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Testimony of George Sweeting
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To the New York City Council Finance Committee
On Legislation to Improve Requirements on the Reporting of Income and Expenses by Property Owners

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Good morning Chairman Recchia and members of the Finance Committee. I am George Sweeting, deputy director of the New York City Independent Budget Office. Thank you for the opportunity to testify today regarding Intro 906-A.

Intro 906-A makes several important changes to the Administrative Code regarding the filing of real property income and expense (RPIE) statements by owners of real property including: 1) moving the filing deadline earlier in the year; 2) adding a requirement that certain properties excluded from the filing requirement because of how they are used will now have to file a form claiming the exclusion; 3) making the penalties for failure to file the required information a lien against the property and eligible for inclusion in lien sales by the city; and 4) requiring the Department of Finance to make more statistical information available about assessment changes on the annual assessment roll as well as the assessment calculations used for individual properties.

There is no question that requiring the filing of income and expense statements is a burden for landlords. But there is also real benefit both to landlords and the city if the information submitted is used appropriately to generate more accurate and consistent assessments for income-producing properties. In general the changes proposed in Intro 906-A should result in more uniform assessments while also increasing information for taxpayers about how properties are assessed. Given the complexity of our city's property tax system, such changes are particularly welcome. Still, the proposed changes raise some issues that merit further consideration. I will discuss three of these changes.

Moving the Filing Deadline

Moving the filing deadline forward by three months will make it more certain that the city is able to base assessments on the most current information. Keep in mind that the assessments for the upcoming fiscal year are largely completed six months before the start of that fiscal year. Thus, the tentative assessments for the 2013-2014 fiscal year were completed and released in early January 2013. The field work and analysis that went into those assessments began in the late summer of 2012.

Currently, owners of income-producing properties have a September deadline to file returns reporting their income and expenses for the prior year. Thus, in September 2012, when assessments for 2013-2014 were already underway, they reported their 2011 income and expenses. Given the time needed to process the RPIE returns, the data filed in September 2012 was received after work on the 2013-2014 assessments had begun. The finance department is forced to scramble to take advantage of the newer data; despite these efforts, in at least some cases it appears that the latest data assessors had to work with had been filed in September 2011 covering 2010 income and expenses. Moreover, this lag in when the information is available affects the development of the assessment guidelines that provide the assessors with crucial information and guidance for estimating income information if none is available and for aligning incomes with the department's capitalization rates.

Moving the filing deadline from September to June should reduce the lag in the availability of the most up-to-date income and expense results. It should also make it possible to develop the guidelines using more recent data. However, we wonder if June is early enough. To increase the chance that assessors will have data from the most recent year available, a May deadline might be preferable. While this would reduce the time for property owners to complete the return, at that time of the year many property owners are already completing a parallel Tax Commission income and expense statement in order to protest their assessments at the commission.

Nonfiling Penalty Would Be Liable

Failure to file has been a persistent problem since income and expense reporting began in the late 1980s. Although the law has always allowed for a penalty—up to 4 percent of the property's assessed value if not filed within four months of the filing deadline—for many years the penalties were very rarely charged. Beginning with the 2007-2008 assessment roll, the department attempted to improve filing compliance without explicitly charging penalties. The finance department tried to encourage filing by assigning the highest possible income and lowest possible expense when assessing properties that had not submitted the information. The department promised to redo a property's assessment with updated information if it was submitted in time. That year, about 35,000 properties received this treatment, roughly 12 percent of the properties subject to the filing requirement. Compliance improved, but not by as much as IBO and others expected. This suggested that for some owners, the higher assessments under the department's more aggressive approach were still lower than they expected to face if they submitted the required information. That means less tax revenue for the city and higher tax rates for everyone else.

Beginning with the 2012 assessments, the finance department resumed charging the penalty for failure to file returns. The finance department assessed \$27 million in penalties against properties whose owners failed to file returns due in September 2011. About \$21.5 million of those penalties remain outstanding. Since these initiatives began, compliance has improved, and based on finance department data it appears that there were only about 10,300 owners who did not file last September.

Intro 906-A would make the nonfiling penalty a lien against the property. Such liens would be eligible to be included in the city's periodic lien sales. IBO expects this change to further increase compliance with the filing requirement.

Additional Reports and Information to Improve Transparency

Intro 906-A would require the finance department to post additional statistical reports on its Web site, presenting data on changes in market values, assessments, and the distribution of income and expenses by geographic areas and property types. The Department of Finance would be required to post much of the information used in developing the assessment guidelines by February 15th each year. Finally, the department would be required to provide information about the specific factors used to determine the market value of each property.

Over the last decade, the finance department has gradually moved towards making such information available and the legislation would codify a requirement to continue doing so and set a required date for release of the information. Improving the transparency of the property tax system for property owners is an objective that our office has long supported. Still, there are some aspects of the proposal where we suggest further consideration.

The new section 11-207.1 describes statistics that are relevant for income-producing properties but not for properties in Class 1 or for coops and condos in Class 2. It would be helpful to tailor additional data items relevant to those property types and perhaps spell out a requirement to segregate the statistics by tax class. Of lesser consequence, Section 11-207.1.a.3 refers to income and expense data from the required income and expense filings, but it is common practice within the Department of Finance to combine data from those returns with those filed with the Tax Commission. If the goal is to have comprehensive information about incomes and expenses in the city, it might be preferable to describe reports combining these two sources.

Again, thank you for the opportunity to testify and I would be happy to try to answer any questions you may have.