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WEEKEND EXCLUSIVE

New Taxman Tightens the Screws - *By Joel R. Marcus*

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NEW YORK CITY—Mayor Bloomberg's recent appointment of David Frankel as the new commissioner of finance will result in significant changes at the Department of Finance. Frankel's priority calls for aggressive pursuit of companies and individuals who do not pay the correct amount of taxes or avoid paying taxes altogether. His goal is "to level the playing field" so that tax avoiders lose their competitive advantage over the vast majority of other law abiding taxpayers.

Frankel, a seasoned Wall Street professional, signaled in his first briefing to industry groups this fall, a number of changes he would make at his agency. He announced several key personnel changes and has reorganized the management structure so that only a few of the 24 department heads report directly to him.

He announced plans to hire 29 new auditors and picked a former Assistant US Attorney as his new general counsel. The auditors will use new databases and software tools to look for inconsistencies in tax receipts, income tax filings, data on licenses and permits, and to review the findings of other audits conducted by all levels of government, including State and Federal. "However you feel about your taxes, you've got to pay them," said Frankel.

As for policy changes, Frankel is exploring ways to make the property tax more transparent, easier to understand and fairer. As an example of how the tax is confusing, Frankel noted that it would be simpler if the city-taxed properties on full market value instead of assessed value at 45%.

For residential housing, he expressed an interest in exploring the idea of valuing small houses (Class 1) and cooperatives and condominiums (Class 2) with the same sales method. He would consider moving away from the methodology of valuing coops and condominiums as if they were conventional rented housing. Frankel seems sensitive to claims that cooperative housing is under assessed compared to condos.

Since many current policies followed by the DOF are dictated by state law, some of his larger goals may take a few years to realize. The current administration will leave office in four years, so much of his agenda will have to be tackled quickly.

Frankel has identified a number of issues which he believes need attention. One such issue is revising the legal mandate that requires coops and condominium housing to be valued on the same basis as conventional rental apartment buildings, which was enabled by Section 581 of the Real Property Tax Law. Another thorny issue revolves around rectifying the astronomical increase in vacant land assessments that happened in the 2009/10 tax year.

The new commissioner has indicated a desire to move the due date of the RPIE (real property income and expense) submission to June 1 from September 1 to allow greater time for the DOF to review the information. In addition, Finance is soliciting on a voluntary basis, income forecasts from property owners to enable the Department to predict possible reductions in market values in future years.

One change just implemented by the DOF involves a new procedure for the taxation of generators and other equipment. Where the owner of the building and equipment are the same, the equipment will be valued based on the cost approach (reproduction cost new less depreciation). However, where appropriate, it will be valued on its rental income for established buildings, and that income should be included in the RPIE statement. For tenant owned equipment, generators will be taxed and assessed directly to that tenant, and the generator will have its own assessment identification number and its value will be calculated on the cost approach. For many years, much of this type of property was not taxed separately, if at all.

Frankel noted that the department was looking at a number of ways to more accurately reflect the recent downturn in market values for the new assessments. How many of his goals and initiatives will be realized over the next four years still remains unclear. The ability to enact major legislation aimed at real property tax reform has stymied each of his immediate predecessors because of the financial and political impact on residential taxpayers.

However, you can count on one thing for sure: a new approach to administering and collecting taxes is going to take place at the DOF, starting with more review and enforcement of tax liabilities. If you are not paying your fair share of taxes, beware: the Taxman is lurking.

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