well-informed property owners may be tempted to risk filing without the long required TC309 for properties assessed between \$1 million and \$4,999,999 (remember, assuming the bill become law, any property valued at \$5 million or more must still provide the TC309). Needless to say, due to the difficult timing of the proposed legislation, many taxpayers will be compelled to retain a certified public accountant based on the \$1 million threshold. To steal yet another cliché, knowledge is power, so please stay in close contact with your certiorari counsel.

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