

**CONTACT**

POLICY DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

**REPORT ON LEGISLATION BY THE COMMITTEE ON  
CONDEMNATION & TAX CERTIORARI**

**Int. No. 1038-A-2018**

**Council Members Grodenchik, Dromm, Yeger, Holden**

A Local Law to amend the administrative code of the city of New York, in relation to amending the requirement that a statement of income and expense certified by a certified public accountant be provided in order for an income-producing property to be granted a reduction in real property assessment by the tax commission

**THIS BILL IS APPROVED**

This report is respectfully submitted by the Condemnation and Tax Certiorari Committee (the "Committee") of the New York City Bar Association in support of Int. No. 1038-A-2018. The Committee addresses issues relating to the statutory procedures for review and correction of assessed valuation of real property and for the condemnation of real property in New York City. The New York City Bar Association promotes impartial rules and laws that safeguard the due process rights of all New York City residents and property owners. In furtherance of that goal, for New York City real estate taxpayers, we submit this position paper in order to urge modernizing Section 11-216 of the New York City Administrative Code.

**BACKGROUND**

Section 11-216 (b) was adopted in 1973 and states, "No reduction shall be granted for an income-producing property unless there is submitted to the tax commission a statement of income and expenses in the form prescribed by the tax commission and which shall be, in the case of property valued at one million dollars or more certified by a certified public accountant. The commissioner granting such reduction in assessment shall state in a short memorandum the basis upon which the reduction is granted."

The Tax Commission enforces Section 11-216(b) by requiring that, where the newly published assessment is \$1,000,000 or more, taxpayers seeking correction of the assessment hire a certified public accountant to audit a statement of income and expenses of the operation of the property for the most recently completed calendar or fiscal year. The accountant must sign the Tax Commission's TC309 form, which must be attached to the income statement when filed. As stated on the TC309 form, the audit must be performed according to auditing standards generally accepted in the United States. The Tax Commission form also requires the accountant's

acknowledgment 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 our understanding from a collective poll of thousands of our clients, that the cost of an audit for this purpose can frequently be \$10,000 or more. If the applicant does not obtain the audit and file form TC309, the Tax Commission does not grant review of the assessment.

## **DISCUSSION**

The City Council’s intentions in 1973 were likely premised on wanting to provide the Tax Commission full faith and confidence in the income and expenses being submitted on behalf of what were then considered to be highly valued properties that were seeking reduction of their real estate tax assessments. However, the image of a 1973 “one million dollar” property does not have nearly the same significance in 2018. Consequently, we believe the Council’s original intent must be maintained but it should be based on current values.

According to the American Institute for Economic Research, \$1,000,000 in 1973 would equate to \$5,454,545 in 2016. The U.S. Bureau of Labor Statistics inflation calculator at InflationData.com states that \$1,000,000 in 1973 would equate to \$5,405,563 in 2016. The Consumer Price Index increased 98.2% from 1983 to 2003 alone.

Based on the data available to us, an increase in the almost 50 year old threshold (\$1,000,000) requiring a TC309 Account’s Certification would be cost-neutral to the City. Indeed, the substantial cost and burden of obtaining a TC309 is on the taxpayer merely to obtain substantive review of their application, regardless of whether they are successful in proving that their property is over-assessed.

## **RECOMMENDATION**

The Condemnation and Tax Certiorari Committee supports creating a new assessed value threshold - obligating a TC309 Accountant’s Certification - at \$5,000,000 and establishing a value adjustment every five years to ensure timely increases in the threshold going forward. This overdue update will allow ordinary properties to obtain substantive review of their property tax assessments and thereby provide equal protection under the law without the financial burdens currently imposed. The Committee supports Int. No. 1038-A-2018 and urges the City Council and Mayor to swiftly enact the bill.

Condemnation and Tax Certiorari Committee  
Reed Schneider, Chair

Reissued January 2019