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To: Comptroller Regan
From: Sidney Schwartz

Date: November 9, 1981
Re: Act to Amend Real
Property Tax Law
(S. 7000-A; A. 9200)

Introduction. We have prepared this memorandum to assess the potential impact of an Act that would amend the Real Property Tax Law (RPTL) in significant ways, which the Legislature has passed and has submitted to the Governor. The aim of the legislation is to settle the uncertainty that has affected the real property tax in New York State for six years as a result of the 1975 Hellerstein case. In achieving this aim, the Legislature has had to deal with a subject of enormous complexity. It appears that a major purpose of the Act as it affects New York City is to secure a good measure of stability and predictability--both are desirable qualities in a system of real property taxation--by establishing a basis in law for practices that have developed over time without such a firm foundation. Nevertheless, as this memorandum will point out, the Act leaves some important problems unsolved and may create new ones. Although the Act has State-wide application, this memorandum is limited to an evaluation of how the legislation would affect the real property tax in New York City.

Background. The long-established practice prior to the Hellerstein case had been for taxing jurisdictions to assess real property for tax purposes at differing proportions of the properties' true values, the proportion applicable to a particular property being dependent on the kind of property it was. This practice tended to place a greater tax-paying burden on the owners of industrial and commercial properties, with a correspondingly lesser tax burden on the owners of residential properties. In Hellerstein, the Court of Appeals held that this practice was contrary to the RPTL, which required that all real property be assessed at its full value. By implication, systems of classification, whereby properties, depending on their types, are assessed at different percentages of their full value, were forbidden. The legislation now before the Governor would repeal that section of the RPTL relied upon by the Court in Hellerstein and would establish a new system of real property taxation.

What the Act Provides. In New York City, the Act would classify taxable real property into four categories:

- Class One: one-, two-, and three-family residences.
- Class Two: all other residential property.
- Class Three: utility property.
- Class Four: all other property.

Using the City's real property assessment roll for 1982, a "base proportion" is to be established for each class by determining the proportion of the City's total assessed valuation in 1982 accounted for by each class in that year. In future years, the portion of the City's total assessed valuation ascribed to any class must correspond generally to the class' base proportion. Two kinds of deviations from strict correspondence to the base

proportions are allowed. First, each year during the period 1983-85, the City may increase or decrease any class' proportion by up to five percent,* (with corresponding adjustments made in the proportions of the other classes). The changes can be cumulative. Second, for 1986 and every second year thereafter, the State Board of Equalization and Assessment (SBEA) will establish for each class an "adjusted base proportion" to reflect the change that has taken place since July 1, 1981 in the class' share of the total market value of all properties in the City. Notwithstanding the two kinds of deviations allowed, the "base proportion" device will operate to provide relative stability in assessments, particularly for the homeowner class, grounded in the 1982 assessment roll.

The Act would provide stability in assessments not only between classes but also for the individual properties within a class. For Class One properties, the Act would limit assessment increases to a maximum of six percent in any year and a maximum of twenty percent over five years. For properties in Classes Two, Three, and Four, any increases necessary for bringing assessed value up to full value (or up to some percentage of full value) must be phased in over five years in equal annual steps.

Another noteworthy provision of the Act pertains to inequality suits, i.e., an action brought by a property owner challenging the property's assessment on the ground that the assessment is at a ratio to the property's full value higher than the comparable ratio for all other property in the class taken in aggregate. Beginning in 1985, a petitioner in an inequality suit would be allowed to introduce as evidence of inequality the applicable class ratio established by the SBEA, provided that the petitioner's claim is that the inequality is greater than 12 1/2 percent of such class ratio.

* Thus, for example, a class whose base proportion is .20 could be assigned a proportion ranging from .19 to .21.

Evaluation. The Act, would work to cushion the effect of assessment changes on property owners' tax liabilities. It would also serve to limit City actions to increase property tax revenues without raising the tax rate. The City's practice has been to increase real property tax revenues by increasing assessed valuations selectively. For example, last year the assessed valuation of the Pan Am Building, after the building had been sold for \$400 million, was increased from \$105 million to \$180 million. Most of this increase would have been disallowed under the Act's provision requiring the phasing-in of increases in assessed values over five years, with a resulting loss of City tax revenue which we estimate at four million dollars in the first year. This limitation applied throughout the central business district would result in the loss of tens of millions of dollars in taxes, despite the dramatic increases in market values in this district. Given its staff of 120 assessors, who must assess 800,000 parcels each year, increasing the assessed valuations of selected parcels has been the City's primary method for increasing its real property tax revenues. In terms of policy, the alternative way open to the City of raising such revenues by generally increasing tax rates would result in a more regressive tax. Moreover, tax rate increases would apply uniformly to all non-residential properties in the City, be they storefronts in the Bronx or large office buildings in Midtown.

Another consequence of the Act is that it would inhibit the City's ability to redress the extensive inequalities of assessment among properties within a class, a problem that we pointed out in a report we issued in May. The report noted that even if the law were to establish a classified assessment system whereby the aggregate tax burden on properties within each class remained the

same--this is what the Act would in fact do--significant shifts would be needed to cure assessment inequities. Among the inequities identified in the report were these: similar houses in the same neighborhood have often been assessed at vastly different proportions of their estimated market values; for seven out of ten properties and for eight out of ten commercial properties, their ratios of assessed-value to market-value deviated by more than ten percent from the comparable ratios for their respective classes (see Table I); and the properties that tended to be over-assessed were those in poorer neighborhoods and less expensive properties in all neighborhoods. Significant changes in assessments would be required to cure these inequities, whereas the Act, to the contrary, promotes stability in the assessments of individual properties by inhibiting large increases.* The Act may further shift the tax burden from those properties experiencing the greatest growth in value to those whose growth is less rapid.

Finally, the Act's provision allowing the introduction of the SBEA class ratio by certain petitioners in inequality suits, while but a rule of evidence, may well expose the City to substantially increased liabilities in such suits; for it will encourage many taxpayers to institute such actions who would otherwise be discouraged from doing so by the expense and difficulty attached to the methods of proving inequality of assessment that may be used

* The Act does not constrain the City from achieving greater equity through the lowering of assessments on over-assessed properties.

currently. In order to determine the potential impact on the City of this newly permitted method of proof, we performed a computer analysis of sales and assessment data to determine how many taxpayers would qualify for introducing the SBEA class ratios in inequality suits. See Table II. Our data show that 35 percent of all parcels are over-assessed by 12 1/2 percent or more, the average of such over-assessment being 28 percent. In all, we estimate that about 252,000 taxpayers would qualify for introducing the SBEA class ratios as evidence, and if all of these sued and won, we estimate the potential annual loss of tax revenue to the City at a minimum of \$424 million. Of course, the City could react to such losses by raising tax rates. Nonetheless, it is possible that under the Act inequality suits could significantly harm the City's prospects for raising the real property tax revenues now forecast in the Financial Plan.

Discussion with City Officials

We reviewed a draft of this memorandum with City officials. They pointed out that the State Equalization rate could not now be introduced as evidence of inequality only because a stay on inequality suits has been imposed, a situation which they believe cannot continue indefinitely. Thus, if the stay were lifted, the City's potential liability under present law, which provides for a single ratio rather than class ratios, would far exceed the memorandum's estimate of the City's liability under the provisions of the Act.

They also indicated that the City intends to take any actions necessary for redressing the problems of inequitable assessments within classes by fiscal year 1985, the first year the Act allows the use of class ratios in inequality suits. The City points out that in addition to the many reassessments that are already underway, modifications in the assessment process have been implemented (or are planned) which will allow the City to phase-in the assessment changes required to limit its liability under the provisions of the Act.

Finally, they stated that, the City would lower assessments as necessary to achieve uniform assessment (within 12 1/2 percent of the average ratios) by class by FY 1985. Given the gross disparities identified by our review of assessment practices, we believe the City faces a difficult task in realizing its obligation to equalize tax burdens so as to avoid a substantial inequality exposure within the three-year time period contained in the Act.

Table I

Percentage of Properties Whose Assessment to Sales Ratios Deviate By
More Than 10 Percent From the Property Type Average^(A)

<u>Property Type</u>	<u>Percentage of Properties</u>
One Family Houses	59%
Two Family Houses	75%
Walk-up Apartment Buildings	82%
Elevator Apartment Buildings	78%
Factories	82%
Store Buildings	80%
Loft Buildings	83%
Office Buildings	<u>75%</u>
Total (weighted)	<u>70%</u>
One and Two Family Houses (weighted)	66%
All other (weighted)	81%

(A) Office of the Special Deputy Comptroller, Real Estate Inequalities in New York City Among Similar Types of Property, Report 10-82, May 1, 1981, p. iv.

TABLE II

Estimated Potential Liability of New York City
Resulting From Bill Provision Facilitating Inequality Suits (A)

Property Class	<u>Parcels Eligible to Sue</u>			Potential Decline in Tax Revenues
	<u>Percentage</u>	<u>Number</u>	<u>Percentage Decline in AV</u>	
I. One, Two & Three Family Homes ^(B)	36%	200,400	-24%	\$ 79 million
II. All Other Residential	31%	42,000	-35%	\$200 million
III. Utility ^(C)	NA	NA	NA	NA
IV. All Other Property ^(D)	<u>31%</u>	<u>9,300</u>	<u>-26%</u>	<u>\$145 million</u>
Totals	<u>35%</u>	<u>251,700</u>	<u>-28%</u>	<u>\$424 million</u>

(A) Based on an OSDC computer analysis of the FY 1980 tax roll adjusted to reflect the total levy planned for FY 1985.

(B) The bill provides for the elimination of certain underassessed class-one parcels from the calculation of the class ratio. This provision applies only in those cases where The City has increased the assessment on the property by the maximum amount permitted by law. The effect of this provision will be to raise the class ratio and thus reduce the number of eligible parcels. The City thinks this could reduce our class-one estimate by one half.

(C) Data limitations prevent calculation of liability.

(D) Only includes offices, stores, lofts and factories.

DEPARTMENT OF AUDIT AND CONTROL

INTER-OFFICE MEMORANDUM

To: Sidney Schwartz

Date: April 17, 1981

From: Bernard J. Kabak

Subject: Slewett & Farber v. Board
of Assessors

You have asked me about the case described in the attached article from the January 22, 1981 issue of Newsday.

The case is Slewett & Farber v. Board of Assessors, decided by the Appellate Division, Second Department on January 21, 1981. Petitioners in this case were the owners of commercial property in Nassau County who instituted judicial proceedings for the review of the property's tax assessments for fiscal years 1966 through 1978. The basis for the proceeding was petitioners' claim that the property was assessed at a higher ratio to its fair market value than the comparable ratio applicable to other property in the county. The County's response was that under subdivision 3 of section 307 of the Real Property Tax Law, a petition alleging inequality was required to assert that the assessment was made at a higher proportionate valuation than that of other property of the same major type as determined by the State Board of Equalization and Assessment. In other words, the petition was based on an allegation of whole-roll inequality, whereas section 307.3 required an allegation of intra-class inequality. Section 307 was enacted in 1978 as part of the Legislature's response to the Hellerstein case.

The Appellate Division, affirming the trial court's decision, held that subdivision 3 of section 307 and the related subdivisions 4 and 5 were unconstitutional. As a result, the court upheld the continuing validity of section 306: "Nowhere in the entire structure of the 1978

legislation," the court said, "can there be found statutory authority for the tax assessor to assess classes of property at varying rates. Indeed, the continuing mandate of the Real Property Tax Law--which has emerged unscathed from the seeming barrage of amendments--is that '[a] ll real property in each assessing unit' be assessed at its full valuation (Real Property Tax Law, § 306, emphasis supplied [by court]), or at least at a uniform fraction of full value."

According to the Newsday article, a New York City source said that the result of the Appellate Division's holding could be to force the City to pay as much as \$2 billion in tax refunds. That view may not be conclusive, however, because it seems to take no account of the Colt Industries case. Colt Industries held that section 307 had no bearing on New York City because, as a general law, it was superseded by special legislation, section 166-1.0 of the Administrative Code, applicable to the City. That special legislation, whose validity was upheld in Colt Industries, has the same effect as the provision struck down in Slewett & Farber, i.e., it permits the City to classify property by major type for the purpose of real property tax assessment. If Colt Industries is upheld -- an appeal has been argued before the Appellate Division, First Department -- Slewett & Farber (like Hellerstein itself, according to the court in Colt Industries) would seem not to apply to New York City.


No appeal to the Court of Appeals has yet been taken in Slewett & Farber, and it is not known whether an appeal will be filed.

DEPARTMENT OF AUDIT AND CONTROL

INTER-OFFICE MEMORANDUM

To: Sidney Schwartz

Date: January 16, 1981

From: Bernard J. Kabak Subject: Colt Industries v. Tax Commission

This memorandum will inform you about Colt Industries v. Tax Commission (New York Law Journal, June 4, 1980, p. 10, Sup. Ct. N.Y. County). The petitioner, as the owner of an office building at 430 Park Avenue, had filed several petitions challenging its real property tax assessments during the period 1969-77. These petitions charged two grounds of error: overvaluation, i.e. that petitioner's property was assessed at an amount greater than its full value, and inequality, i.e. that petitioner's property was assessed at a ratio to its full value higher than the comparable ratio that was applied to other real property in the City of New York.

In the case at bar, the petitioner sought from the court: (1) an order consolidating its filed petitions, (2) an order directing the respondent to disclose certain sales data filed by other real property taxpayers in New York City, and (3) a declaration that Real Property Tax Law sections 307 (pertaining to standards of assessment in certain assessing units) and 720(3) (pertaining to evidence on the issue of whether an assessment is unequal) created unconstitutional impediments to the proof of inequality. The court granted only the first motion, to consolidate the filed petitions. In denying the second and third motions, the court held that in the City of New York real property was not required to be assessed at a proportion of its full value equal to the proportion of full value applicable to all other real property on the tax rolls (whole-roll equality); rather the proportionate assessment had to equal the proportion of full value applicable to other real property of like character (intra-class

equality). In other words, in New York City a system of classification of property by major type was permissible. The landmark case of Hellerstein v. Assessor of the Town of Islip, 37 N.Y.2d 1, 371 N.Y.S.2d 388, 332 N.E.2d 279 (1974), had held that section 306 of the Real Property Tax Law forbade the assessment of property at less than its full value. By implication, systems of classification, whereby properties, depending on their types, are assessed at different percentages of their full value, were also forbidden. Colt Industries held that Hellerstein did not apply to New York City.

The court denied petitioner's motion for it to declare section 307 of the Real Property Tax Law unconstitutional, holding that because the assessed property was in New York City, section 307 was inapplicable to the petitions at issue. Section 307, the court explained, was a general law setting the standard for assessments and defining the elements of an inequality petition generally throughout the State. In New York City, however, this general law was superseded by special legislation enacted by the legislature when it adopted the City Charter in 1901 and carried over into the Administrative Code, which became law in 1937. The court traced the antecedents of this special legislation to a law enacted in 1857, observing that for well over a century the State legislature had recognized the need for legislation governing the levy and review of assessments applying uniquely to New York City. Section 166-1.0 of today's Administrative Code replicates the standard established in the 1901 Charter. For a petition based on the ground of inequality, the Administrative Code requires the petitioner to specify that the assessment has been made at a higher proportionate valuation than the assessment of other real property

of like character in the same ward or section. This was the basis for distinguishing Hellerstein. In Hellerstein, the Town of Islip had classified property and had established the practice of fractional assessments without such legislative authorization and, indeed, in the face of the express provision of Real Property Tax Law section 306 requiring assessment at full value.

Based on its holding that classification of real property was legal in New York City, the court also denied petitioner's motion for it to declare an amendment to section 720(3) of the Real Property Tax Law unconstitutional. The amendment (L.1979, ch. 2, § 2) precluded the introduction of the equalization rate established by the State Board of Equalization and Assessment as evidence on the issue of whether an assessment is unequal. The court held that since the State equalization rate was a ratio of the assessed value of all the real property in the City to the market value of this property -- a whole-roll ratio -- it could not be used as a measure of intra-class inequality. In a dictum, the court stated that even if the State equalization rate were promulgated on a class basis it would be an unacceptable and inappropriate measure of inequality in New York City because of the minuscule number of parcels surveyed to establish the rate and because of the infrequency of such surveys (once every two or three years) against the background of New York City's volatile real estate market.

The court also denied petitioner's motion for the disclosure of certain sales data filed by other real property taxpayers in New York City. Because petitioner intended to employ these data to establish a roll-wide ratio based on actual sales, the court held that the information sought was irrelevant to a determination of intra-class inequality. The court cited Administrative

Code section II46-15.0, which requires that information relating to real property transfer tax returns be kept secret, as another reason for denying petitioner's disclosure motion.

Colt Industries v. Tax Commission has been appealed to the Appellate Division, First Department. The lawyer for the City expects the appeal to be argued in March or April.