

## Proposed pied-à-terre tax faces legal and valuation hurdles - by Peter Blond



**Peter Blond**

While everyone knew it was only a matter of time before mayor Mamdani endeavored to prove his pre-election vitriol for “the rich,” few speculated ignorance and inexperience would necessitate this much gaslighting. As an attorney handling tax certiorari and related valuation matters in New York for nearly thirty years, this pied-à-terre tax simply isn’t legal (JMHO), under the current New York City assessment and valuation system. We must remember, however, the legal system in New York has been infiltrated by people favoring personal ideology over the laws of New York, or the state or federal constitutions, much less taxpayer rights.

With that said, this country was arguably formed on “no taxation without representation.” You truly must marvel at our current governor for unifying the gaslighting, despite knowing full well this path is both likely illegal, ineffective, counterproductive financially overall and contrary to her election campaign ‘promises.’ New York City was arguably the

front runner, hundreds of years ago, in the “no taxation without representation” battle during the Stamp Act Congress. Many of the delegates from that event, from multiple states, went on to sign the Declaration of Independence as well as the Constitution.

Yet here we are with a mayor ready to tax anyone on a purely fabricated valuation for his political purposes and pet projects. Other than 1, 2 and 3 family houses (tax class 1), New York City has not promulgated tax class 2 (cooperatives and condominiums) assessed values based on arms-length market values in nearly half a century! Even for the tax class 1 properties, only their actual assessments can be contested at present. There is no mechanism at the New York City Tax Commission to receive substantive review solely regarding the Department of Finance’s imputed market value.

Let’s forget the mechanism itself for a moment. The New York City Tax Commission presently receives roughly 60,000 annual assessment protests and their resources are already stretched thin according to the last several tax commission presidents. Hopefully, mayor Mamdani and governor Hochul aren’t suggesting there is no protest process being planned wherein a taxpayer can contest the “made up” market value New York City will have to employ if they plan to institute the pied-à-terre tax anytime soon. New York

City only assesses each January and state law presently dictates that cooperatives and residential condominiums be valued as if they are a rental property. Until New York City undertakes a revaluation of all property (you can’t only revalue residential alone, especially with the admitted gross inequities in the New York City system) there are no existing valuations that were created for the intended purpose.

For New York City to employ the tax immediately, they would have little choice but to apply a rumored class 1 ratio (6% at present) to existing tax class 2 actual assessments (45% at present) to bastardize the existing assessment and valuation system to their ends. There are multiple problems with such an approach; least of which is those assessments were not created on the same basis as the tax class 1 figures. City assessors used actual market sales to establish estimated market values for nearly 700,000 tax class 1 properties city-wide. As discussed above, city assessors did no such thing for over 300,000 tax class 2 parcels city-wide (including rental buildings). The New York City Department of Finance merely analyzed the income and expenses of the rentals – and imputed similar figures for the co-op’s and condos – and then utilized a pre-tax net and a created for tax purposes capitalization rate.

Never in my entire career has the New York City Tax Commis-

sion permitted such a comparative approach to value as between different classes of property. It is as flawed legally as it is from an appraisal technique perspective (that has never discouraged NYC DOF previously). Without an established governmental body to determine and review market values of cooperatives and condominiums, the city is incapable of providing Constitutionally mandated due process of law. It would be taxation without representation!

In case the above wasn’t sufficient to quash the “tax the rich” pied-à-terre hyperbole, who pray tell is going to explain to cooperative unit owners how they can protest their individual market values?! There is no process in existence for a New York City cooperative owner to contest individual valuation imputed to their unit. It seems the only attorneys that will be as busy as my office in the next few years are the co-op/condo attorneys that will be editing by-laws and holding emergency shareholder/unit owner meetings. While cooperative unit owners are stuck relying on their boards to contest annual assessed values, condominium and townhouse owners at least can potentially protect their own interests, if the mayor believes in due process, even for the “rich.” As Saul Goodman might say, time to lawyer up!

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