Review of Assessment Ratios for Recent Sales of Tax Class 2 and 4 Properties in New York City

Please direct any questions concerning this report to:

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Abstract

The City of New York's tax assessment system has been plagued in recent years by corruption scandals and the concern that pervasive inattention to the goal of an accurate and precise assessment roll has led to an assessment roll that does not reflect current market conditions. This study examines the relationship between recently sold properties and their assessments for Tax Class 2 and 4. As a recent sale is widely held to be the best indicator of current market value, the ratio of the sale price to the assessment is the best method of determining the accuracy of the assessment system. The study's conclusion is that the current assessment roll is severely under-assessed relative to the City's stated target assessment. Furthermore, this study demonstrates that the City of New York is at serious risk for legal proceedings that could reduce its potential annual tax collections by hundreds of millions of dollars. This paper also presents possible avenues for future research and improvement of the system.

Acknowledgements

While the results of this report are the author's own, the author would like to thank a few individuals without whom this report would not have been possible. David Moog, President of the labor union, Local 1757, provided his organization's invaluable financial support and also significant insights. Peter Leonard, President of PRL Solutions LLC, did an outstanding job in collecting the data from the Department of Finance's web site when we were unable to obtain the information directly from the Department. Professor Barry Hersh at Baruch College provided crucial advice and guidance that helped to form this work.

Introduction

It has been suggested by numerous parties, both inside and outside of government, that the tax assessment system of the City of New York is assessing different tax classes disproportionately. It has further been suggested that the city as a whole is under-assessed relative to the City's stated target assessment ratio.

The study aims to examine the recent sales of tax class 2 and 4 properties and the relationship between the sales price and the 2003/2004 final assessment[1]. "Arms-length" transactions are widely held to be the best indicator of the market value of an asset. As such, they are an excellent tool to gauge the accuracy of the assessment system.

The essential goal of the study was to compare the current market value with the final assessment. If the assessment ratio was in line with the City's target assessment ratio of 45%[2], the assessments were appropriately applied. As this report will demonstrate, this is a relatively simple numerical test with large implications for the City.

This project consisted of two phases:

1) Data Collection – Obtain data from the Department of Finance on all sales of Tax Class 2 and 4 properties that were recorded in calendar year 2003. Current assessment data for those properties would also be obtained.
2) Analysis - Sort the data by borough, filter out irrelevant transactions, and analyze the results.

The two phases are reviewed separately below.

Data Collection

The first phase, data collection, took much longer than it should have. The City of New York's Department of Finance ("DOF") made it extremely difficult for the author, an independent researcher, to obtain the data.

To start the process, the author submitted a FOIL (e.g., Freedom of Information Law) request to the DOF that requested assessment and transaction information for all sales city-wide that were recorded in 2003. The expectation was that the assessment data would be provided to the author from the assessment roll (otherwise known as "RPAD" –

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1 For those who are not familiar with the City's system, the four tax classes are:

- Class 1: Includes most residential property of up to three units (one-, two-, and three-family homes and small stores or offices with one or two apartments attached), vacant land that is zoned for residential use, and most condominiums that are not more than three stories.
- Class 2: Includes all other property that is primarily residential, such as cooperatives.
- Class 3: Includes property with utility company-owned equipment.
- Class 4: Includes all commercial or industrial property that is not in the other three tax classes.

2 The target assessment ratio is 8% for Tax Class 1 properties. It is 45% for the other three classes, two of which are the focus of this study.

Real Property Assessment Data) and the transaction information, with information such as sales price, sales date, and involved parties, would be provided to me from the City's database that calculated transfer taxes.

The author was surprisingly informed by DOF that access to the sales transaction data could not be granted as it was "tax secret" information[3].

This was surprising for two reasons:

1. Practical – The data is publicly accessible. Anyone, regardless of whether or not they are government officials, could simply pull the public records on any sale and obtain the information. DOF's denial did not protect the public from having their privacy violated; it simply made it impossible for a researcher to analyze the data because collecting all the information for a particular year for all sales would be time prohibitive.

2. Legal – Their response was also inaccurate as recent changes in State law require them to release the information to both the State and interested parties[4]. The author was also unable to obtain the data from the New York State Office of Real Property Services ("ORPS"), as the City has not released the information to ORPS either[5].

In order to encourage the DOF to release the sales transaction data, the author had to enlist the efforts of State Assemblymen. This worked only up to a point; the City did release some data but it was not in a usable format[6]. Whether this was an attempt to "stonewall" the author or a result of their inability to put the data in a usable format is unclear[7].

The author was able to obtain the assessment data from DOF, but DOF did not release the transaction data in a usable form.

The author was only able to obtain the sales transaction data by "screen scraping" the information from DOF's online data system, "ACRIS". When the DOF informed the author that the data was "confidential", it neglected to state that all of the data was available online if one was willing to download the information parcel-by-parcel for the entire City of New York[8].

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[3] Please refer to Appendix B for a copy of the letter that was sent to the author from the Department of Finance in January of 2004.
[4] Please refer to Appendix D for supporting documentation.
[5] A letter from ORPS documenting as much can be found in Appendix B.
[6] The data was provided in "text" format instead of a usual format such as MS Excel or MS Access. The author, the computer consultant that was later retained by the author, and two other experienced real estate professionals that specialize in tax assessment issues could not decode the information. It also appeared that the data had a significant amount of "garbage data".
[7] The letters from the Assemblymen can be found in Appendix B.
8 The reader can download the RP5217NYC information from:
http://a836-acris.nyc.gov/Scripts/DocSearch.dll/DocType

Search for documents that are "Deed, Other". In addition, the actual scanned image of the original form can be viewed by choosing the "IMG" button.

The City is collecting the information that it is required to by law and on the form that it is required to use (the "RP5217NYC"). However, while the City is collecting the data as it is required to by State law, as mentioned earlier it has not to date released this information to the State.

As downloading each entry would have taken an unreasonable amount of time, the author retained the services of a computer programming consultant (PRL Solutions LLC) to use a technique known as "screen scraping". Screen scraping is a process by which a computer programmer writes a program that downloads the needed information by repeatedly querying a database for each individual entry and then collecting the information into a usable format that can be manipulated.

The author believes that the data that has been collected by screen scraping is accurate. However, as the City has not released the sales transaction data to the public (or to the State) in a usable format, this assumption is impossible to confirm. It is always possible that DOF only posted a fraction of the sales that were filed on the RP-5217NYC form; if so, the portion of the sales that they did not post might be statistically different from those they did.

Data Analysis

Once the data collection was complete, the filtering was relatively easy. The data went through three phases of filtering. Each filter winnowed down irrelevant transactions in order to answer the key question of this study: What is the relationship between market value and assessments for sales in 2003?

Phase 1: Eliminate Tax Class 1 from Data-Set

The original "screen scrape" returned 13,490 sales that were recorded in 2003 on the RP-5217NYC form. Of these 13,490 transactions, 1,087 were multiple parcel transactions. These 1,087 multiple parcel transactions were ignored for the purposes of this study in order to ease the merging of the DOF provided assessment data with the transaction data that was screen scraped from DOF's website.

In addition, all transactions in the borough of Staten Island were not included. DOF's web site, ACRIS, does not contain information for the borough of Staten Island regarding the RP5217NYC.

Table 1: Single Parcel Sales for 2003 for All Four Tax Classes in 2003

Borough	Count
Bronx	1,604
Brooklyn	5,275
Manhattan	2,447
Queens	3,077
Total	12,403

The next filter that was used cleaned out Tax Class 1 sales and sales that did not tie out to the assessment data. This filter was relatively straight-forward as the assessment rolls that DOF provided only contained information on Tax Class 2, 3, and 4 properties. If the property was screen scraped from ACRIS and it wasn't in the DOF provided assessment database, it was Tax Class 1 by process of elimination.

Table 2: Single Parcel Sales for 2003 for Tax Classes 2, 3, and 4 in 2003

Borough	Count
Bronx	881
Brooklyn	2,946
Manhattan	2,284
Queens	1,527
Total	7,638

Phase 2: Remove all non-"arms-length" transactions.

This filter took the above sample and removed all sales that were:

- Nominal Sales (all sales under $100,000).
- All sales involving Government agencies (HUD, New York City, various housing development agencies).
- Sales involving Administrators, Adminstratrixs, Referees, Arbitrators.
- Sales involving related parties.
- Sales involving Mortgage holders or Mortgage corporations.
- Sales that appeared to be related party or intercorporate[9].

[9] This filter did require judgment on the part of the author. While this filter could be attacked on the grounds that this introduced author bias, even without this step the assessment roll is still far short of the target assessment. Please refer to Appendix A where the only filter that is applied is the removal of sales of less than $100,000.

Table 3: Arms-Length Single Parcel Sales for Tax Class 2, 3, and 4 in 2003

Borough	Count
Bronx	432
Brooklyn	1329
Manhattan	578
Queens	646
Total	2,985

Phase 3: Remove Irrelevant Tax and Building Classes

This final filter targeted only sales that were investment properties that were not restricted in the ability of the assessment to rise to market in Tax Class 2 and 4. Also, sales of property that also included business components were also removed from the sample (such as hotels and gas stations).

This filter took the sample above and removed all sales of properties that were in:

- Tax Classes 2A, 2B, 2C, 3, 4A (“2004_TXCL”)
- Building Classes C6, C8, D0, D4 (“2004_BLDGCL”)
- Building Classes beginning with the letters: G, H, I, J, M, N, R, V, W, Z (“2004_BLDGCL”)

For those that are unfamiliar with New York City’s complex tax class and building class designations, definitions of the different building classes can be found in Appendix C.

Table 4: Arms-Length Single Parcel Sales of Investment Real Estate for Tax Class 2 and 4 in 2003

Borough	Count
Bronx	184
Brooklyn	329
Manhattan	345
Queens	253
Total	1,111

With this final sample set of 1,111 winnowed down from the initial data set of over 12,403, meaningful analysis could be conducted.

Table 5: Average and Median Assessment Ratios for Tax Class 2 and 4 for 2003

Borough	Count	Ratio of 2003/2004 final assessment/sales price ("Final Actual Assessed Total Value"/Sales Price)	Median Ratio of 2003/2004 final assessment/sales price
Bronx – Tax Class 2	87	19.85%	18.13%
Bronx – Tax Class 4	97	32.22%	33.22%
Brooklyn – Tax Class 2	112	19.63%	17.16%
Brooklyn – Tax Class 4	217	19.25%	18.90%
Manhattan – Tax Class 2	199	19.85%	16.00%
Manhattan – Tax Class 4	146	25.91%	18.28%
Queens – Tax Class 2	30	19.56%	15.81%
Queens – Tax Class 4	223	20.24%	19.94%
4 Boroughs – Tax Class 2	428	19.79%	16.86%
4 Boroughs – Tax Class 4	683	25.42%	20.55%
4 Boroughs – TC 2 and 4	1111	24.48%	18.67%

The Department of Finance determines the assessed value of property by multiplying the market value by the assessment rate, which is different depending on the tax class. The assessment ratio for Class 1 is 8 percent. For the other tax classes, the assessment ratio is 45 percent.

As one can plainly see, the assessment ratio for the sample is about half of what that target is (45%). One could also reasonably assume that the assessments on recent sales are probably the most accurate as they are conducted with the most current indication of market value (e.g., a recent sale). **Based on these results, one could extend the results of this study to the conclusion that the entire set of Tax Class 2 and 4 properties is vastly under-assessed relative to the target assessment.**

This under-assessment leads one to the following conclusions:

1. If the entire assessment roll is under-assessed relative to the target assessment, as this data shows, the amount of tax revenue that the city is not collecting and is at risk for further losing is stunning.

On its most basic level, the City is not collecting approximately half of what it could be. However, this statement is not entirely accurate as the City is probably compensating for an unusually low assessment level with a high tax rate. The net result is then the City collects the same amount of revenue as it would if the assessment was higher and the tax rate was lower. The larger and more dangerous issue is that this underassessment relative to the City's target assessment puts the City at risk to lose significant amounts of tax revenue through legal challenges.

According to the Tax Commission annual report, approximately $6.6 Billion of tax levy is contested every year in Article 7 (tax certiorari) proceedings. Those proceedings allow the taxpayer to contest not only over assessments but they can also contest "unequalized" assessment. **In simple terms, the petitioner would argue that the City overall has a low assessment ratio and that since the petitioner's asset was previously assessed at 45%, the property's assessment should now be lowered to match the rest of the City.** This under-assessment can be proven with a sales ratio study[10]. As shown above, the citywide assessment ratio for Tax Class 2 and 4 properties is approximately 25% (it is 24.48% in Table 4). If the sales ratio study indicates a citywide rate of 25% then that would be the target rate used in the proceeding.

For example, if a property is valued with a fair market value of $10,000,000, it should have an assessment of $4,500,000 ($10,000,000 x 45%). However, the citywide rate is 25%, significantly below the target rate of 45%. This could force a reassessment of the asset at the lower rate and that would result in a reduction of the assessment by 44% (e.g. 1-[25%/45%]). If we extend this concept to every assessment that is currently being contested (approximately $6.6 Billion in annual tax revenue) and these proceedings received the same treatment, the result would be a 44% reduction in annual taxes. This is an annual loss to the City of $2.9 Billion dollars[11].

Even if we are extremely conservative and assume only a fraction (1/3) of the potential claims are successful on this basis, it would result in an annual loss to the City of $1.0 Billion dollars.

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10 The section of the law that allows for the use of a simple sales ratio to prove the equalization rate is RPTL sect 720.

11 This conclusion is derived from page A8 of the 2003 Annual Report by the City of New York's Tax Commission.

For 2002, the Collective Amount of Assessments that was "Pending Judicial Review Proceedings" was $66,181,093,541. There was also $8,565,090,578 that was no longer at issue in that year. This results in a net amount of $57,616,002,963. If one uses the most conservative tax rate of 11.431% (the rate for Tax Class 4), the current annual taxes that are at risk is $6,586,085,298.

There is one minor caveat to this calculation. All 4 tax classes are included in these calculations; however, as is clear from the following chart, the vast majority of these proceeding refer only to Tax Classes 2 and 4.

2003 Assessment Review Applications

Real Property Designation	Collective Amount of Assessments
Tax Class 1	$ 128,547,382
Tax Class 2	$35,733,212,696
Tax Class 3	$ 1,242,084,150
Tax Class 4	$48,777,588,896

This information can be found on page A4 of the above referenced document.

2. A financial loss of this magnitude extends beyond just the annual loss of revenue. The larger issue is the impact of the inaccurate tax assessment on the City's bond rating. A municipal bond rating is essentially the result of two factors: the City's ability to collect revenue to pay outstanding bonds and the City's other obligations that limit its ability to repay. An impact of this size on the City's ability to collect revenue could cause the bond rating agencies to lower the City's rating. The result of a lower rating would be that the bond markets would require a higher rate of interest for new bond issuances. In other words, if assessment roll issues raised the concern that the City could not effectively collect its tax revenue in the future, the overall financial health of the City could be hurt.

Avenues for Future Research and Reform

Putting aside the research issues, the larger issue is one of reform.

A full analysis of reforms is beyond the scope of this paper[12]. However, the following suggested measures are a good place to start:

1. *Compliance with the Requirements of Existing Law*
2. *Annual Reporting by an Outside Source*
3. *Fix the Assessment Ratios*
4. *Integrate Staten Island*

1. Compliance with the Requirements of Existing Law: The City is currently not in compliance with the reporting requirements that it submit the information that is collected from the RP-5217NYC form to the State. Please refer to Appendix B that contains a letter from ORPS that explains the legal requirements. The City of New York should obey the law before the State of New York's Office of the Attorney General compels it to. **To this author's knowledge, the Office of the Attorney General is unaware of the situation; however, if they were to be made aware of it, it should be assumed that they would force the City to comply.**

It is apparent from this author's experience, and documentation from ORPS, that DOF is not willing or able to release the RP-5217NYC data in a usable format. It does not appear to be a "technical issue"; all of the information can be obtained on a single property basis from ACRIS on their web site. There is no technical reason that this could not be released in a more straight-forward way (such as on a CD in MS Access format).

2. Annual Reporting by an Outside Source: In keeping with the general tenets of good government practices, an annual analysis of the assessment rolls regarding the accuracy and fairness of the system should be conducted. This report should be conducted by an

[12] For a good list of reforms to start with, please refer to the January 2004 report, "New York City Department of Finance & Department of Investigation Joint Task Force Charged with Eliminating Corruption in the Department of Finance's Real Property Assessment Unit Final Report". While this report was targeted at corruption issues, many of these proposals will help with the larger goal of an accurate tax assessment system.

entity that is independent from the Department of Finance. It is apparent that the health and accuracy of the tax roll would be aided by an outside observer or ombudsman that would be responsible for analyzing the status of the tax roll and pointing out ways that the process could be improved.

The level of analysis in this paper is just the beginning of what could be done. The intersection of the assessment data and the sales data is ripe for research. This research would also not be particularly difficult to conduct; the primary issue is whether or not researchers would have access to the data.

This analysis could be conducted on either a geographic or time basis. For example, why do some boroughs have higher assessment ratios than others? Is this related to staffing? Are there department level biases for or against certain communities?

Another way to look at the assessment ratio issue is over time. Are the assessment ratios consistent over time? The City has sales records going back many years before the change of the law that required its release. If a study was conducted with DOF's approval and was for the benefit of the city, the issue of "tax secrecy" could be mitigated and access to pre-2003 data could be used.

3. Fix the Assessment Ratios: This study makes clear the fact that the assessment ratios are extremely out of line when compared to the rest of the state. At the very least, DOF should aim to meet the target assessment ratios on transactions in the coming years. Otherwise, the City puts itself at severe peril for loss of tax revenue.

The City could eliminate the potential political issue of increasing the assessments by lowering tax rates to compensate. The net revenue to the City would be the same, but the legal risks that are currently outstanding would be mitigated.

4. Integrate Staten Island: There does not appear to be a good reason why Staten Island's property information is maintained separately from the rest of the City. If the City is truly one legal entity, Staten Island's information should be just as accessible as the rest of the City's. Without the integration of Staten Island into the larger data collection system, city wide comprehensive analysis is impossible.

<u>What Next?</u>

A good first step to correcting some of these problems would be to organize a process that could harness the power of collective decision making. The author suggests roundtable discussions.

Roundtable discussions are not simply holding hearings; hearings often are confrontational and end up being little more than an airing of past hurts and finger-pointing. Instead, the author suggests that a series of roundtable discussions should be launched. Members of both government and industry should be invited to identify how the assessment process can be more accurate, less susceptible to corruption, and more transparent. At the risk of harping on the obvious, while certain individuals may benefit from an inaccurate tax roll, as a collective group, the entire City suffers.

These roundtable discussions should be hosted on “neutral” ground. A university would be a natural fit. New York City has a number of high quality academic institutions that run graduate level real estate educational programs that could be considered as a potential host. One of a number of leading New York based industry organization might also possibly be appropriate.

Note to Other Researchers

The author would like to note that this entire report is based on the data that is available from DOF’s ACRIS web site. It is possible that other more accurate data sets exist, but without DOF’s assistance (or legal compliance), it is impossible to confirm. The process is currently entirely opaque for a researcher that wants to examine the intersection of assessment and sales information.

To ease access to the data for researchers, the data that was used to put this report together will be posted online after publication. The data will also be available at that time by contacting the author directly.

Appendix A: Alternate Result

The main methodological attack that could be made on this report is that the filters biased the result to generate an unusually low assessment level. The assessment ratio is significantly off from the 45% target regardless of whether or not a filter is used. In fact, the unfiltered data is even farther from the 45% target rate than the filtered data.

The following table shows the assessment ratios three ways:

1. The “Filtered” ratio – These are the same assessment ratios that appear in Table 5.
2. The “Unfiltered” ratio – This assessment ratio is calculated by using the sample set before filtering. It uses the sample that was featured in Table 2.
3. The “>=$100,000 Unfiltered Ratio” is calculated by using the Table 2 sample set but it removes sale transactions that are less than $100,000.

Table 6: Unfiltered vs. Filtered Assessment Ratios

Borough	Count	Filtered Ratio of 2003/2004 final assessment/sales price	Count	Unfiltered Ratio of 2003/2004 final assessment/sales price	Count	>=$100,000 Unfiltered Ratio of 2003/2004 final assessment/sales price
Bronx – Tax Class 2	87	19.85%	496	31.29%	290	18.66%
Bronx – Tax Class 4	97	32.22%	377	64.55%	191	29.95%
Brooklyn – Tax Class 2	112	19.63%	2051	25.33%	1199	12.44%
Brooklyn – Tax Class 4	217	19.25%	883	58.70%	383	18.23%
Manhattan – Tax Class 2	199	19.85%	1479	73.10%	814	15.60%
Manhattan – Tax Class 4	146	25.91%	786	181.11%	274	25.09%
Queens – Tax Class 2	30	19.56%	840	41.23%	521	14.92%
Queens – Tax Class 4	223	20.24%	649	65.25%	372	22.17%

As is clear from the above table, if sales transactions that are less than $100,000 are included, the assessment ratios are unusually high. This is due to the large number of “sale transactions” that occur for no money. These sales are obviously not “arms-length” sales and should be discarded.

Once only “arms-length” sales are examined (the final column) the assessment ratio for all four boroughs and both tax classes is not even remotely close to the City’s target assessment ratio of 45%. It is also apparent that in seven out of eight cases (all except for Queens Tax Class 4), the filtering process only increased the sample’s assessment roll and brought it closer to the target value.

Appendix B: Letters

The following are copies of letters from government officials that the author acquired during this research:

January 6, 2004	Letter from Gerald S. Koszer, Records Access Officer, City of New York Department of Finance to Joshua Kahr (the author)
March 12, 2004	Letter from Stephen J. Harrison, Associate Attorney and Records Access Officer, State of New York Office of Real Property Services to Joshua Kahr (the author)
May 3, 2004	Letter from Assemblyman Brian McLaughlin and Assemblyman James Brennan to Commissioner Martha Stark, City of New York Department of Finance
June 14, 2004	Letter from Assemblyman Brian McLaughlin and Assemblyman James Brennan to Commissioner Martha Stark, City of New York Department of Finance
June 29, 2004	Letter from Commissioner Martha Stark, City of New York Department of Finance to Assemblyman Brian McLaughlin and Assemblyman James Brennan

Regardless of the presence of filters, it is obvious that Tax Class 2 and 4 properties are severely under-assessed relative to the target assessment.

FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

January 6, 2004

Joshua Kahr
Director of Research
The Steven L. Newman Real Estate Institute
Baruch College, Box C-0120
137 East 22nd Street
New York, NY 10010

Dear Mr. Kahr:

This is in response to your request addressed to Assistant Commissioner George Mark dated December 30, 2003.

In response to your request, please be advised that the New York City Department of Finance is able to provide the following information to you on CD for all tax class 2 & 4 properties:

Borough
Block
Lot
Address
Zip Code
Building Class
Tax Class
Number of Units (residential only)
Improvement Size (current building size, not size of addition)
Year Built
Number of Stories
2003/04 Actual Assessment
2004/05 Tentative Actual Assessment (Available after January, 15, 2004)

The following information is not available because the Department of Finance does not maintain such information:

Neighborhood
Number of Rooms (residential only)
Councilmanic District

Please be advised that you are being denied access to Sales Price and Sales Date information because this information is tax secret information that is derived from Real Property Transfer Tax returns. Pursuant to §11-2115 of the New York City Administrative Code, this information may only be released to the grantor, grantee, or subsequent owner of the property.

The following fields are on the file. You may eliminate any properties you do not want to include in the selection:

Building Class
Tax Class
Exempt Class (can be used to determine if a property is fully Exempt)

Pursuant to Public Officers Law (POL) §89 (4)(a), an appeal of the partial denial of access to information can be made within thirty days to Peter Rabinowitz, FOIL Appeals Officer, New York City Department of Finance, 345 Adams Street, 10th Floor, Brooklyn, NY 11201.

If you desire the releasable information described above, kindly submit a new request to Assistant Commissioner George Mark asking for the RPAD Master File, for tax classes 2 and 4, in CD format.

Sincerely,

Gerald S. Koszer
Records Access Officer

GSK:jk
Attachment
04jk1/kahr

cc: George Mark
Pat Sammut

THOMAS G. GRIFFEN
EXECUTIVE DIRECTOR

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF REAL PROPERTY SERVICES
16 SHERIDAN AVENUE
ALBANY, NEW YORK 12210-2714

TEL. (518) 474-5711
FAX (518) 474-9276
Website: http://www.orps.state.ny.us

RICHARD J. SINNOTT
Counsel

March 12, 2004

Prof. Joshua Kahr
The Steven L. Newman Real Estate Institute
Baruch College
City University of New York
Box C-0120
137 East 22nd Street
New York, NY 10010

Dear Prof. Kahr:

This is in reply to your March 4, 2004 Freedom of Information Law request for sales data pertaining to the City of New York.

Effective January 1, 2003 and pursuant to chapter 259 of the Laws of 2002, New York City became subject to the requirement (in Real Property Law, §333(1-e)(iv)) that deeds offered for recording must be accompanied by the RP-5217 real property transfer report form.[1] Those forms are generally public records (Real Property Tax Law, §574(5).

It is my understanding, however, that despite chapter 259, we are not yet receiving RP-5217 data from New York City. Rather, the sales data which we currently receive from the City is that derived from the New York City transfer tax. By statute (New York City Administrative Code, §11-2115), that information is confidential (per Public Officers Law, §87(2)(a)).[2] As such,

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[1] Bill section three of that same act repealed subdivision four of section 574 of the Real Property Tax Law that previously excluded New York City from the purview of that section.
[2] Chapter 259 of the Laws of 2002 did not amend the City's Administrative Code.

your request for New York City sales data must be (and therefore is) denied.

Please note that you may appeal the denial of access to a State Board record by writing, within the next 30 days, to Richard J. Sinnott, Records Appeals Officer, at the above address (Public Officers Law, §89(4)(a)).

Very truly yours,

Stephen J. Harrison
Associate Attorney &
Records Access Officer

cc: Richard J. Sinnott, Esq.
Colleen Benson
James J. O'Keeffe, Esq.

THE ASSEMBLY

STATE OF NEW YORK

ALBANY

May 3, 2004

Martha E. Stark – Commissioner
New York City Department of Finance
One Centre Street, Room 500
New York, New York 10007

Dear Commissioner Stark:

It has come to our attention that the New York City Department of Finance is in violation of Section 574 of New York State's Real Property Tax Law which requires recording officers and assessors to file a RP-5217 form with the State. As you must know, effective January 1, 2003 (pursuant to Chapter 259 of the Laws of 2002), New York City became subject to the statewide requirement of recording the transfer of deeds on the standardized RP-5217 real property transfer report and submitting such form to the New York State Office of Real Property Services.

The realization that New York City is neglecting to meet this statutory requirement was discovered when a researcher, Mr. Joshua Kahr, at the City University of New York requested real property sales reporting data. Mr. Kahr's FOIL request was initially denied on the grounds that the data was confidential as the City was using a City transfer tax form to record deed transfers. He then made an appeal to get the information via the RP-5217 form. This FOIL request went unanswered for three months. After many attempts to get the information, Joshua was informed that the City does not submit the statutorily required RP-5217 form to the New York State Office of Real Property Services. To date, Joshua is still waiting for the sales data that the City is required to make available.

Over the last several months we have heard time and time again how the Department of Finance is working to create a real property system that is transparent. The RP-5217 is a data collecting instrument that would be instrumental in meeting this goal. The information gathered via the RP-5217 would allow greater accuracy in analyzing and forecasting real property market trends. Yet, the City fails to implement its usage.

When can we expect to see the City of New York adhering to State law and when can the public expect to have access to the sales information that the City is obligated to release. We look forward to your prompt response.

Sincerely

Brian M. McLaughlin

Assemblyman Brian McLaughlin
Chair Real Property Taxation Committee

Sincerely,

Assemblyman James Brennan

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

June 14, 2004

Martha E. Stark – Commissioner
New York City Department of Finance
One Centre Street, Room 500
New York, New York 10007

Dear Commissioner Stark:

This is a follow-up letter to correspondence we sent in early May (see attached) regarding a FOIL request by Mr. Joshua Kahr – a researcher for the City University of New York. To date, we have not received a response from you or for that matter from any member of the Department of Finance regarding this issue.

Mr. Kahr simply requested the sales data that is required to be filed by the City of New York pursuant to Chapter 259 of the Laws of 2002. The enactment of this legislation requires the recording of a completed RP-5217 form upon the transfer of ownership of real property in the City of New York. It further requires that the NYC Department of Finance file such information with the New York State Office of Real Property Services.

Since our initial letter to you in May, we have been notified by Mr. Kahr that a representative from the City had provided a data disc that was cited as having the requested information. Interestingly, the data was in a rather unique format and was not usable (it was in a raw text format a/k/a "data dump"). Additionally, it has been discovered that the Department of Finance has been collecting the data on the RP-5217 form (this is contrary to what Mr. Kahr was initially told) and such information can be viewed online at the Department of Finance's own web site.

These new developments lead us to ask you two additional questions:

1. If the form has been imaged and the data has been loaded onto your web site, why has it not been released to the State in a usable form as is required by State law? The mere act of collecting data and posting the information on an entry-by-entry basis is not sufficient; it must be released to the State in a usable form.

2. What is the delay and/or difficulty in providing the data in a usable format (such as MS Excel or MS Access) to Mr. Kahr as originally requested some months ago? Your agency is clearly not complying with the requirements of FOIL by sending a citizen a "data dump" of raw and unusable information that may or may not be the information that they requested. Similarly, your initial denial on the grounds that the data is confidential is belied by the fact that the data is available from your own web site.

We look forward to your timely response. In fact, until this matter is cleared up, it will be impossible to address your request for legislation that allows for electronic filing of this data. We must operate in a spirit of transparency and it would be unwise to consider this type of legislation when we have received no response concerning the release of this information.

Sincerely,

Brian M. McLaughlin

Assemblyman Brian McLaughlin
Chair Real Property Taxation Committee

Sincerely,

James F Brennan

Assemblyman James Brennan

CC: Mayor Michael Bloomberg

FINANCE
NEW YORK
MARTHA E. STARK
COMMISSIONER

June 29, 2004

Assemblymember Brian McLaughlin
Assemblymember James Brennan
The Assembly
State of New York
Albany, 12248

Dear Assemblymembers McLaughlin and Brennan:

This is in response to your letter dated May 3, 2004 regarding Joshua Kahr's Freedom of Information Law request for real property sales data. There seems to have been some confusion regarding Mr. Kahr's request, but the issue has been resolved and Mr. Kahr has received the data.

Last month, Finance supplied Mr. Kahr with a CD of our standard Mortgage Deed Extract file, which does in fact contain sales information from January 1, 2003 onwards. Unfortunately Mr. Kahr had trouble manipulating the data. We provided assistance, and on June 3, we received an e-mail message from Mr. Kahr advising that he was able to open the file, though we continue to provide technical assistance to him.

Although I regret the delay in supplying this data, I must take exception to your charge that Finance failed to implement the law. That is absolutely untrue, and had Mr. Kahr contacted me or one of my Assistant Commissioners for help, he would have received it.

Finance has indeed been the driving force behind making the tax system more transparent. Under Mayor Bloomberg's leadership, we have made the bills we send easier to understand, put deed and other property information online on our award-winning Automated City Register Information System, and consolidated our response to data requests to streamline this process.

While there's still much to do, I am committed to making sure the public understands every aspect of Finance's work and has access to all of our public data.

Sincerely,

Martha E Stark

Martha E. Stark
Commissioner of Finance

C: Sam Miller, Assistant Commissioner
Gerald Koszer, Records Access Officer

Appendix C: Building Classes

The following appendix provides a list of the building classes that were excluded as part of the data filtering process.

The following were excluded:

Specific Building Classes

- C6: Walk-Up Apartments, Cooperatives (other than uses condominiums)
- C8: Walk-Up Apartments, Co-op Conversion from Loft/Warehouse
- D0: Elevator Apartments, Co-op Conversion from Loft/Warehouse
- D4: Walk-Up Apartments, Cooperatives (other than condominiums)

All Building Classes in the Following Categories

- G: Garages and Gasoline Stations
- H: Hotels
- I: Hospitals and Health Facilities
- J: Theatres
- M: Religious Facilities
- N: Asylums and Hotels
- R: Condominiums
- V: Vacant Land
- W: Educational Facilities
- Z: Miscellaneous

Appendix D: Bill 4683A

Bill 4683A was signed into law as part of Chapter 259, Laws of 2002. It effectively repealed the "tax secrecy" that surrounded sales price and other information. It was effective as of January 1, 2003.

As such, it covers the timeframe for the information that the author requested from the Department of Finance.

The bill and a memorandum in support of the legislation are attached.

Post-it® Fax Note 7671

Date 1/13/04	# of pages ▶ 2
To Joshua Cahr	From Lorris Smith
Co./Dept.	Co. M/A Brennan
Phone # 212·802·5956	Phone # 518·455·5377
Fax # 646·365·3211	Fax # 518·455·5592

New York State ASSE

Wednesday, July 3, 2002

Bill Text - A04683

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See Bill Summary

Chapter 259 Laws of 2002

S T A T E O F N E W Y O R K

4683--A

2001-2002 Regular Sessions

I N A S S E M B L Y

February 13, 2001

Introduced by M. of A. BRENNAN, STRINGER -- Multi-Sponsored by -- M. of A. COOK, GLICK, GOTTFRIED, GRANNIS, JACOBS, JOHN, ORTIZ -- read once and referred to the Committee on Real Property Taxation -- recommitted to the Committee on Real Property Taxation in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to the recording of conveyances of real property and to repeal subdivision 4 of section 574 of the real property tax law relating to access to tax returns

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph iv of subdivision 1-e of section 333 of the real property law, as amended by chapter 274 of the laws of 1994, is amended to read as follows:

iv. The provisions of this subdivision shall not operate to invalidate any conveyance of real property where one or more of the items designated as subparagraphs one through eight of paragraph ii of this subdivision, have not been reported or which has been erroneously reported, nor affect the record contrary to the provisions of this subdivision, nor impair any title founded on such conveyance or record. Such form shall be certified as to the accuracy of the contents by the transferor or transferors and the transferee or transferees. Provided, however, if the conveyance of real property occurs as a result of a taking by eminent domain, tax foreclosure, or other involuntary proceeding such form may be certified only by either the condemnor, tax district, or other party to whom the property has been conveyed, or by that party's attorney. {The provisions of this subdivision shall not apply to a county wholly within the boundaries of a city.} Any deed executed and delivered prior to July first, nineteen hundred ninety-four may nevertheless be recorded in the office of the county clerk providing there is submit-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

LBD06587-04-2

ted therewith, and in place of such form, a separate statement signed by the transferor or transferors and the transferee or transferees or any person having sufficient knowledge to sign such form which contains the same information required by the state board of equalization and assessment as set forth in subparagraphs one through four of paragraph ii of this subdivision.

S 2. Subdivision 3 of section 333 of the real property law, as amended by chapter 385 of the laws of 1994, is amended to read as follows:

3. The recording officer of every county shall impose a fee of twenty-five dollars for every sales reporting form submitted for recording as required under subdivision one-e of this section. {In the city of New York, the recording officer shall impose a fee of twenty-five dollars for each real property transfer tax form filed in accordance with chapter twenty-one of title eleven of the administrative code of the city of New York.} The recording officer shall return eighty-eight percent of the revenue collected to the state office of real property services every month. All revenue collected and returned to the state office of real property services shall be deposited in the improvement of real property tax administration account established pursuant to section ninety-seven-ll of the state finance law. The remainder of the revenue collected shall be retained by the county or by the city of New York.

S 3. Subdivision 4 of section 574 of the real property tax law is REPEALED.

S 4. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

.SO DOC A 4683A *END* BTXT 2001

Contact Webmaster

MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, sect. 1(e)

Bill Number: Assembly 4683a **Senate** **Original bill**
XX **Amended bill**

Sponsors: Members of Assembly: BRENNAN, STRINGER

Senators: PADAVAN

TITLE OF BILL: An act to amend the real property law, in relation to the recording of conveyances of real property and to repeal subdivision 4 of section 574 of the real property tax law relating to access to tax returns.

SUMMARY OF SPECIFIC PROVISIONS: Section 1 of the bill amends paragraph iv of subdivision 1-e of section 333 of the Real Property Law to remove the exemption for New York City.
Section 2 of the bill amends subdivision 3 of section 333 of the real property tax to remove language that places a fee on each real property transfer tax form filed according to the City's administrative code. This fee will now be paid for complying with the requirements of section 1 of this legislation.
Section 3 of the bill would repeal subdivision 4 of §574 of the Real Property Tax law which exempts New York City from making certain real estate transfer records subject to certain reporting requirements.

JUSTIFICATION: All municipalities are required to collect data on transfers of real property, including such information as mailing address of new owner, tax billing address, appropriate tax map designation sales price and other information on the taxable status of the property. This information is collected on a Form 5217 from ORPS in all jurisdictions except New York City. This bill requires that New York City also use that form.

Since filing the ORPS form requires a $25 fee, the City of New York has agreed to remove the equivalent fee which they have been charging to file a form with the recording officer in each borough in accordance with chapter 21 of title 11 of the Administrative Code. Therefore, there is no change in the fee structure for transfer of property due to this change in the law.

By making this change in the law, the information that is available regarding property transfers from the Form 5217 will be available for ALL transfers, including those in New York City.

PRIOR LEGISLATIVE HISTORY: Similar to: A. 6447 of 1995-96. In Cities committee.
A.3344 of 1997-98. In Real Property Tax committee.
A.3643 – 1999-2000 – Reported from Real Property Tax to Ways and Means.
2001 – Reported from Real Property Tax to Ways and Means.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: None.

EFFECTIVE DATE: January 1 after enactment.