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Non-primary residence surcharge rollout raises questions of fairness, due process and administration - by Peter Blond

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Unfortunately, all my worst fears regarding mayor Mamdani's "tax the rich" non-primary residence surcharge (NPRS) aka pied-à-terre tax have come to fruition. You only need to listen to the July 9th New York City Department of Finance public hearing on the NPRS to recognize nobody in city or state government gave two hoots about the program's rollout. Nearly every speaker warned the city that 30 days was grossly insufficient time from both a notice and practical perspective. Not even a month later, and NYC had to already extend the initial response deadline for "presumed innocent" real estate owners to prove their innocence.

For many, this may prove only an inconvenience. For many others, either away from home for the summer, or just too old to navigate the city's website and documentation requirements alone, they must now retain representation just to demonstrate innocence that could have been ascertained in advance by the very agencies tasked with managing a system where a mistake can cost an innocent taxpayer A SIX-FIGURE SURCHARGE! Ask yourself why NYC didn't compare each property on their list of approximately 17,000 "suspects" to NYS and/or NYC income tax returns to eliminate the innocent without their having to defend themselves or pay thousands to a hired gun just to do what NYC was too lazy or too greedy to do. While the NYC Department of Finance hasn't impressed anyone with their work ethic lately, this is pure greed. By legislating that the surcharge remain for the innocent purchaser, the city guarantees they collect even if the pied-à-terre owner makes a run for it by selling.

The inequities and despicable nature of the NPRS don't stop at the intentional and de minimis time to respond. Here are some real examples of the gross unfairness this unconstitutional tax has created: an apartment was purchased in February, before the law was created (much less publicized). Prior owner did in fact use the apartment as a pied-à-terre. The law was created to run with the real estate, not with the owner at the time. The new owner is facing a $76,000 NPRS despite using the apartment as her primary residence since purchase. Does a law that punishes someone for a crime they didn't commit make sense to you? Amazingly, this concept was raised at the public hearing on July 9th. The NYC DOF's written response was breathtakingly stupid, brace yourself: "Parties transacting for an interest in a real property may structure their transactional documents to allocate the risk associated with the potential retroactive imposition of the surcharge due to a determination that a property did not serve as a primary residence."

Translation, NYC DOF expected good faith innocent purchasers to be aware of a law that didn't exist and have their transactional attorneys include clauses to protect them from a law that did not exist. Incredible! By ignoring the comments from many attorneys, DOF has made clear that this is every bit of the money grab I have stated it to be. This approach will undoubtedly lead to many lawsuits city-wide, as many apartments and townhouses traded hands from January until the law's creation at the end of May.

Another gross inequity resulting from this race to grab money is mixed-use townhouses. While mixed-use cooperatives and condominiums have their non-residential values separated based on a fixed proportionate share, tax class one properties have no such predetermined template to utilize. One call I received is for a Brooklyn three-story class one property with a retail space on the ground floor with a duplex apartment above. Total value ascribed by NYC DOF for 2026/27 is roughly $5.8 million. Residential townhouses must be worth at least $5 million to be eligible for the NPRS. Is someone from NYC DOF going to tell me with a straight face that the duplex is worth $5 million plus in this example while the store is only worth less than $800,000? If this property was a co-op or condominium, the NPRS most likely would not apply. Of course, it begs the question why investment properties like the one described are subject to the NPRS at all.

The city has moved the initial exemption response deadline to September 18th. Anyone deemed liable for the NPRS has until this date to demonstrate their "innocence" or the anticipated surcharge will be included on the November Quarterly Statement of Account from DOF due in January. For people who miss the September 18th deadline, or receive denial of exemption from DOF, you have until March 1st (co-op's and condos) or March 15th, 2027, (class one) to file an application with the New York City Tax Commission to prove residency and/or contest the city's imputed valuation.

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