DEPARTMENT OF FINANCE
AUDIT DIVISION

PP-2008-23
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STATEMENT OF AUDIT PROCEDURE

FAIR MARKET VALUE OF REAL PROPERTY

BACKGROUND

This Statement of Audit Procedure replaces SAP 93-2-GCT/RPTT, which dealt with the fair market valuation of real property and SAP 95-1-GCT/RPTT which dealt with the fair market value of Condominiums and Cooperatives. Fair market value is generally defined as the price a willing buyer would pay to a willing seller, both in a free market, for any piece of property. This SAP specifically discusses the approach to determining fair market value that should be taken for each class of property in the City.

PROCEDURE

Tax Class One Properties –

Tax class one properties include:

(a) one, two and three family residential real property as well as residential real property that contains no more than three dwelling units held in condominium form of ownership and that was classified in tax class one on an assessment roll prior to the property's conversion to condominium form of ownership. This class also contains properties that are primarily residential but may also include some commercial use such as "mom and pop" stores where the commercial use is at ground level with one or two residential units above;

(b) residential real property not more than three stories in height held in condominium form of ownership, provided that no dwelling unit therein previously was on an assessment roll as a dwelling unit in other than condominium form of ownership;

(c) residential real property consisting of one family house structures owned by the occupant, situated on land held in cooperative ownership by the owner occupiers, provided that (1) such structures and land constituted bungalow colonies in existence prior to 1940 and (2) the land is held in cooperative ownership for the sole purpose of maintaining one family residences for members own use; and

(d) vacant land, other than vacant land in the borough of Manhattan south of or adjacent to the south side of 110th Street, provided that such vacant land which is not zoned for residential use must be situated immediately adjacent to a property improved with a residential structure as defined in subparagraphs (a) and (b) of this paragraph, be owned by the same owner as such immediately adjacent residential property immediately prior to and since January 1, 1989, and have a total area not exceeding 10,000 square feet.

When conducting a field or desk audit in which the value for class one properties may be an issue, the auditor should compare the value of the real property reported on the tax return to the Estimated Market Value of the property on the assessment roll of the City for the same period as covered by the return. The Department determines value as of the annual taxable status date, which is January 5th. The auditor may also seek to establish a value for the property other than the Estimated Market Value by utilizing other relevant evidence. This could include information concerning the market values of class one properties on the Property Sales File that is now available on the Department's website. The auditor can compare the subject property to comparable properties (number of dwelling units, square footage, land area, etc.) in the same neighborhood that sold within the same period of time to establish an alternative estimate of market value. If there was a recent prior sale of the subject property the auditor should also take note of the sales price and trends in pricing in establishing the estimate. If the value reported on the return is less than the assessment roll's Estimated Market Value or an alternative market value established by the auditor using comparable sales data, the auditor may presume that the property has been reported at less than its fair market value and calculate a proposed deficiency in tax liability.

Tax Class Two Properties – Class Two consists of all residential property not classified as Tax Class One – generally, multi-family housing - but does not include hotels, motels or other similar commercial properties. Although the Department includes an Estimated Market Value on the assessment roll for Class Two properties, statutory provisions restrict the value of these properties for real property taxation purposes, particularly cooperatives and condominiums, and are not truly reflective of market value for the purposes of the General Corporation Tax or the Real Property Transfer Tax.

For real property tax purposes, Real Property Tax Law section 581 states that real property owned or leased by a cooperative corporation or on a condominium bases must be valued "at a sum not exceeding the assessment which would be placed upon such parcel were the parcel not owned or leased by a cooperative corporation or on a condominium basis." In other words, the assessor may not use the sales prices for such co-ops and condos to value these properties for real property tax purposes but must instead value them as if they were rental properties. Section 581 also imposes a limitation on the value of rental properties, requiring that they be assessed "without regard to the value the property might have if converted to a cooperative or condominium basis or if sold or owned for the purpose of such a conversion." Cooperatives and condominiums classified in Class One are not subject to these section 581 limitations.

Consequently, when conducting a field or desk audit in which the value for a Class Two property, particularly cooperatives and condominiums, may be at issue, the auditor should look beyond the Estimated Market Value from the assessment roll and seek to establish an alternative value. The three customary methods of property valuation would apply. As noted above, the City's Property Sales File will be useful to find the sales prices of properties that are comparable to the property at issue. Where appropriate, such a review should be done in consultation with the assessors familiar with the property from the Property Division.

If the value reported on the return is less than the auditor's calculation of market value using a customary valuation method, the auditor may presume that the property has been reported at less than its fair market value. A proposed deficiency in tax liability will be calculated on the basis of the difference between the reported value and the auditor's calculated value.

A taxpayer may dispute a proposed deficiency based on this procedure to determine fair market value by submitting proof of a different value (e.g. an independent appraisal).

Tax Class Two properties include residential rental properties, cooperatives and condominiums. For assessing purposes, the properties are further differentiated by the number of units. Properties with fewer than 11 units are subject to assessment increase limitations of eight percent annually and 30 percent over any five-year period. In contrast, assessment increases for properties with 11 units or more must be phased in over a five-year period.

<u>Tax Class Four Properties</u> – Class Four is the "everything else" class – specifically, everything that is not classified in Tax Classes One, Two or Three (which is generally composed of plant and equipment of utility corporations). As a result of a recent court decision, some properties that had been classified in Class Three have now been reclassified as Class Four. But the vast majority of Class Four properties are properties used for commercial or industrial activities or uses – office buildings, stores, warehouses, factories, etc.

The Department's assessment roll includes an Estimated Market Value for these properties, which may be compared with the value reported on the return. The auditor may seek to establish a value other than the Estimated Market Value by using one or more of the customary valuation methods, including the Sales Approach (using the sales data from the City's Property Sales File) or the Income Approach. This is particularly true for properties in Class Four that are in condominium form of ownership. RPTL §581, discussed above, is equally applicable to commercial condominiums and the Estimated Market Value on the assessment roll may not reflect the property's true value.

As with Class Two properties, the auditor may consult with the assessor familiar with the property from the Property Division to discuss his estimates.

A proposed deficiency in tax liability will be calculated on the basis of the difference between the reported value and the auditor's estimated value (whether this represents the Estimated Market Value from the assessment roll or a value determined by the auditor). A taxpayer may dispute the proposed deficiency and may submit proof of a different market value (e.g., an independent appraisal).