



New York City Council
Committee on Finance Hearing
New York City Department of Finance

**Testimony of Michael Hyman
First Deputy Commissioner**

February 13, 2017

Good afternoon, Chairwoman Ferreras-Copeland and members of the Committee on Finance. I am Michael Hyman, First Deputy Commissioner at the NYC Department of Finance (DOF) and I am joined today by my colleagues, Karen Schlain, Associate Commissioner for Tax Policy; Zal Kumar, Senior Legal Advisor; and Samara Karasyk, Assistant Commissioner for External Affairs. Thank you for the opportunity to testify on the New York City Commercial Rent Tax (CRT) and specifically on Intro 799-A--legislation that would raise the CRT taxable threshold; Intro 1107-A—legislation to establish a 52-week CRT exemption for certain rent related to advertising theatrical productions on billboards; Intro 1376—legislation requiring the NYC Department of Finance to issue a report on the CRT; and Intro 7925—legislation to exempt certain grocery stores from the CRT.

Background:

The NYC Commercial Rent Tax is imposed on tenants of properties used for commercial purposes in Manhattan south of 96th street. The statutory rate is 6.0 percent of base rent (gross rent less certain statutory deductions), but the effective tax rate is 3.9 percent because only 65 percent of base rent is subject to tax.

For example, a tenant pays a landlord \$1 million in base rent. The law provides a 35 percent reduction in the base rent, thereby reducing the taxable base rent to \$650,000. The \$650,000 taxable base rent will be subject to the 6 percent tax rate. The tenant pays \$39,000 in CRT, which is 3.9 percent of the tenant's \$1 million base rent.

All commercial tenants with annual or annualized rents less than \$250,000 are exempt from the CRT. The CRT is phased-in for tenants with base rents between \$250,000 and \$300,000. The \$250,000 taxable base rent threshold became effective June 1, 2001.

In addition, tenants that are governmental or non-profit organizations, tenants located in the World Trade Center Area, tenants occupying retail space in Lower Manhattan, and tenants eligible for the Commercial Revitalization Program are exempt from the CRT.

For Tax Year 2016 (June 2015-May 2016), commercial tenants subject to the CRT owed \$754 million in total tax liability. Approximately 7,700 taxpayers were subject to the tax on 11,000 taxable premises. The City projects that the CRT will generate \$816 million in the current fiscal year (Fiscal Year 2016/17) and \$848 million in Fiscal Year 2017/18.

Intro 799-A

The proposed legislation would increase the CRT taxable threshold to \$500,000 annual rent (per premises) and phase-in the tax for tenants paying between \$500,000 and \$550,000 in annual rent. DOF has estimated that the proposal would benefit more than 40 percent of current CRT taxpayers -- approximately, 3,300 businesses and will reduce projected revenue by about 6 percent. From a policy perspective, the proposed treatment would provide relief to smaller-sized businesses, such as restaurants and smaller retail stores, some of which are struggling economically and for which an excise tax on rent can be a burden. And there is an argument that the CRT taxable threshold is due for an increase. The threshold has not kept up with rent inflation, since it is not indexed and has been at its current level for more than 15 years. But the proposed legislation would cost approximately \$52 million annually, and thus must be discussed in the broader context of City budget needs and priorities.

Intro 1107-A

DOF understands the concerns and needs of business owners who use billboards to advertise their products and services. Billboards are taxable under the CRT. The CRT regulations have long provided that the definition of taxable premises includes "advertising signs on the tops of buildings or structures or located on otherwise unoccupied land." (Rules of the City of New York, Title 19, Chapters 7-01 (subparagraph (3) of the definition of "taxable premises"). Intro 1107-A would provide a 52-week exemption for taxable premises used for "the advertisement of a production or performance of a theatrical work." DOF estimates the cost of the proposal at approximately \$1 million annually. The proposal is seeking an extension of the current CRT exemption provided to tenants that use taxable premises for the production and performance of a theatrical performance for the

first 52 weeks from the date production commences. The current exemption does not cover rent paid for advertising on billboards not attached to the theatre. That is, rent paid for advertising on billboards attached to a different building or space is subject to the CRT. While the legislation is intended to benefit the City's theatre sector, an important part of the City's economy, there is a tax equity argument that billboards used to advertise theatrical performances should not be treated differently than other billboard advertising. And it is important to note that the CRT on rents for billboard advertising is generally paid by Fortune 500-type companies, including the CRT on billboards used to advertise certain theatrical productions.

Intro 1376

DOF is committed to transparency and releases many tax policy reports. DOF currently provides an annual report, "Statistical Profile of the New York City Commercial Rent Tax," which provides detailed statistical information on CRT taxpayers – by base rent ranges and economic sectors, for example. DOF is open to making changes to how we report CRT data. It is problematic, though, to provide systematic reporting for some data, because of problems with the reported information. For example, Intro 1376 mandates certain reporting by the zip code of the taxable premises, but some taxpayers omit zip code information when filing and some taxpayers file incomplete address information for premises or provide information in a non-standard format. DOF reporting must also be in compliance with statutory tax confidentiality requirements, which restrict reporting when the number of observations per category is too low. We recommend that DOF staff meet with City Council Finance staff to discuss the types of enhanced reporting that we may be able to provide.

Intro 7925

Intro 7925 provides a CRT exemption for certain grocery stores meeting the criteria specified in the bill. The legislation as currently drafted raises significant tax administration and compliance issues. The detailed eligibility criteria regarding uses of space on a square footage basis, the development of affordability requirements and annual inspections, would be a challenge for DOF

to administer and could place compliance burdens on the very businesses the legislation seeks to assist. In addition, implementing this type of subsidy through the tax code would inhibit transparency, as DOF would not be able to provide information on the specific businesses benefiting from the legislation. It is important to note that the financial assistance provided through the Food Retail Expansion to Support Health or FRESH program is discretionary, rather than as-of-right, and evaluated by New York City Industrial Development Agency (IDA) staff case-by-case to determine specific eligibility. As regards cost, we do not have specific information for the firms that would qualify for relief under Intro 7925, but we do know that the economic subsector retail grocery stores and supermarkets had Tax Year 2016 CRT liability of \$5.4 million. The subsector included 95 taxpayers and 142 premises.

In closing, the Department of Finance believes the bills that are the subject of this hearing highlight important policy issues. From a tax policy perspective, we believe broad-based relief, such as increasing the CRT taxable threshold is desirable. But any proposed CRT reduction proposal is a budget issue and needs to be discussed as part of the broader budget discussion.

Thank you for the opportunity to testify today. I'm happy to take any questions you may have.