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January 2020

## **New York City Property Taxes and Appeals: A Systemic Subversion of Constitutional Rights**

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### **Recommended Citation**

Phoenix Marino, *New York City Property Taxes and Appeals: A Systemic Subversion of Constitutional Rights*, 64 N.Y.L. SCH. L. REV. 151 (2019-2020).

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PHOENIX MARINO

## New York City Property Taxes and Appeals: A Systemic Subversion of Constitutional Rights

64 N.Y.L. SCH. L. REV. 151 (2019–2020)

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## NEW YORK CITY PROPERTY TAXES AND APPEALS

### I. INTRODUCTION

Over \$28 billion in taxes were collected from New York City property owners in 2019,<sup>1</sup> and for many property owners, real estate taxes are and will continue to be one of the largest line item expenses on their annual income and expense statements.<sup>2</sup> With a population of over eight million,<sup>3</sup> New York City is classified as a special assessing unit<sup>4</sup> under the New York Real Property Tax Law (NYRPTL), and serves as a model taxing and assessing authority for other major cities and large municipalities across the nation.<sup>5</sup> Over time, the current system of real property assessment and taxation in New York City has caused significant disparities between the actual market values of a property and the values upon which property taxes are calculated. Furthermore, the system unequally allocates the tax burden among taxpayers.<sup>6</sup> This has resulted in prejudicial assessments and discrimination against some taxpayers and classes of property at the expense of others.<sup>7</sup> Further, the process for appealing and challenging assessments in New York City is regressive, overly burdensome for the average taxpayer, and violates the constitutional rights of property owners.<sup>8</sup>

This Note contends that due to the dysfunction and unfair administration of New York City's property assessment system, 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.

Part II of this Note provides a brief history of the legislation that underpins the current property tax system in New York City and discusses the role of the New York City Tax Commission<sup>9</sup> in the tax appeal system.<sup>10</sup> Part III outlines the ways in which

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1. *Annual Report of the New York City Property Tax: Fiscal Year 2019*, N.Y.C. DEP'T OF FIN. DIV. OF TAX POL'Y 28 (Aug. 2019), [https://www1.nyc.gov/assets/finance/downloads/pdf/reports/reports-property-tax/nyc\\_property\\_fy19.pdf](https://www1.nyc.gov/assets/finance/downloads/pdf/reports/reports-property-tax/nyc_property_fy19.pdf).
  2. See Yoav Gonen, *New York City Property Taxes are Rising at an Alarming Rate*, N.Y. POST (Sept. 5, 2018), <https://nypost.com/2018/09/05/new-york-city-property-taxes-are-rising-at-an-alarming-rate/>.
  3. *Quickfacts—New York City, New York*, U.S. CENSUS BUREAU (July 1, 2019), <https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045217>.
  4. New York City is designated as a special assessing unit for the very purpose of making it distinct from other areas of New York that do not share similar characteristics. See N.Y. REAL PROP. TAX LAW §§ 102, 1801 (McKinney 2020) (indicating that a city, town, or county in New York state with a population greater than one million is considered a special assessing unit).
  5. Compare N.Y. REAL PROP. TAX LAW § 1802(1) (2020) (proscribing four classes of property for special assessing units), with MASS. ANN. LAWS ch. 59, § 38 (West 2020) (proscribing four similar classes of property for local assessment districts).
  6. See *infra* Part III (A).
  7. See *infra* Part III (A).
  8. See *infra* Part III (B).
  9. See N.Y.C. CHARTER § 153 (McKinney 2020).
  10. *About the Tax Commission*, N.Y.C. TAX COMMISSION, <https://www1.nyc.gov/site/taxcommission/about/about-the-nyc-tax-commission.page> (last visited Mar. 15, 2020) (stating that the New York City Tax

the current property assessment and tax appeal process violate taxpayers' rights to fair assessment and impartial review. Part IV discusses mechanisms available to elected officials and government agencies for reforming the property assessment and tax appeal system—which, due to a lack of political will, has been put off far too long. Part V concludes this Note by discussing the need for general property tax reform, which could serve as a model to other cities and municipalities for fairer and more transparent administration of property tax laws.

## II. HISTORY AND BACKGROUND OF NEW YORK CITY PROPERTY TAX APPEALS

### A. Establishing and Calculating New York City Property Taxes

In New York City, property taxes are legislatively levied pursuant to the New York State Constitution,<sup>11</sup> NYRPTL,<sup>12</sup> and Chapter 2, Title 11 of the New York City Administrative Code.<sup>13</sup> Reform to the New York property tax system was prompted in 1975 by the New York Court of Appeals decision in *Hellerstein v. Assessor of Town of Islip*, in which NYRPTL Section 306 was interpreted to clearly and unambiguously require that all properties be assessed at 100 percent of market value.<sup>14</sup> In 1981, in response to *Hellerstein*, the New York State Legislature repealed Section 306 in favor of Section 305.<sup>15</sup> Section 305 mandates that property in New York be assessed at a “fractional” or uniform percentage of market value, unless mandated otherwise by Administrative Code.<sup>16</sup>

Under the current system of property taxation,<sup>17</sup> the Commissioner of the New York City Department of Finance is given authority to set assessment ratios, review property information, and determine assessments based on a percentage of market value for all properties throughout the five boroughs of New York City on an annual basis.<sup>18</sup> Because New York City is classified as a special assessing unit,<sup>19</sup> properties are categorized into four separate tax classes, each with its own applicable tax rate—

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Commission “reviews and determines annual applications for correction of assessment that the applicants claim are incorrectly assessed or improperly denied an exemption from real property tax”).

11. See N.Y. CONST. art. XVI, § 2.

12. See generally N.Y. REAL PROP. TAX LAW § 100 (McKinney 2020).

13. See generally N.Y.C. ADMIN. CODE §§ 11-201 to 240 (McKinney 2020).

14. 332 N.E.2d 279, 280, 286–87 (1975).

15. *Foss v. Rochester*, 480 N.E.2d 717, 719 (1985).

16. *Id.* See also N.Y. REAL PROP. TAX LAW § 305 (2020).

17. The New York City Department of Finance provides an explanation with visual aids on how property taxes are calculated. *Calculating Your Property Taxes*, N.Y.C. DEP'T OF FIN., <https://www1.nyc.gov/site/finance/taxes/calculating-your-property-taxes.page> (last visited Mar. 15, 2020).

18. N.Y. REAL PROP. TAX LAW § 202 (2020).

19. See *id.* §§ 102, 1801.

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some of which have sub-classes and caps on annual assessment increases.<sup>20</sup> The City Council is required to set and adjust the assessment ratio each year to establish a “just and equal relation between the valuations of property in each borough and throughout the city.”<sup>21</sup> The City Council is also charged with establishing tax rates each June relative to the respective tax classes.<sup>22</sup> However, the City Council is not required, by law, to timely meet this charge before tax bills are issued in July, which often results in confusing adjustments to these tax bills at a later date.<sup>23</sup>

Properties in New York City are subject to re-assessment each fiscal year, which runs from July 1 to June 30,<sup>24</sup> based upon the property’s status and condition as of the taxable status date of January 5 of the preceding fiscal year.<sup>25</sup> To maintain assessments consistent with a changing market, the Department of Finance re-assesses properties each year and publishes new assessments on January 15—prior to the relevant fiscal period on which real estate taxes are based for all properties.<sup>26</sup> Once published, taxpayers may begin the tax appeal process to contest the revised assessments.<sup>27</sup> The assessment roll remains tentative during the appeal process and becomes final approximately thirty days prior to the issuance of real estate tax billing.<sup>28</sup>

To further complicate the process, a five-year phase-in system of the actual assessment is utilized for Tax Class 2 and 4 properties, creating a transitional assessment that is phased in by 20 percent increments each year until it reaches the target or actual assessment.<sup>29</sup> This creates five separate phase-in clocks in any one fiscal period, which determine the real estate tax bill for a property in Tax Classes 2 and 4.<sup>30</sup> Real estate taxes are calculated based upon the lower of the “actual” or

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20. *Id.* §§ 1802, 1805. Tax Class 1 properties (generally those residential properties with three or fewer units) are limited to increases in assessment of no more than 6 percent per year, or 20 percent over five years, while Tax Class 2a, 2b, and 2c properties (generally those residential properties with more than three but fewer than eleven units) are limited to increases in assessment of no more than 8 percent per year, or 30 percent over five years. *See id.* There are, however, exceptions to these increase limitations where physical improvements are made to the property. *See id.* § 1805(5)–(6).

21. N.Y.C. ADMIN. CODE § 11-212 (McKinney 2020); *see also* N.Y. REAL PROP. TAX LAW § 738(b).

22. N.Y.C. CHARTER § 1516(a) (McKinney 2020).

23. *Id.* §§ 1516, 1516-a.

24. *Due Dates*, N.Y.C. DEP’T OF FIN., <https://www1.nyc.gov/site/finance/taxes/property-due-dates.page> (last visited Mar. 15, 2020).

25. *See* N.Y.C. CHARTER §§ 1507, 1508.

26. *See id.* § 1510.

27. *See id.*; 21 R.C.N.Y. § 3-02(c) (McKinney 2020).

28. *See* N.Y. REAL PROP. TAX LAW § 523-B(8) (McKinney 2020).

29. *See id.* § 1805(3).

30. *See id.* As with Tax Classes 1, 2a, 2b, and 2c, there is an exception to the phase-in rule where physical improvements are made to the property, such that value obtained from improvements is not phased-in, but applied in full to the market value and multiplied by the assessment ratio of 45 percent. *Id.* § 1805(5).

“transitional” assessment, multiplied by the applicable tax rate for the particular class of property.<sup>31</sup>

Additionally, property owners in New York City may be eligible for a variety of exemptions or abatements, which further impact the final calculation of real estate taxes.<sup>32</sup> Exemptions, which are deducted from the property’s assessment before the tax is calculated, and abatements, which offset the amount of taxes owed after taxes are calculated, are granted by the Department of Finance and other City agencies, including the Department of Housing Preservation and Development. These exemptions and abatements are based on a combination of factors: the usage of the property, the status of the property, improvements made to the property, and the tax status of the property owner.<sup>33</sup> Exemptions and abatements, some of which are as of right,<sup>34</sup> usually require separate applications with the appropriate agency, and can further affect the final calculation of property taxes.<sup>35</sup> However, not all property owners are entitled to exemptions or abatements as of right because the requirements for these programs are often based upon the status of the property at the time of the application.<sup>36</sup>

#### B. *The City’s Current Tax Appeal System*

The New York City Tax Commission is the City agency designated with *de novo ab initio* review authority of property assessments.<sup>37</sup> This review authority gives the New York City Tax Commission’s president, commissioners, administrative law judges, and hearing officers the same authority and jurisdiction as Department of Finance assessors relative to the matters before them pursuant to the New York City Charter, the New York City Administrative Code, and the Rules of the City of New York.<sup>38</sup> The Tax Commission has jurisdiction to adjust and correct assessments on

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31. *Id.* § 1805(3).

32. *See Benefits for Property Owners*, N.Y.C. DEP’T OF FIN., <https://www1.nyc.gov/site/finance/benefits/landlords.page> (last visited Mar. 15, 2020) (listing the potential exemptions and abatements available to property owners depending upon who owns the property, what it is used for, and whether any construction has occurred).

33. *NYC Residential Property Taxes: Class Two - Coops, Condos, Rentals, 4+ Units*, N.Y.C. DEP’T OF FIN. 10–13 (Sept. 19, 2017), [https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/class\\_2\\_guide.pdf](https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/class_2_guide.pdf) [hereinafter *Class Two*].

34. *See Benefits for Property Owners*, *supra* note 32.

35. *See Class Two*, *supra* note 33.

36. For example, the Cooperative and Condominium Tax Abatement program reduces taxes only for Tax Class 2 condominium or cooperative unit owners who use the unit as their primary residence, do not own the unit in an LLC, and are not receiving certain other exemptions or abatements on the unit. *See Cooperative and Condominium Tax Abatement*, N.Y.C. DEP’T. OF FIN., <https://www1.nyc.gov/site/finance/benefits/landlords-coop-condo.page> (last visited Mar. 15, 2020).

37. *See* N.Y.C. CHARTER § 153 (McKinney 2020); *About the Tax Commission*, *supra* note 10.

38. *See* N.Y.C. CHARTER §§ 150, 153, 154, 168, 170, 171; N.Y.C. ADMIN. CODE §§ 11-215, 11-225 (McKinney 2020); 21 R.C.N.Y. §§ 1-01 to 5-07 (McKinney 2020).

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the basis of inequality, excessiveness, illegality, or misclassification for the current and prior fiscal year.<sup>39</sup>

Depending on the tax class involved, property owners must file an Application for Correction with the Tax Commission on or before March 1 or March 15, to contest the assessment set by the Department of Finance.<sup>40</sup> Because the annual assessment roll is not published by the Department of Finance until January 15, taxpayers have only a limited six to eight week window to prepare a possible appeal.<sup>41</sup> For income producing properties, the application requires the filing of an income and expense statement, which for properties currently assessed at \$5 million or more must be certified by a Certified Public Accountant.<sup>42</sup>

As a pre-requisite to tax review before the Tax Commission, owners of property in New York City are also required to complete an online filing by June 1 each year with the Department of Finance reporting income and expenses (Real Property Income and Expense or RPIE).<sup>43</sup> However, if the property falls within a category of exclusion, a claim of exclusion must be filed to avoid the imposition of penalties and loss of the right to tax review.<sup>44</sup> Any taxpayer who has not timely complied with the online RPIE filing in the preceding tax year will be denied a Tax Commission hearing in the current tax year, may be subject to financial penalties, and will only be able to preserve rights to a Tax Commission hearing in the following tax year if they comply with the online RPIE filing by June 1.<sup>45</sup>

Between March and October each year, the Tax Commission conducts hearings for those property owners who have met all filing and compliance requirements.<sup>46</sup> However, not all taxpayers receive in-person hearings.<sup>47</sup> The factors that go into determining which taxpayers receive in-person hearings—as opposed to review on paper submissions—change from year to year.<sup>48</sup> Starting with the presumption that the assessment dictated by the Department of Finance is correct, officials at the Tax

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39. See N.Y.C. CHARTER §§ 150, 153, 154, 168, 170, 171; N.Y.C. ADMIN. CODE §§ 11-215, 11-225; 21 R.C.N.Y. §§ 1-01 to 5-07.

40. 21 R.C.N.Y. § 3-02.

41. *Id.*

42. N.Y.C. ADMIN. CODE § 11-216(b)(1).

43. *Id.* § 11-208.1; *Real Property Income and Expense (RPIE) Statements*, N.Y.C. DEP'T OF FIN., <https://www1.nyc.gov/site/finance/taxes/property-rpie.page> (last visited Mar. 15, 2020).

44. See N.Y.C. ADMIN. CODE § 11-208.1.

45. See *id.*

46. 21 R.C.N.Y. § 4-09(a), (b) (McKinney 2020). The agency has up to a year to review unless the case is deferred. *Id.*

47. *Id.* § 4-09(d). This rule states “review of an application may be (1) by hearing, in person or by telephone or (2) on papers submitted.” *Id.*

48. See 21 R.C.N.Y. § 4-09(d).

Commission will only review assessments under three valuation approaches recognized by the courts: sales, income, or cost.<sup>49</sup>

Under the sales approach, recent sales of comparable properties of similar age, size, and location are used to assess the value of the subject property.<sup>50</sup> Tax Class 1 properties represent the only tax class almost exclusively required to be reviewed under this approach.<sup>51</sup> Under the income approach, the primary methodology used for Tax Class 2 and 4 properties, the value of the subject property is determined based on actual or imputed income less reasonable allocable expenses, deriving net income, which is then divided by a capitalization ratio.<sup>52</sup> Finally, under the cost approach, which is typically utilized when the subject property is a unique “specialty” property or is newly constructed, rehabilitated, or renovated, property value is determined by the cost of reproduction of the existing structure less depreciation over time.<sup>53</sup>

Pursuant to the Tax Commission’s directions, hearing officers closely scrutinize certain line items (referred to as “sins” by the Tax Commission)<sup>54</sup> on the required income and expense statements and will confirm an assessment when certain parameters on these line items are not corroborated.<sup>55</sup> For example, the Tax Commission automatically requires additional corroboration by the taxpayer at the hearing when a taxpayer has reported on their Application for Correction that the property: ended the fiscal year with an operating loss; experienced more than a 10 percent decrease in gross income; had a continuing vacancy of 15 percent or more; had a decrease in operating expenses of 15 percent or more; experienced more than a 15 percent increase in vacancy; or had repairs and maintenance expenses higher than 15 percent of gross rent.<sup>56</sup> In other words, hearing officers have broad discretion to dismiss cases and confirm assessments. Interestingly, Tax Commission decisions are not independently audited in the more than 80 percent of cases that receive no consideration for a hearing or are dismissed.<sup>57</sup>

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49. 21 R.C.N.Y. §§ 4-10(a), (f), 4-11(b)(1).

50. *Id.* § 4-11(b)(1)–(3).

51. *Id.*

52. *Id.* § 4-11(c).

53. *Id.* § 4-11(d). The Tax Commission is required to issue determinations within thirty days of the scheduled hearing. The agency retains jurisdiction to review assessments of the current and prior fiscal years if an Application for Correction was filed, preserving the taxpayer’s rights to review in the previous fiscal period, with the filing of an Article 7 Petition in New York State Supreme Court. N.Y.C. ADMIN. CODE §§ 11-225, 11-230 (McKinney 2020); 21 R.C.N.Y. § 4-12(c).

54. N.Y.C. Tax Comm’n and N.Y. Law Sch., New York City Property Tax CLE 2019, at 12–13 (Jan. 23, 2019) (unpublished manuscript) (on file with New York Law School).

55. *Form TC 201 Instructions for 2020/21*, N.Y.C. TAX COMMISSION 2, <https://www1.nyc.gov/assets/taxcommission/downloads/pdf/tc201.pdf> (last visited Mar. 15, 2020).

56. *Id.*

57. See Ellen Hoffman, *Tax Commission of the City of New York: 2018 Annual Report*, N.Y.C. TAX COMMISSION A4, [https://www1.nyc.gov/assets/taxcommission/downloads/pdf/annual\\_report18.pdf](https://www1.nyc.gov/assets/taxcommission/downloads/pdf/annual_report18.pdf) (last visited Mar. 15, 2020).



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If an offer to reduce the assessment of a property is proposed by the Tax Commission, no counteroffers or extensions of time to consider an offer are allowed.<sup>58</sup> If no offer is extended, or the proposed offer is rejected, the taxpayer must commence an Article 7 proceeding<sup>59</sup> by filing a Petition in New York State Supreme Court to preserve their legal rights.<sup>60</sup> They must then wait another year, and submit another Application for Correction, before the assessment can be reviewed again—all while they continue to pay taxes on the original assessment.<sup>61</sup>

### III. UNFAIRNESS IN TAXATION METHODOLOGIES AND DUE PROCESS VIOLATIONS

Taxpayers in New York City face two substantial challenges with regard to their property taxes. The first challenge is that the system for assessing and taxing properties in the five boroughs is inherently unfair, unequal, and discriminatory. The second challenge is that the system set in place to review and correct the unfair, unequal, and discriminatory property taxes violates the due process rights of property owners in failing to adequately or timely rectify the issues created by the unfair assessment and taxation process.

#### *A. Inherent Unfairness in Property Assessment and Taxation*

The New York Court of Appeals has consistently recognized that properties should be assessed equally and fairly through a uniform assessment of properties of the same type.<sup>62</sup> In *Hellerstein*, the New York Court of Appeals provided an exhaustive history of the discrepancy between the traditional statutory requirement of assessments, based upon full value, and the actual practices of various jurisdictions utilizing fractional assessment methods.<sup>63</sup> The court noted that historically, these fractional assessment methods had been upheld by the courts so long as the assessments were set at a uniform percentage of market value.<sup>64</sup> However, the court

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58. 21 R.C.N.Y. § 4-12(h) (McKinney 2020).

59. A proceeding challenging the Tax Commission's assessment of real property can be brought under Title 1 of Article 7 of the New York Real Property Tax Law. To commence such a proceeding, the owner or person aggrieved by the assessment has to first purchase an index number and file a petition with the County Clerk and serve the petition on the Tax Commission. *How to Obtain Review of a Final Determination of the Tax Commission in New York State Supreme Court*, N.Y.C. TAX COMMISSION, <https://www1.nyc.gov/assets/taxcommission/downloads/pdf/tc707.pdf>. The petition may state any of the grounds for review previously set forth in the application for correction, including claims relating to the total assessed valuation, the classification of real property, and entitlement to full or partial tax exemption. *Id.*

60. N.Y.C. ADMIN. CODE § 11-231 (McKinney 2020).

61. *Id.*

62. See *Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348, 1350–51 (N.Y. 1992); *Foss v. City of Rochester*, 480 N.E.2d 717, 717, 720, 722 (N.Y. 1985); *Hellerstein v. Assessor of Town of Islip*, 332 N.E.2d 279, 280–85 (N.Y. 1975).

63. *Hellerstein*, 332 N.E.2d at 280–84.

64. *Id.* at 283.

ultimately recognized that those fractional assessment practices not only violated equal protection rights of taxpayers, but also discouraged both assessors from establishing the true value of other properties within a given jurisdiction and taxpayers from bringing claims of overvaluation.<sup>65</sup>

The court further recognized the difficulty in determining “whether there is uniformity in the proportion or whether, through incompetence, favoritism, or corruption of the assessors, some portions of the taxpaying body are bearing the others’ burdens, as between either individuals or local groups.”<sup>66</sup> The New York State Legislature’s decision to repeal Section 306 in the immediate aftermath of the *Hellerstein* decision completely disregarded all of the court’s concerns about continuing to utilize a fractional assessment method in valuing and taxing property.<sup>67</sup>

Despite the Legislature’s actions after *Hellerstein*, in 1985, the New York Court of Appeals reaffirmed its commitment to maintaining fairness and equality among assessments in *Foss v. Rochester*, working within the new parameters of Section 305 of the NYRPTL.<sup>68</sup> Although the court did not find Section 305 unconstitutional, it did conclude that other legislation allowing similarly situated properties to be taxed in an unequal manner violated the equal protection clauses of the State and Federal Constitutions.<sup>69</sup> The court reasoned that this type of valuation perpetuated invidious discrimination between those properties classified as “homestead” and “non-homestead.”<sup>70</sup> The court specifically noted:

The Federal and State Constitutions do not prohibit dual tax rates or require that all taxpayers be treated the same. They require only that those similarly situated be treated uniformly. Thus, the creation of different classes for purposes of taxation is permissible as long as the classification is reasonable and the taxes imposed are uniform within the class . . . . The classification violates constitutional equal protection guarantees, however, if the distinction between the classes is “palpably arbitrary” or amounts to invidious discrimination.<sup>71</sup>

Ultimately, the court invalidated the applicable local law when it created an unequal burden upon similar properties in different geographic areas.<sup>72</sup> The court also

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65. *Id.* The court explained that, because the state constitution did not allow assessments to exceed the full property value, fractional assessment practices place the more difficult burden of proving comparative inequality on the taxpayer in order to be successful in their appeal. *Id.* at 286.

66. *Id.* at 287 (quoting 1 JAMES C. BONBRIGHT, *THE VALUATION OF PROPERTY* 497–98 (1937)).

67. *See id.* at 280–84.

68. 480 N.E.2d 717, 717, 720, 722 (N.Y. 1985).

69. *Id.* at 718.

70. *See id.* at 718–22. During the 1984–1985 tax year, the tax rate in Rochester for non-homestead properties was almost twice the tax rate for homestead properties. *Id.* at 722. Thus, non-homestead property, which made up about 52.5% of the total assessed value, paid 65.6% of the taxes, compared to homestead properties, which made up about 47.5% of the total assessed value, but only paid 34.5% of the taxes. *Id.*

71. *Id.* at 722.

72. *Id.*

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prevented the imposition of significantly different tax rates, which exacerbated the unequal burden.<sup>73</sup>

Each layer of intricacy added to the process—the creation of assessment caps for only certain tax classes, the selective utilization of phase-in clocks for only certain tax classes, and the allocation of special exemptions or abatements for only certain qualifying properties<sup>74</sup>—exacerbates the existing discrimination among properties and drives the system further away from the uniformity and equality standard set by the New York Court of Appeals.<sup>75</sup> In 2017, for many of the aforementioned reasons, the plaintiff in *Tax Equity Now NY LLC v. City of New York* commenced a lawsuit against the City and State of New York, the Department of Finance, and the New York Office of Real Property Tax Services seeking injunctive relief and a declaratory judgment invalidating the current property tax system.<sup>76</sup> The plaintiff argued that the current system violates the New York and U.S. Constitutions' equal protection and due process clauses, NYRPTL Section 305, and the Federal Fair Housing Act.<sup>77</sup> The lawsuit focused on the unfairness evidenced by the fact that two properties in the same class with significantly different fair market values may be obligated to pay the same amount in taxes, and the resulting discriminatory impact on certain property owners and communities within the City.<sup>78</sup> Although the Appellate Division modified the lower court's decision by granting defendants' motions to dismiss for failure to state a cause of action,<sup>79</sup> Tax Equity Now NY LLC plans to appeal to the Court of Appeals which will likely bring more attention to the seriousness of the property tax issues taxpayers in New York City currently face.<sup>80</sup>

### *B. Equal Protection and Due Process Violations*

Taxpayers in New York City are not only confronted with unfair and excessive property assessments and taxes, but also with an unnecessarily byzantine and biased appeals process. The appeals process uses essentially the same assessment criteria utilized in establishing the initial assessment being contested.<sup>81</sup> In *Foss*, the New York Court of Appeals again recognized the importance of achieving uniformity, not

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73. *Id.*

74. Cooperative, condominium, newly constructed, and newly renovated properties are examples of qualifying properties. See *Benefits for Property Owners*, *supra* note 34; *infra* Part II (A).

75. Complaint at 3–12, *Tax Equity Now NY LLC v. City of New York*, 104 N.Y.S.3d 50 (N.Y. App. Div. 2019) (No. 153759).

76. *Id.*

77. *Id.*

78. *Id.* at 3–27.

79. *Tax Equity Now NY LLC v. City of New York*, 2020 N.Y. App. Div. LEXIS 1465 (N.Y. App. Div. Feb. 27, 2020).

80. John Herzfeld, *NYC Property Tax System Survives Court Challenge*, BLOOMBERG TAX (Feb. 27, 2020), <https://news.bloombergtax.com/daily-tax-report/nyc-property-tax-system-survives-court-challenge>.

81. See *supra* Part III (A).

only through proper and fair assessments, but also through taxpayers challenging assessments for inequality under Article 7 of the NYRPTL.<sup>82</sup> Thus, the unfair and unequal assessment and taxation system demands an even more focused tax appeal system to acknowledge and correct the inherent inequities that arise in the re-assessment process each year.

1. *Substantive Due Process Violations: Arbitrary & Capricious Agency Action*

New York courts have consistently held City administrative agencies, such as the Tax Commission, to a “rational basis” standard<sup>83</sup> when evaluating whether agency action should be upheld by the courts.<sup>84</sup> Where an agency’s actions are taken in accordance with the rational basis standard, courts will defer to regulatory interpretations due to the agency’s expertise in a particular area of law.<sup>85</sup> However, agency action has been overruled by the courts when it is “arbitrary and capricious” or “taken without sound basis in reason or regard to the facts.”<sup>86</sup> Additionally, the New York Court of Appeals has recognized that a property owner’s equal protection rights have been violated when there is a tax classification system that creates arbitrary distinctions that amount to “invidious discrimination.”<sup>87</sup>

Tax Commission decisions, such as whether a protesting taxpayer should be given an in-person hearing or hearing “on papers,” are not made on any rational basis under the Tax Commission’s rules.<sup>88</sup> Furthermore, decisions to grant some taxpayers

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82. *Foss v. City of Rochester*, 480 N.E.2d 717, 720–22 (N.Y. 1985). The court noted:

The integrity of any system of taxation, and particularly real property taxation, rests upon the premise that similarly situated taxpayers pay the same share of the tax burden. Because real property taxes normally are computed by dividing the total assessed value of all real property subject to tax by the total levy of money which must be raised, thereby producing a tax rate, the taxes will be fairly borne under the usual practice if assessments are uniform and equal. This uniformity may be achieved not only by review of the property on the tax rolls by the assessors but also by property owners challenging their assessments for inequality in judicial proceedings pursuant to article 7 of the Real Property Tax Law.

*Id.* (citations omitted).

83. “Rational basis” equates to an agency having a reasonable justification for interpreting the law in a certain manner or taking certain action. *See, e.g.*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 388 (1999); *Pharm. Research & Mfrs. of Am. v. FTC*, 790 F.3d 198, 208 (D.C. Cir. 2015) (quoting *Vill. of Barrington v. Surface Transp. Bd.*, 636 F.3d 650, 667 (D.C. Cir. 2011)).

84. *See generally* *Murphy v. N.Y. State Div. of Hous. & Cmty. Renewal*, 999 N.E.2d 524 (N.Y. 2013); *Peckham v. Calogero*, 991 N.E.2d 813 (N.Y. 2009); *Washington v. N.Y.C. Dep’t of Hous. Pres. & Dev.*, No. 101957, 2016 N.Y. Misc. LEXIS 2766 (N.Y. Sup. Ct. July 19, 2016).

85. *See generally* *Murphy*, 999 N.E.2d at 528; *Peckham*, 991 N.E.2d at 816; *Washington*, 2016 N.Y. Misc. LEXIS 2766, at \*7–8.

86. *See, e.g.*, *Murphy*, 999 N.E.2d at 528; *Peckham*, 991 N.E.2d at 816; *Washington*, 2016 N.Y. Misc. LEXIS 2766, at \*7–8.

87. *Foss*, 480 N.E.2d at 720; *Shapiro v. City of New York*, 296 N.E.2d 230, 234–35 (N.Y. 1973).

88. *See generally* *How to Appeal a Tentative Assessment*, N.Y.C. TAX COMMISSION 7, <https://www1.nyc.gov/assets/taxcommission/downloads/pdf/tc600.pdf>.

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an opportunity to support their written submission with in-person representation and oral argument are made arbitrarily, denying other similar taxpayers an opportunity to further explain their arguments for reduction at a personal hearing.<sup>89</sup>

For example, under the current system, the same Tax Class 4 property may be given an in-person hearing one year, and a hearing “on papers” the following year—without any reason provided or any change in the property’s status. This provides taxpayers who are granted an in-person hearing an unfair advantage over those who are denied one. In addition, this treatment constitutes de facto discrimination against those taxpayers who may never be provided an opportunity for an in-person hearing, despite a property’s unique circumstances—which may not be adequately conveyed “on paper.”

Additionally, the Tax Commission’s utilization of certain methodologies of valuation for different classes of property is arguably arbitrary in its assignment and creates inconsistencies in the review process as well as in the corrected assessments. While the rules state that hearing officers should evaluate a property’s value based on one of three methodologies, there is no explanation for why one property, or class of property, should be evaluated differently than other properties, or classes of property.<sup>90</sup> Although all three methodologies of valuation should, in theory, produce a similar range of market values for a given property, in practice, the methods produce wildly different values for properties.<sup>91</sup> For example, under the income approach, cooperatives and condominiums are assessed as if they are rental buildings, which can be rent-regulated. This results in undervaluation of cooperatives and condominiums when compared to the sales approach, whereby one unit in the cooperative or condominium may be sold for a price equivalent to the entire assessment of the building established under the income approach.<sup>92</sup> The particular valuation method utilized by the Tax Commission in its review thus effectively determines the outcome of the appeal. Further, the Tax Commission may be denying taxpayers with valid claims under other valuation methods a fair and unbiased hearing by choosing to rubber stamp the Department of Finance’s approach. In this way, the Tax Commission violates the equal protection rights of taxpayers when it arbitrarily chooses a valuation method that does not necessarily support the true market value of the property, resulting in invidious discrimination against certain property owners.

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89. *See generally id.*

90. The Tax Commission has the authority to determine which valuation methodology it uses in evaluating assessments, and while the agency has chosen to use specific methodologies for properties in certain tax classes, there is no explanation for why they choose one method over another. *See* 41 Kew Gardens Rd. Associates v. Tyburski, 514 N.E.2d 1114, 1116–17 (N.Y. 1987).

91. *See Distribution of the Burden of N.Y.C.’s Prop. Tax*, N.Y.U. FURMAN CTR. FOR REAL EST. & URB. POL’Y 23 (2012), [http://furmancenter.org/files/publications/Distribution\\_of\\_the\\_Burden\\_of\\_New\\_York\\_Citys\\_Property\\_Tax\\_11.pdf](http://furmancenter.org/files/publications/Distribution_of_the_Burden_of_New_York_Citys_Property_Tax_11.pdf) (demonstrating the effects of utilizing different valuation methods on similar properties).

92. *See id.* at 14 (“[S]ome of the city’s most exclusive apartment buildings contain individual units with asking prices nearly equal to the entire building’s official valuation.”).

2. *Procedural Due Process Violations: Burdensome Requirements & Discriminatory Practices*

In the 1979 U.S. Supreme Court case *Mathews v. Eldridge*, the Court set forth three distinct factors that must be balanced in determining whether procedural due process rights have been violated by an agency's actions when a citizen has been deprived of a property interest without notice or the opportunity of a hearing.<sup>93</sup> The three factors are (1) the private interests that will be affected by the official action, (2) the risk of erroneous deprivations of such interests through procedures used and probable value of additional or substitute procedural safeguards,<sup>94</sup> and (3) the government's interests—including the fiscal and administrative burdens of instituting additional or substitute procedures to meet due process requirements.<sup>95</sup>

New York courts have considered factors similar to those outlined in *Mathews* when analyzing the procedural due process rights of petitioners in administrative hearings before the New York City Tax Commission.<sup>96</sup> In the 2003 case *439 E. 88 Owners Corp. v. Tax Commission*, the Supreme Court of New York County noted that, while the Article 7 proceeding provided petitioners with a reasonable post-deprivation hearing when an assessment is confirmed by the Tax Commission, any "supplemental process" instituted by the Tax Commission in determining whether the petitioner is entitled to review "itself must pass constitutional muster."<sup>97</sup> At the time the suit was filed, property owners like 439 E. 88 Owners Corp., who were protesting their assessments before the Tax Commission, were required to pass an additional test by filing Form TC 152 in order to solidify their appeal. The sole purpose of Form TC 152 was to determine whether property owners protesting their assessments had any nexus to the individuals involved in the tax assessor bribery scandal of 2002.<sup>98</sup> The court in *439 E. 88 Owners Corp.* characterized Form TC 152 as a supplemental process that could result in a denial of a substantive review of the plaintiff's appeal on the merits.<sup>99</sup> Ultimately, the court held that the supplemental process violated the procedural due process rights of 439 E. 88 Owners Corp. and

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93. 424 U.S. 319, 335 (1976).

94. *See generally id.* The Court's discussion of "additional or substitute procedural safeguards" included any additional policies or procedures that could be put in place to protect the private interests of the petitioner. For example, the Supreme Court reviewed whether the procedures for terminating the petitioner's social security disability benefits violated the petitioner's due process rights. *Id.* at 343–47. The Court weighed the value of an evidentiary hearing to appeal the termination of benefits against the value of written submissions and the "procedural safeguard" of allowing the recipient and counsel full access to information relied upon by the agency in making its decision to terminate benefits. *Id.*

95. *Id.* at 335.

96. *See* 439 E. 88 Owners Corp. v. Tax Comm'n, 800 N.Y.S.2d 346 (N.Y. Sup. Ct. 2002), *aff'd* 763 N.Y.S.2d 12 (N.Y. App. Div. 2003).

97. *Id.*

98. *Id.* *See* Charles V. Bagli & William K. Rashbaum, *18 City Tax Assessors Indicted in Decades-Long Bribe Scheme*, N.Y. TIMES (Feb. 26, 2002), <https://www.nytimes.com/2002/02/26/nyregion/18-city-tax-assessors-indicted-in-decades-long-bribe-scheme.html>.

99. *439 E. 88 Owners Corp.*, 800 N.Y.S.2d at 346.

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others protesting their assessments because it unfairly denied those property owners review on the merits of their case.<sup>100</sup>

Under current law, only properties assessed at \$5 million or more are subject to the requirement of having a Certified Public Accountant certify the numbers that are listed on the income and expense statement submitted to the Tax Commission for review.<sup>101</sup> While the income and expense information does relate to the valuation of the property, the certification requirement unfairly creates two classes of taxpayers—those who have the burden of expending thousands of dollars for certifications and those that do not—who must avail themselves of the same review process. The petitioners with the certification burden must bear the cost of the substantial fees paid to their accountants to audit and certify their income and expense information—a requirement not even placed on property owners for their annual online RPIE filing requirement with the Department of Finance under New York City Administrative Code Section 11-208 each June.<sup>102</sup> Because the Department of Finance’s RPIE filing requirement does not require such certifications, there is no reason why the Tax Commission’s certification requirement should be arbitrarily imposed on property owners with assessments of \$5 million or more.

Additionally, the Tax Commission has created a “supplemental” process requiring corroboration for alleged “sins” on a taxpayer’s Application for Correction of Tentative Assessed Valuation.<sup>103</sup> The so-called “sins,” set forth by the Tax Commission, effectively deny taxpayers with certain sets of facts a fair hearing because the Tax Commission may confirm the property’s assessment when such sins, only relevant to the income method of valuation, are neither explained nor corroborated by the taxpayer. Through this process, taxpayers are deemed guilty or without credibility by the Tax Commission, such that review of their application is prejudiced before they even have the opportunity for a thorough in-person review by a hearing officer. In this way, taxpayers’ procedural due process rights are unfairly violated in the property tax appeal process, and subject to arbitrary and capricious determinations.

Even when the taxpayer is successful in appealing their assessment before the Tax Commission for a specific fiscal tax year, there is nothing to prevent the Department of Finance from making future re-assessments far above the settlement agreed to by the Tax Commission—regardless of whether the market has sufficiently fluctuated within a limited time frame to justify such an increase. When this occurs, the taxpayer is ultimately forced to return to the same flawed appeal process, spending additional time, money, and resources to complete the same Application for Correction as was previously submitted. The taxpayer has no guarantee that the Tax Commission will follow its own precedent because there is no standardized review process among various hearing officers, commissioners, and administrative law judges. The complete disregard of Tax Commission settlements during the Department of Finance re-assessment

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100. *Id.*

101. N.Y.C. ADMIN. CODE § 11-216(b)(1) (McKinney 2020).

102. *Id.* § 11-208

103. *Id.* § 11-208.1.

process highlights the lack of communication between the two city agencies and adds yet another layer to an already dysfunctional tax appeal process that ultimately denies taxpayers' rights to fair, reasonable, and timely review of their appeals.

#### IV. PROPOSED SOLUTIONS

##### *A. Solutions for the Property Tax Assessment System*

The intricacies of the property tax assessment system in New York City are largely responsible for the resulting inequities in property valuation and taxation throughout its five boroughs.<sup>104</sup> This Note highlights and addresses only some of those inequities. The complexity and lack of transparency are manifested and reflected in the actual real estate tax bills issued by the Department of Finance, either quarterly or semi-annually, which are not easily understood by even the most sophisticated taxpayers.<sup>105</sup> By designating it as a special assessing unit, legislators have appropriately recognized that because of New York City's size and population, it must have a special system of taxation to accommodate its needs.<sup>106</sup> However, the current dynamic between state and local legislation is confusing and creates a more complicated and user-unfriendly system for taxpayers.

In May 2018, recognizing that serious inequities exist within New York City's property tax system, Mayor Bill de Blasio established an Advisory Commission on Property Tax Reform.<sup>107</sup> The Commission held public hearings, reviewed guidelines set by the International Association of Assessing Officers, and gathered information that it used to make recommendations for reform.<sup>108</sup> On January 31, 2020, the Commission issued its preliminary report.<sup>109</sup> The report focused solely on properties currently in Tax Class 1 and residential buildings with fewer than ten units—ignoring inequities faced by properties in Tax Classes 2 and 4.<sup>110</sup>

Throughout the report, the Commission repeated its goals of creating a more fair, transparent, and simple property tax system.<sup>111</sup> Unfortunately, the report's recommendations, if enacted, would only exacerbate existing inequities and confusion. For example, one of the recommendations includes a five-year phase-in of

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104. *See supra* Part II (A).

105. The Department of Finance provides a "sample bill" in its guides to property owners outlining all the different components of the tax bill in an attempt to clarify how the amount due is calculated. Arguably, the sample highlights the complexity of the entire system. *See Class Two, supra* note 33, at 12.

106. *See* N.Y. REAL PROP. TAX LAW §§ 102, 1802(a) (McKinney 2020).

107. *About NYC Advisory Commission on Property Tax Reform*, N.Y.C. ADVISORY COMMISSION ON PROP. TAX REFORM, <https://www1.nyc.gov/site/propertytaxreform/about/about-the-property-tax-reform-commission.page> (last visited Mar. 15, 2020).

108. *Id.*

109. *Preliminary Report*, N.Y.C. ADVISORY COMMISSION ON PROP. TAX REFORM (Jan. 31, 2020), <https://www1.nyc.gov/assets/propertytaxreform/downloads/pdf/NYC-AdvCommission-Prelim.pdf>.

110. *Id.*

111. *Id.*



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actual market value to properties within a new residential class comprised of properties currently in Tax Class 1 and residential buildings with fewer than ten units.<sup>112</sup> However, the phase-in system, currently in place and utilized for properties in Tax Classes 2 and 4, has already proven to be extremely confusing to taxpayers in understanding their tax bills and how much they must pay.<sup>113</sup>

Of the recommendations included within the report, those that are the most concerning are ones that attempt to link the personal income of property owners to the manner in which property taxes are levied and allocated among the various classes of property. Two such recommendations are creating a property tax exemption for property owners who are below a certain income threshold, and utilizing “circuit breakers” to lower tax burdens based on the ratio of property tax paid to the personal income of the property owner.<sup>114</sup> Such proposals discourage people from increasing their personal income, or incentivize them to hide it, as in this case, to avoid property taxes.<sup>115</sup> Over time, these recommendations will adversely affect those whom the Commission seeks to help by reducing the market value of properties in this new residential class.<sup>116</sup> For example, if a property owner receiving the benefits of an income-based exemption wishes to sell their property to a buyer who does not meet the income threshold to qualify for such an exemption, the property will be harder to sell, and the value of that property will be significantly reduced over time. Nearly half of the City’s revenue is derived from property taxes.<sup>117</sup> While income based exemptions and “circuit breakers” may provide temporary tax relief for some property owners,<sup>118</sup> they will likely harm owners of small businesses and commercial properties already under duress in the current tax system by unfairly shifting more of the City’s tax burden to Tax Classes 2 and 4.

The extended period of time it took for the Commission to formulate its preliminary report, coupled with the Commission’s intention to hold additional hearings before compiling a final report, makes it highly unlikely that any of these

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112. *Id.*

113. See N.Y. REAL PROP. TAX LAW § 1805(3) (McKinney 2020).

114. *Preliminary Report*, *supra* note 109.

115. See Howard Husock, *(Mostly) The Right Ideas on Reforming NYC’s Lunatic Property-Tax System*, N.Y. POST (Feb. 5, 2020), <https://nypost.com/2020/02/05/mostly-the-right-ideas-on-reforming-nycs-lunatic-property-tax-system/>.

116. *Id.* See also Lisa Chamoff, *New York City Property Tax Overhaul Will Be A Blow To Real Estate Market, Industry Experts Say*, FORBES (Feb. 3, 2020), <https://www.forbes.com/sites/lisachamoff/2020/02/03/nyc-property-tax-overhaul-will-be-a-blow-to-real-estate-market-those-in-the-industry-say/#2c02f116e92b>.

117. In 2017 and 2018, property taxes made up 39.97 percent and 40.19 percent, respectively, of city-based revenue sources for New York City’s budget. See *Fiscal History, Revenue and Expenditure Summary*, INDEP. BUDGET OFF. OF THE CITY OF N.Y., <https://ibo.nyc.ny.us/fiscalhistory.html> (last visited Mar. 15, 2020).

118. See Azi Paybarah, *Property Tax Overhaul: Winners and Losers*, N.Y. TIMES (Feb. 3, 2020), <https://www.nytimes.com/2020/02/03/nyregion/property-tax-reform-winners-losers.html>; Chamoff, *supra* note 116.

recommendations will ever be implemented.<sup>119</sup> As was the case with Mayor David Dinkins,<sup>120</sup> it seems that by the time the Commission establishes its final recommendations for reform, a new mayor and administration with a different agenda will be in place,<sup>121</sup> allowing for continued inaction on part of the state legislators.

Although the lawsuit initiated by Tax Equity Now NY LLC has brought much needed attention to the serious inequities within the current property tax system, the case was dismissed by the Appellate Division for the plaintiff's failure to state a cause of action in the complaint.<sup>122</sup> The court ultimately recognized that "[i]t is up to the legislature to implement a fair and equitable tax system."<sup>123</sup> While Tax Equity Now NY LLC has publicized its intention to appeal the First Department's decision,<sup>124</sup> having a judge potentially invalidate existing law does not necessarily guarantee that appropriate legislative changes will be made to prevent another unfair system from replacing the current one.<sup>125</sup> If the Court of Appeals reverses the Appellate Court's decision, all that can possibly be achieved is a Pyrrhic victory for the plaintiff—further highlighting the need for reform due to unfairness and unequal protection.

Ultimately, true reform lies in the hands of the the New York State Legislature which must address the relevant portions of the NYRPTL to adjust for inequalities in the property tax system. The goal of legislators should be to create a more simple, understandable, transparent, and user-friendly property tax system. Common sense

119. See Janaki Chadha, *Property Tax Reform Will be a Heavy Lift, Despite Mayor's Optimism*, POLITICO (Jan. 31, 2020), <https://www.politico.com/states/new-york/city-hall/story/2020/01/31/property-tax-reform-will-be-a-heavy-lift-despite-mayors-optimism-1258104>.

120. David N. Dinkins was the Mayor of New York City from 1990 to 1993. See *David N. Dinkins, 106th Mayor of New York City, 1990-1993*, CITY OF N.Y., [http://www.nyc.gov/html/media/mrmayor/dinkins\\_bio.html](http://www.nyc.gov/html/media/mrmayor/dinkins_bio.html) (last visited Mar. 16, 2020). Mayor Dinkins' major tax initiative was establishing the "New York City Real Property Tax Reform Commission, which found that the property tax system was inherently unfair and benefitted people with higher incomes." Jana Cholakovska, *All The Times Politicians Called For Fixing NYC's Property Tax System*, CITY & ST. N.Y. (Feb. 5, 2020), <https://www.cityandstateny.com/articles/politics/new-york-city/all-times-politicians-called-fixing-nycs-property-tax-system.html>. Unfortunately, due to Dinkins losing the following mayoral election to Rudy Giuliani, he was "was unable to pass any reforms since the report came out two days before [he left office]." *Id.*

121. See, e.g., Ruth Ford, *What Would it Take to Fix NYC's Inequitable Property Tax System?*, CITY & ST. N.Y. (June 8, 2015), <https://cityandstateny.com/articles/politics/new-york-city/who-has-what-it-takes-to-fix-nycs-unfair-property-tax-system.html>; Alan Finder & Richard Levine, *Unequal Burden: New York's Property Tax; Hodgepodge of Home Valuations Produces Disproportionate Taxes*, N.Y. TIMES (July 6, 1991), <https://www.nytimes.com/1991/07/06/nyregion/unequal-burden-new-york-s-property-tax-hodgepodge-home-valuations-produces.html>.

122. *Tax Equity Now NY LLC v. City of New York*, 2020 N.Y. App. Div. LEXIS 1465, at \*28–29 (N.Y. App. Div. Feb. 27, 2020).

123. *Id.* at \*7.

124. See Rich Bockmann, *Court Throws Out Real Estate-Backed Property Tax Lawsuit*, THE REAL DEAL (Feb. 27, 2020), <https://therealdeal.com/2020/02/27/court-throws-out-real-estate-backed-property-tax-lawsuit/>.

125. As exemplified by the *Hellerstein* decision and the legislative aftermath, judicial intent does not always translate to the laws promulgated after the previous laws have been invalidated. See generally *Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348 (N.Y. 1992); *Foss v. City of Rochester*, 480 N.E.2d 717 (N.Y. 1985); *Hellerstein v. Assessor of Town of Islip*, 332 N.E.2d 279 (N.Y. 1975).

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solutions include assessing properties at full value, or 100 percent of market value, as opposed to fractional assessment. Reducing the number of tax classes and sub-categories within classes, some of which have protective caps limiting annual assessment increases, would help eliminate the designation of winners and losers in the current property tax system.

The need for an annual re-assessment of all property should also be re-examined. Market factors cannot be accurately evaluated as they relate to the more than one million parcels in New York City in less than a year, which is what is required to accurately meet each fiscal year's January 5 assessment status date. This results in the Department of Finance blindly following the prior year's property card without sufficient time to properly analyze and digest market data or perform site inspections—perpetuating and compounding erroneous assessments from year to year. A less frequent re-assessment schedule would eliminate the current automatic trending and annual assessment increases on the vast majority of properties—increases which may be neither justified nor sustainable.

Additionally, eliminating assessment phase-ins and phase-downs which create confusing transitional assessments for Tax Class 2 and 4 properties would make assessments and billing less confusing to the taxpayer. This would help taxpayers better understand their current and prospective obligations so that they can make informed decisions about their property and budgeting needs without having to use higher math or spreadsheets to determine how much their next property tax bill will be. Eliminating assessment phase-ins will also prevent taxes from increasing in a declining market, a recurring phenomenon in the current property tax system.

Finally, Department of Finance notifications and billing statements must also be simplified so that they may be more easily understood by taxpayers. For example, all Tax Class 1 property owners receive notices from the Department of Finance that prominently set forth the market value of the property, although the actual bills are not based upon market value, but only “effective market value,” shown further down on the bill.<sup>126</sup> Effective market value relates specifically to the cumulative historical assessment of the property divided by the 6 percent equalization ratio designated for Tax Class 1 properties, causing confusion to taxpayers.<sup>127</sup> Another example of confusing notices and bills are those sent to the owners of condominiums. Because condominiums are assessed based upon the legal fiction that they are part of a rental property (even though they are not), imputed rental income and fictional market values are set forth on these notifications, which have absolutely nothing to do with a taxpayer's understanding of the condominium's current use and fair market value.

In summary, assessing at 100 percent of market value, reducing the number of tax classes and sub-classes, eliminating protected classes which designate winners and losers, less frequent re-assessing, eliminating phase-in or transitional assessments,

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126. See *NYC Residential Property Taxes: Class One-One, Two, Three Family Homes*, N.Y.C. DEP'T OF FIN. 8 (Jan. 30, 2020), [https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/class\\_1\\_guide.pdf](https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/class_1_guide.pdf).

127. See *id.* at 9.

and simplifying notifications and billing are just some of the possible solutions to the current property tax system.

*B. Solutions for the Property Tax Appeal Process*

Until state and local governments have the political will to reform current law and devise a more equitable property tax system for New York City, the need for a better trained and financed Tax Commission remains of the utmost importance in protecting the rights of taxpayers and property owners in New York City.

First and foremost, the Tax Commission must be able to meet the needs of the taxpayers who are appealing their assessments. In 2018, the Tax Commission received more than fifty-five thousand applications for properties in the City, which represented about 81.5 percent of the total tentative taxable assessed value of all City properties across the tax classes, but entertained in-person or paper hearings on only 29,694 of those applications.<sup>128</sup> Because the Tax Commission is often the sole forum for relief and tax review, the agency should be allocated more resources. Such resources include manpower, funding, and training of hearing officers to properly review and hear the large volume of applications that are filed with the agency. This will help ensure that every single taxpayer is given the opportunity for an in-person hearing, and a fair and consistent review within the agency.

Additionally, when the Department of Finance fails to use an appropriate valuation methodology such that the pure market value is not accurately reflected in the assessment, the Tax Commission should review property assessments using an approach that is more reflective of full market value. This will help correct the inequalities created by the assessing agency at the outset of the process. Guidelines should be established within the Tax Commission so that hearing officers fully understand the consequences of using one valuation methodology over another, and such guidelines should dictate that comparable properties used in the review process should only be those properties that are similar in circumstances.<sup>129</sup>

Furthermore, the Tax Commission should not seek to discourage taxpayers from filing appeals by demanding absolute rather than substantial compliance with overly burdensome and costly requirements, such as annual audits and expensive accountant certifications for properties assessed at \$5 million or more.<sup>130</sup> The Tax Commission should also afford greater opportunities for taxpayers to cure applications deemed non-compliant or “sinful.”

With regard to the problem of subsequent increased re-assessments affecting certain properties in Tax Classes 2 and 4 within just months of a settlement reducing an assessment, the appropriate framework for solving this problem already exists in New York law,<sup>131</sup> but is not currently applicable to the special assessing unit of New

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128. Hoffman, *supra* note 57, at 12.

129. For example, cooperatives and condominiums should only be compared to other cooperatives and condominiums, not rental buildings.

130. *See supra* Part II (B).

131. N.Y. REAL PROP. TAX LAW § 727 (McKinney 2020).

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York City. Pursuant to NYRPTL Section 727, when a reduction in assessment is achieved by final court order or judgment outside New York City, the assessed valuation of the property is “frozen” at the settlement for the next three succeeding assessment rolls.<sup>132</sup> These types of “Freeze Acts,” as they are known by tax certiorari practitioners,<sup>133</sup> are common in other jurisdictions, such as New Jersey, where the statute calls for a frozen assessment for three subsequent assessment years after a final judgment has been issued by the Tax Court.<sup>134</sup> To correct the subsequent re-assessment increase issue unfairly affecting those Tax Class 2 and 4 properties, New York’s Freeze Act should be applied to the special assessing unit of New York City.<sup>135</sup>

### V. CONCLUSION

The rights of taxpayers in New York City are being prejudiced under the current property tax system, which has, over time, created significant disparities between the actual market values of the property and the values on which actual property taxes are calculated, while unequally allocating the tax burden among taxpayers and the different classes of properties, and discriminating against some taxpayers and classes of property at the expense of others.

Reforms to the NYRPTL through the New York State Legislature, City Council changes to the New York City Administrative Code and City Charter, and policy changes within the New York City Department of Finance and the Tax Commission are necessary to ensure that the due process rights of taxpayers are better protected. By establishing a new and more equitable and transparent property tax assessment and billing system in New York City, precedents can be established that can better protect the constitutional rights of New York property owners and serve as a model for other large cities and municipalities throughout the country.

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132. *Id.*

133. A tax-certiorari proceeding is the procedural means by which an owner may legally challenge a property-tax assessment. BARBARA J. VAN ARSDALE, ET AL., N.Y. JUR. TAXATION AND ASSESSMENT § 416 (2d ed. 2020).

134. *See generally* N.J. STAT. ANN. § 54:51A-8 (West 2019).

135. The Freeze Act should be applied so long as no construction or major improvements have occurred in the intervening time period, since material changes in market value are not likely to occur within a three-year span where construction or improvements have not occurred. *See generally* N.Y. REAL PROP. TAX LAW § 727.