

TAX SECTION

New York State Bar Association

Report on Legislative Proposals for the
Establishment of a New York City Tax Appeals Tribunal

by the
Committee on New York City Tax Matters

May 31, 1989

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June 9, 1989

The Honorable Anthony Shorris
 Commissioner of Finance
 City of New York
 Municipal Building (Room 500)
 One Centre Street
 New York, New York 10007

Re: New York City Tax Appeals Tribunal

Dear Commissioner Shorris:

Enclosed is a Report by our Committee on New York City Tax Matters on the legislative proposal (S.9241-A) to implement City Tax Tribunal.

This Report supplements a report last October by the Committee. A copy of that prior report is also enclosed.

This Report sets forth an alternative proposal for implementing the City Tax Tribunal. The alternative proposal is designed to implement a City Tax Appeals Tribunal as embodied in the City Charter, but with certain changes that we believe will enhance the perception of the City Tribunal as an independent forum and improve the efficiency of Tribunal proceedings. The specific recommendations that are reflected in the Tax Section's proposal are as follows:

- (a) The dispute resolution procedures are stream-lined to avoid the multiple fact-finding proceedings that can be required under the Charter Proposal and S.9241-A, and to guarantee one hearing by a body independent from the Department of Finance. The Tax Section proposals

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are therefore more in line with the existing procedures of the State Tax Appeals Tribunal;

- (b) Taxpayers are not required to pay the disputed tax or post a bond before they present their case to the City Tribunal;
- (c) The State legislation is specifically amended to clarify that the City corporate taxes and the unincorporated business tax are under the jurisdiction of the City Tribunal; and
- (d) The City Tribunal is required to follow as precedent decisions of the State Tax Appeals Tribunal.

While we believe all four recommendations are important, we believe the greatest priority should be given to recommendations (a) through (c).

Clearly it is to everyone's benefit to establish an efficient and fair City Tax Tribunal. The Tax Section remains available to meet with you, and with other interested groups, to cooperate in preparing a joint proposal for implementing the City Tribunal.

Very truly yours,

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Enclosures
4322r

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May 31, 1989

NSW YORK STATE BAS ASSOCIATION
TAX SECTION

Report on Legislative Proposals for the
Establishment of a New York City Tax Appeals Tribunal

by the
Committee on New York City Tax Matters¹

This report supplements the October, 1988 report of the Tax Section (Report No. 591) regarding proposals to change the procedures for the administrative adjudication of disputes involving New York City taxes, and comments on S.4988 (the "City's Bill"). The City's Bill was recently introduced in the New York State Senate on behalf of the New York City Commissioner of Finance to provide for the establishment of a New York City tax appeals tribunal.

The Tax Section's earlier report recommended a number of changes to the procedures that currently govern the administrative adjudication of disputes involving New York City taxes. The Tax Section strongly supports the establishment of an independent forum for the resolution of such disputes, and urges that the independent resolution procedures be economical and efficient, ensure uniformity in interpretation of similar statutes, and be staffed by tax experts.

¹ This report was prepared by Anshel David. Helpful comments were received from Robert Herbst, Carolyn Ichel, Kenneth I. Moore, Robert J. Levinsohn, Robert Plautz, Arthur R. Rosen and David Sachs.

Our earlier report commented on specific aspects of the New York City Charter Revision Commission proposal for the establishment of a New York City Tax Tribunal (the "Charter Proposal") and on a legislative proposal (S.9241-A) that had been introduced by Senator Marchi (the "Legislative Proposal"). The Tax Section concluded that the Charter Proposal, while imperfect, represented an important start in the establishment of an independent forum for the resolution of disputes involving New York City taxes, and therefore recommended a favorable vote on that part of the November, 1988 ballot questions that related to the Charter Proposal's establishment of a City Tax Appeals Tribunal. This proposal was in fact approved by popular vote last November.

The Tax Section further recommended, however, that in adopting the enabling legislation necessary to confer on the city Tribunal jurisdiction over certain business taxes (see §1152c(1)(c) of the City Charter), the State legislature also make certain changes in the proposed dispute resolution procedures. The changes recommended by the Tax Section were designed to enhance the perception of the City Tribunal procedures as independent, fair, economical and efficient. While these pro-posed changes differ in certain respects from the Charter Proposal, the Tax Section believes that its recommendations are consistent with the spirit of the Charter Proposals and will better achieve the "independent tribunal" overwhelmingly endorsed by New York city voters last fall.

In addition to our specific comments on the City's Bill (which is attached as Exhibit A), this report sets forth our alternative proposals for State tax legislation (Exhibit B) and for amendments to the City Charter (Exhibit C). The Tax Section proposals are designed to implement a City Tax Appeals Tribunal as described in the Charter provisions, but with certain changes that the Tax Section believes are necessary to establish fair and efficient tax appeals procedures.

I. Tax Section Proposals.

Both the City's Bill and the Tax Section's proposal for State tax legislation are designed to implement the Charter mandate and establish a City Tax Appeals Tribunal for all taxes administered by the City. In its structure, however, the city's Bill follows the Charter very closely, superimposing the Tribunal review on the existing Finance Department hearings procedures, requiring taxpayers to post a bond in order to obtain Tribunal review, and so forth. We disagree with this approach. Instead, the Tax Section proposal set forth in Exhibit B incorporates modifications that we believe will enhance the perception and the operation of the City tribunal as a fair, independent and efficient forum for resolution of tax disputes.

The Tax Section's legislative proposal is by design not as detailed as the City's Bill, the City Charter provisions or the existing State Tax Appeals Tribunal law. We believe that a detailed tribunal statute would not be necessary or appropriate in State enabling legislation; the statutory provisions suggested herein therefore direct the establishment of an independent tribunal without unduly interfering with the City's autonomy.

The proposed amendments to the City Charter, shown in Exhibit C, are designed to bring the City Charter into conformity with the Tax Section's legislative proposal.

In addition to these substantive proposals it may be necessary or advisable to enact further amendments to specific enabling acts, to sections of the administrative code, or to the CPLR, in order better to incorporate the new tribunal procedures and to reduce the potential for conflicts or confusion between statutory provisions. In preparing this report, however, we did not undertake an exhaustive review of specific State and City provisions that may require conforming amendments.

The specific recommendations that are reflected in the Tax Section's proposal are as follows:

(a) The dispute resolution procedures are streamlined to avoid the multiple fact-finding proceedings that can be required under the Charter Proposal and the City's Bill, and to guarantee one hearing by a body independent from the Department of Finance. The Tax Section proposals are therefore more in line with the existing procedures of the State Tax Appeals Tribunal;

(b) Taxpayers are not required to pay the disputed tax or post a bond before they present their case to the City Tribunal;

(c) The City Tribunal is required to follow as precedent decisions of the State Tax Appeals Tribunal; and

(d) The State legislation is specifically amended to clarify that the City corporate taxes and the unincorporated business tax are under the jurisdiction of the city Tribunal.

The legislative proposal consists of 9 sections. Section one tracks the jurisdictional grant of City charter §168(a), and provides that other provisions of law regarding the administration of City taxes are superseded by the new City Tribunal provisions.

Section two provides for the composition of the tax appeals tribunal.

Section three provides for the taxpayer's right to petition the Tribunal for a hearing without being required to post a bond², regardless of the amount in controversy. Section three also is designed to guarantee taxpayers impartiality and other elements of due process, and provides, similar to existing State Tribunal procedures, that decisions rendered by a hearing officer may be reviewed by the Tribunal at the request of the taxpayer or the Department of Finance. See Tax Law §§2006.7, 2010.4. Although our proposal does not require that the decision of a single commissioner be reviewable by the full Tribunal, we generally believe that the interpretation and application of the tax law is enhanced by collegial consideration and debate; we therefore recommend that the rules of the City Tribunal provide for en banc review at either party's request, on such terms as the rules provide.

² The section does, however, preserve the Finance Commissioner's right to make jeopardy assessments.

Section four provides that the City Tribunal procedures are the exclusive means of administrative review, but permits the establishment of an informal conciliation process within the Department of Finance. In this connection, while our proposal does not mandate the establishment of conciliation procedures, we recommend that the Commissioner do so; obviously the conciliation procedures should be structured such that conciliation either precedes the issuance of the Commissioner's notice of determination, or tolls the ninety-day time limit on filing a petition with the city Tribunal. If the latter alternative is chosen it would be necessary to amend Charter Section 170(a), which currently provides that the Tribunal appeal must be commenced within ninety days of the Commissioner's notice of determination.

The effect of section four, combined with section three, is to give all taxpayers the right to one de novo hearing at the Tribunal level, conducted either by the Tribunal commissioners or by their hearing officers, without first having to go through a hearing at the Finance Department. This is important to the efficiency of the City Tribunal and to its appearance as an independent body. It is similar to the procedures followed in the State Tax Tribunal.

Section five prescribes the authorities that the City Tribunal is to follow as precedent. It is similar to §170(f) of the Charter, but by providing that the city Tribunal shall "follow," rather than "take into consideration," controlling precedential decisions, section five eliminates some confusion in the existing Charter provision. Section five also provides

in effect that decisions of the State Tax Tribunal may overrule prior decisions of the City Tribunal. As we noted in our October report, this approach reflects a bias in favor of the State Tribunal, which bias may not always be appropriate. However, at this time we believe that this proposal is a reasonable compromise to ensure conformity in the two Tribunals' interpretations of similar State and City tax laws. Since our proposal gives the City the right to seek judicial review of City Tribunal determinations, the City is not precluded from contesting the correctness of a State Tribunal decision in court.

Section six requires exhaustion of the City Tribunal proceedings before a taxpayer can seek judicial review. This tracks the language of City Charter §171(b). In addition, section six prescribes a uniform four-month period to appeal decisions of the City Tribunal. A uniform time period for commencing an action for judicial review is an important improvement in the fairness and comprehensibility of city tax laws, for it eliminates existing differences among the various taxes. Consistent with existing procedures for commencing actions for judicial review of State Tax Appeals Tribunal decisions and determinations of the City Commissioner of Finance, Section six prescribes that such actions are to proceed in the manner provided in Article 78 of the CPLR. Section six also provides that the appeal of a Tribunal decision will go directly to the Appellate Division, First Department. This conforms to the procedures applicable at the State Tribunal level, eliminating the step of seeking a transfer from Supreme Court.

Section seven follows City Charter §171(b) which gives the City, as well as the taxpayer, the right to appeal a determination of the Tribunal; the structure of section seven is essentially the same as section six. All existing provisions regarding exclusive remedies, limitation periods and bond requirements for seeking judicial review are preserved, except that the taxing authority is not subject to bond requirements in order to obtain judicial review. We note that it may be advisable to amend the CPLR as well to ensure the City's right to appeal Tribunal decisions.

Section eight specifically provides that nothing in the corporate and unincorporated business tax enabling legislation shall prevent the City Tribunal from determining appeals relating to those taxes. We believe that at a minimum, this State legislation is needed to implement the City Tribunal with respect to the City business taxes; it may be advisable to make conforming changes to the relevant enabling legislation as well.

Section nine provides that the City Tribunal shall begin accepting, hearing and determining appeals on January 1, 1990. This is consistent with section 1152 of the City Charter.

II. Additional Comments on the City's Bill

1. We are concerned with the approach taken in the City's Bill to the application of the City Tribunal procedures to the so-called business taxes, that is, the City corporate and unincorporated business taxes. Section 1152 of the Charter provides that the relevant sections of the State enabling legislation are to be amended to bring such taxes within the jurisdiction of the City Tribunal. This provision was

considered necessary because of the specificity of the State enabling legislation in prescribing procedures applicable to the business taxes.

The City's Bill contains no proposed amendments to the enabling legislation. Instead, it contemplates that the State legislature make amendments directly to the local laws, effecting something like a de facto change in the enabling legislation. See also the City's Bill amendment to Charter §1152.

Certainly it is intended that the Tribunal adjudicate all City taxes, and its significance as an independent dispute resolution forum would be severely eroded if the business taxes were not within its jurisdiction. It may be that the City's Bill will bring the business taxes under the Tribunal. However, we believe that this area is so important that it should be clearly addressed by specific State legislation. Accordingly, we recommend that any State legislation that is enacted with regard to the City Tribunal specifically incorporate State law amendments that clarify that business taxes are within the jurisdiction of the City Tribunal.

2. We recommend that all mail that may be jurisdictional in nature be sent by certified or registered mail. Currently the City's Bill provides for such mailing in some cases but not others. (Compare §19, page 12 of the Bill, and §26, page 18 of the Bill.)

3. inasmuch as Charter section 170(c) gives the City Tribunal the right to grant leave to either the City or the taxpayer to raise new issues of fact or law, we do not understand the justification for proposed §11-529.1 (c) and (d), which

provides that the Tribunal may not consider any issue that has not previously been raised before the Commissioner of Finance. (See Bill §19, on page 13.) In any event, since the Tax Section proposal eliminates preliminary hearings at the Department of Finance, the problem presented by these aspects of the City's Bill would not occur under the Tax Section's proposal.

4. In some cases a court may render a decision in a tax case that does not finally resolve the issue but instead provides for further administrative action and potential judicial review of such action. The last clause of proposed §11-529.1(e) is somewhat confusing in its application to such situations. A determination of the Commissioner of Finance in accordance with the mandate of the Tribunal or a court should not become final if the taxpayer has the right to request Tribunal or judicial review of whether that determination does in fact accord with the mandate. This section therefore should provide that a decision of the Commissioner becomes final upon the rendering of a decision by the Commissioner in accordance with the mandate of the Tribunal or a court's review, subject to any applicable tribunal or judicial review of the decision rendered pursuant to such mandate. (See Bill §19, on page 13.)

5. Proposed §11-530(b) provides that judicial review is the exclusive remedy for taxpayers and, except as otherwise provided by law, the exclusive remedy for the Commissioner. As drafted, it therefore appears that the commissioner may enjoy further remedies in addition to judicial review, while the taxpayer does not. (See Bill §20, on page 14.) This would be remedied by moving the clause "except as otherwise provided by law" to the beginning of the sentence.

6. The effective date proposed in the City's Bill differs from that of the Charter, in that the City's Bill confers on the Tribunal jurisdiction to hear appeals of only those determinations issued by the Commissioner on or after January 1, 1990. (See Bill §33, on page 24.) The Charter, on the other hand, is quite specific in permitting the Tribunal to begin accepting, hearing and determining appeals on January 1, 1990, regardless of when the determination of the Commissioner is issued.

We prefer the Charter's effective date provision, because it brings the City Tribunal into operation at an earlier date, and without regard to when the Commissioner's determinations are issued. We note, however, that some transitional rules will be needed to mesh the existing Finance Department procedures with the new Tribunal, particularly under the Tax Section proposal. We recommend that such rules be drafted (i) to provide for the active operation of the Tribunal at the earliest possible date, and (ii) to provide broad latitude for taxpayers to obtain hearings before the Tribunal commissioners or their hearing officers.

Specifically, we recommend the following transitional rules for cases pending on January 1, 1990:

a. Any petition that is timely filed on or after January 1, 1990 shall be deemed to have been filed with the City Tribunal, regardless of whether the petition is addressed to the "new" Tribunal or the "old" Hearings Department.

b. If a petition was timely filed before January 1, 1990 but the hearing has not been held by such date, the case shall be transferred to the City Tribunal.

c. If a hearing has been held prior to January 1, 1990 but no decision has been rendered by such date, the taxpayer shall have the option of transferring the case to the City Tribunal and requesting a new hearing. If the taxpayer does not elect to transfer his case to the City Tribunal, he would proceed directly to the First Department for judicial review. To implement this transitional rule the last sentence of Charter §171(b) should be amended to clarify that a taxpayer who falls within this transitional rule is not required to exhaust the City Tribunal procedures before commencing an Article 78 proceeding.

d. If a hearing has been held and a decision rendered prior to January 1, 1990, but the time for commencing an Article 78 proceeding has not yet expired, the taxpayer shall have the option of commencing an Article 78 proceeding or transferring the case to the City Tribunal and requesting a new hearing.

Again, to implement the foregoing rules it may be necessary to make conforming changes to the CPLR and to other specific provisions of the tax law.

New York State Bar Association
Tax Section
Report on City Tribunal Proposals
The City Bill

AN ACT to amend the civil practice law and rules, the racing, pari-mutuel wagering and breeding law, the tax law, chapter 235 of the laws of 1952, chapter 1032 of the laws of 1960, chapter 949 of the laws of 1962, chapter 257 of the laws of 1963 and chapter 161 of the laws of 1970, all relating to the Imposition of taxes in the city of New York, and the charter and administrative code of the city of New York, in relation to certain proceedings before, and appeals from decisions of, the tax appeals tribunal of the city of New York

The People of the State of New York, represented In Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of section 506 of the civil practice law and rules is amended by adding a new paragraph four to read as follows:

4. a proceeding against the New York city tax appeals tribunal established by section one hundred _sixty eight of the New York city charter shall be commenced in the supreme court New York county.

§2. Subdivisions 1 and 2 of section 309 of the racing, pari-mutuel wagering and breeding law are amended to read as follows:

1. Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionally or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if the proceeding is commenced within ninety days after the giving of the notice of such final determination, provided, however, that any such proceeding shall not be instituted by a taxpayer unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, shall first be deposited and an undertaking filed, In such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper officer or officers, and such officer or officers or, in the case of a city of one million or more which has established a tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules if the proceeding is commenced within ninety days after the giving of the notice of such denial, provided, however, that a final determination of tax due was not previously made, and that an undertaking Is filed with the proper officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed,

the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

§3. Section 509 of such law is amended by adding a new subdivision 2-a to read as follows:

2-a. Nothing in subdivision one or two of this section shall be construed to prohibit the commissioner of finance of a city of one million or more which has established a tax appeals tribunal from commencing a proceeding under article seventy eight of the civil practice law and rules to review a decision of such tribunal as provided in the charter or administrative code of such city.

§4. Section 1243 of the tax law, as added by chapter 93 of the laws of 1969, is amended to read as follows:

§1243. Judicial review

(a) Any final determination of the amount of any tax payable under sections twelve hundred one through twelve hundred four shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application there for is made to the supreme court within four months after the giving of the notice of

such final determination, provided, however that any such proceeding unde article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless (1) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, ordinance, resolution or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding or (2) at the option of the [petitioner] taxpayer, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against It in the prosecution of the proceeding, in which event the [petitioner] taxpayer shall not be required to pay such taxes, Interest or penalties as a condition precedent to the application.

(b) Where any tax imposed hereunder shall have been erroneously, illegally unconstitutionally assessed or collected anti application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers or. In the case of a city of one million or more which has established a tax anneals tribunal, such tax appeals tribunal, shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, (1) that such proceeding is instituted within four months after the giving of the notice of such denial, (2) that a final determination of tax due was not previously made,

and (3) that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will; by all costs and charges which may accrue in the prosecution of such proceeding.

(c) Nothing in this section shall be construed to prohibit the commissioner of finance of a city of one million or more which has established a tax appeals tribunal from commencing a proceeding under article seventy-eight of the civil practice law and rules to review a decision of such tribunal as provided in the charter or administrative code of such city.

§5. Subdivisions 6 and 7 of section 1 of chapter 235 of the laws of 1952, relating to taxes on cigarettes in a city of one million or more, are amended to read as follows:

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice [act] law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice [act] law and rules shall not be instituted by a taxpayer unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and an undertaking filed, in such amount and with such sureties as a Justice of the supreme court shall approve to the effect that if such proceeding b

dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers or, in the case of a city of one million or more which has established a tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice [act] law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

§6. Section 1 of such chapter is amended by adding a new subdivision 7-a to read as follows:

(7-a) Nothing in subdivision six or seven of this section shall be construed to prohibit the commissioner of finance of a city of one million or more which has established a tax appeals tribunal from commencing a proceeding under article seventy-eight of the civil practice law and rules to review a decision of such tribunal as provided in the charter or administrative code of such city.

§7. Subdivisions 8 and 9 of section 1 of chapter 1032 of the laws of 1960, relating to taxes on certain motor vehicles in a city of one million or more, as amended by chapter 311 of the laws of 1962, are amended to read as follows:

(8) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a special proceeding under article seventy-eight of the civil practice law and rules brought in the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding shall not be instituted by a taxpayer unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that If such proceeding be dismissed or the tax confirmed the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the [petitioner] taxpayer such undertaking may be in a sum sufficient to cover the taxes, Interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the [petitioner] taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(9) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers or, in the case of a city of one million or more which has established a tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

§8. Section 1 of such chapter is amended by adding a new subdivision 9-a to read as follows:

(9-a) Nothing in subdivision eight or nine of this section shall be construed to prohibit the commissioner of finance of a city of one million or more which has established a tax appeals tribunal from commencing a proceeding under article seventy-eight of the civil practice law and rules to review a decision of such tribunal as provided in the charter or administrative code of such city.

§9. Subdivisions 9 and 10 of section 1 of chapter 949 of the laws of 1962, relating to annual vault charges in a city of one million or more, are amended to read as follows:

(9) Any final determination of the amount of any annual vault charge payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice [act] law and rules If application there for is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice [act] law and rules shall not be Instituted by a person subject to the charge unless (a) the amount of any annual vault charge sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, Issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that If such proceeding be dismissed or the determination confirmed, the [petitioner] person subject to the charge will pay all costs and charges which may accrue in the prosecution of such proceeding; or (b) at the option of the [petitioner] person subject to the charge such undertaking may be in a sum sufficient to cover the annual vault charge, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the [petitioner] person subject to the charge shall not be required to pay such vault charge, interest or penalties as a condition precedent to the application.

(10) Where any annual vault charge imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the remind thereof duly made to the proper fiscal officer or officers, and such officer

or officers or, In the case of a city of one million or more which has established a tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice [act] law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of annual vault charge due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the annual vault charge confirmed, the [petitioner] person subject to the charge will pay all costs and charges which may accrue in the prosecution of such proceeding.

§10. Section one of such chapter is amended by adding a new subdivision 10-a to read as follows:

(10-a) Nothing in subdivision nine or ten of this section shall be construed to prohibit the commissioner of finance of a city of one million or more which has established a tax appeals tribunal from commencing a proceeding under article seventy-eight of the civil practice law and rules to review a decision of such tribunal as Provided in the charter or administrative code of such city.

§11. Subdivisions 8 and 9 of section 1 of chapter 257 of the laws of 1963, relating to taxes on rent or occupancy in a city of one million or more, are amended to read as follows:

(8) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, Illegality or

unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice {act] law and rules if application there for is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice [act] law and rules shall not be Instituted by a taxpayer unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of Insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the [petitioner] taxpayer such undertaking may be in a sum sufficient to cover the taxes, Interest and penalties stated In such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the [petitioner] taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(9) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Proper fiscal officer or officers, and such officer or, in the case of a city of one million or more which has established a tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund,

such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice [act] law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

§12. Section 1 of such chapter is amended by adding a new subdivision 9-a to read as follows:

(9-a) Nothing in subdivision eight or nine of this section shall be construed to prohibit the commissioner of finance of a city of one million or more which has established a tax appeals tribunal from commencing a proceeding under article seventy-eight of the civil practice law and rules to review a decision of such tribunal as Provided in the charter or administrative code of such city.

§13. Subdivisions 6 and 7 of section 1 of chapter 161 of the laws of 1970, relating to taxes on the occupancy of hotel rooms in a city of one million or more, are amended to read as follows:

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law

and rules if application therefore is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless (a) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to [transmit] transact business in this state and approved by the superintendent of Insurance of this state as to solvency and responsibility, in such amount as a justice of supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue In the prosecution of such proceeding or (b) at the option of the [petitioner] taxpayer such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the [petitioner] taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers or, in the case of a city of one million or more which has established a tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding Is instituted within thirty days after the giving of

the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the [petitioner] taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

§14. Section 1 of such chapter is amended by adding a new subdivision 7-a to read as follows:

(7-a) Nothing In subdivision six or seven of this section shall be construed to prohibit the commissioner of finance of a city of one million or more which has established a tax appeals tribunal from commencing a proceeding under article seventy-eight of the civil practice law and rules to review a decision of such tribunal as provided In the charter or administrative code of such city.

§15. Section 11-501 of the administrative code of the city of New York is amended by adding a new subdivision (f) to read as follows:

(f) "Tax appeals tribunal" when used in this chapter shall mean the tax appeals tribunal established by section one hundred sixty-eight of the charter.

§16. Subdivision (c) of section 11-521 of such code is amended to read as follows:

(c) Restrictions on assessment and levy. So assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as

otherwise provided in section 11-531 of this chapter, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the commissioner of finance until the expiration of ninety days from the date of mailing of the decision of the commissioner of finance [has become final] provided, however, that no action shall be taken to assess or collect a deficiency following the expiration of such ninety-day period (except as otherwise provided In section 11-534 of this chapter) if the tax appeals tribunal has issued, and there remains in effect, a stay pursuant to subdivision d of section one hundred seventy of the charter. For exception in the case of judicial review of the decision of the [commissioner of finance] tax appeals tribunal, see subdivision (c) of section 11-530 of this chapter.

§17. The first unnumbered paragraph of subdivision (a) of section 11-522 of such code is amended to read as follows:

The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the commissioner of finance shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section 11-521 of this chapter if no petition to the commissioner of finance is filed, or if a petition is filed, then upon the date when a decision of the commissioner of finance establishing the amount of the deficiency becomes final; provided, however, that the deficiency

may be assessed following the expiration of ninety days from the date of mailing of the decision of the commissioner of finance unless the tax appeals tribunal has issued, and there remains in effect, a stay pursuant to subdivision d of section one hundred seventy of the charter. If an amended return or report filed pursuant to section 11-519 of this chapter concedes the accuracy of a federal or New York state adjustment, change or correction, any deficiency in tax under this chapter resulting there from shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-523 of this chapter.

§18. Subdivision (e) of section 11-523 of such code is amended to read as follows:

(e) Suspension of running of period of limitation. The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner of finance is prohibited under subdivision (c) of section 11-521 of this chapter from making the assessment or from collecting by levy, provided, however, that for purposes of this subdivision, the protection under subdivision (c) of such section 11-521 shall be deemed to continue in effect until the decision of the commissioner of finance has become final.

§19. Such code is amended by adding a new section 11-529.1 to read as follows:

§11-329.1 Review of commissioner's decision. (a)

General. A decision rendered by the commissioner of finance pursuant to section 11-529 of this chapter shall be subject to review by the tax appeals tribunal at the instance of and taxpayer affected thereby in the manner provided by, and subject to the requirements of, sections one hundred sixty-eight through one hundred seventy-two of the charter.

(b) Commencement of time to appeal to tax appeals tribunal. The time within which a decision of the commissioner of finance may be appealed to the tax appeals tribunal shall commence to run on the date the notice of the decision of the commissioner of finance is sent by certified or registered mail to the taxpayer.

(c) Determination of overpayment after commissioner's decision. Notwithstanding any other provision of law to the contrary, If, in the circumstances described in the first sentence of subdivision (f) of section 11-527 of this chapter, the Issue as to whether the taxpayer has made an overpayment has not been raised In a case before the commissioner of finance, the tax appeals tribunal may not determine that the taxpayer has made an overpayment in a proceeding to review the decision of the commissioner of finance In such case.

(d) Assertion of deficiency after commissioner's decision. Notwithstanding any of her provision of law to the contrary, if the commissioner of finance has not exercised his or her authority under subdivision (d) of section 11-529 of this chapter to assert a deficiency, an addition to tax or Penalty, or Issues which offset an amount for which credit or refund is sought at or before a hearing held by him or her, no such assertion or determination with respect thereto shall be made in

a proceeding before the tax appeals tribunal to review the decision of the commissioner of finance in such case.

(e) Date of finality of commissioner's decision. A decision of the commissioner of finance shall become final upon the expiration of the period specified in subdivision a of section one hundred seventy of the charter for commencing an appeal to the tax appeals tribunal if no such appeal has been duly commenced within such time, or if such appeal has been duly commenced, upon the expiration of the time for all further review, including judicial review, or upon the rendering by the commissioner of finance of a decision in accordance with the mandate of the tax appeals tribunal or the court on review.

(f) Credit, refund or abatement after review. If the amount of a deficiency determined by the commissioner of finance is disallowed in whole or in part by the tax appeals tribunal or. If an application for judicial review has been made, by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim there for, or, if payment has not been made, shall be abated.

§20. Section 11-530 of such code is amended to read as follows:

§11-530 Review of [commissioner's] tax appeals tribunals decision (a) General A decision of the [commissioner of finance]

tax appeals tribunal shall be subject to Judicial review at the instance of any taxpayer affected thereby or the commissioner of finance in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer or the commissioner of finance for such review must be made within four months after notice of the decision is sent by certified [or registered] mail, return receipt requested, to the taxpayer and the commissioner of finance.

(b) Judicial review exclusive remedy [of taxpayer]. The review of a decision of the [commissioner of finance] tax appeals tribunal provided by this section shall be the exclusive remedy available to any taxpayer or, except as otherwise provided by law, the commissioner of finance for the judicial determination of, the liability of the taxpayer for the taxes imposed by this chapter.

(c) Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, the commissioner of finance may assess a deficiency after the expiration of the period specified in subdivision (a) of this section, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the deficiency, has deposited with the commissioner of finance the amount of the deficiency, or has filed with the commissioner of finance a bond (which may be a jeopardy bond under subdivision (h) of section []) 11-534 of this chapter[,]) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against such taxpayer

in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a Justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency (Including [interests] interest and other amounts) as finally determined and such costs and charges. The deficiency referred to in the preceding sentence is the deficiency determined by the tax appeals tribunal in a decision rendered pursuant to section one hundred seventy-one of the charter. If as a result of a waiver of the restriction on the assessment and collection of a deficiency, any part of the amount determined by the commissioner of finance is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) Credit, refund or abatement after review. If the amount of a deficiency determined by the commissioner of finance is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim there for, or, if payment has not been made, shall be abated.

(e) Date of finality of commissioner's decision. A decision of the commissioner of finance shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further Judicial review, or upon the rendering by the commissioner of finance of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the commissioner of finance shall be deemed final on the date

of notice of decision is sent by certified or registered mail to the taxpayer.]

§21. Subdivision (d) of section 11-531 of such' code I amended to read as follows:

(d) Certificate: unfiled return. For purposes of this chapter and sections one hundred sixty-eight through one hundred seventy-two of the charter, the certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that Information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such Information has not been supplied.

§22. Subdivision 1 of section 11-538 of such code I amended to read as follows:

Except in accordant with proper judicial order or as otherwise provided by law, It shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, any person engaged or retained by such department on an independent contract basis, any depository to which any return may be delivered as provided in subdivision [two] four of this section, any officer or employee of such depository, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any Information contained In any report or return is furnished,

to divulge or make known In any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, In any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The commissioner of finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing required under section 11-529 of this chapter. Nothing herein shall be construed to prohibit the delivery to a taxpayer or to the taxpayer's duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review be tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of finance or the corporation

counsel or has been instituted, or the inspection of the reports or returns required under this chapter by the duly designated officers or employees of the city for purposes of an audit under this chapter or an audit authorized by the enacting of this chapter. Reports and returns shall be preserved for three years and thereafter until the commissioner of finance orders them to be destroyed.

§23. Section 11-538 of such code is amended by adding a new subdivision 5 to read as follows:

5. Notwithstanding anything in subdivision one of this section to the contrary, if a taxpayer has commenced an appeal to the tax appeals tribunal as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

§24. Subdivision 8 of section 11-601 of such code is renumbered to be subdivision 9 and such section is amended by adding a new subdivision 8 to read as follows:

8. "Tax appeals tribunal" means the tax appeals tribunal established by section one hundred sixty-eight of the charter.

§25. Subdivision 3 of section 11-672 of such code is amended to read as follows:

3. Restrictions on assessment and levy. No assessment of a deficiency in tax and no levy or proceeding In court for its collection shall be mad*, begun or prosecuted, except as otherwise provided in section 11-685 of this subchapter, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the commissioner of finance, until the expiration of ninety days from the date of mailing of the decision of the commissioner of finance [has become final]; provided, however, that no action shall be taken to assess or collect a deficiency following the expiration of such ninety-day period (except as otherwise provided in section 11-685 of this subchapter) if the tax appeals tribunal has issued, and there remains in effect, a stay pursuant to subdivision d of section one hundred seventy of the charter. For exception in the case of judicial review of the decision of the [commissioner of finance] tax appeals tribunal, see subdivision three of section 11-681 of this subchapter.

§26. The first unnumbered paragraph of subdivision 1 of section 11-673 of such code is amended to read as follows:

The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision two of section 11-672 of this subchapter if no petition to the commissioner of finance is filed, or if a petition is filed, then upon the

date when a decision of the commissioner of finance establishing the amount of the deficiency becomes final; provided, however, that the deficiency may be assessed following the expiration of ninety days from the date of mailing of the decision of the commissioner of finance unless the tax appeals tribunal has issued, and there remands in effect, a stay pursuant to subdivision d of section one hundred seventy of the charter. If a report or an amended return filed pursuant to subchapter two or three of this chapter [,] concedes the accuracy of a federal or New York state, adjustment or change or correction or renegotiation or computation or recomputation of tax, any deficiency in tax under subchapter two or three of this chapter resulting there from shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-674 of this chapter.

§27. Subdivision S of section 11-674 of such code is amended to read as follows:

5. Suspension of running of period of limitations. The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the made of a notice of deficiency, be suspended for the period during which the commissioner of finance is prohibited under subdivision three of section 11-072 of this subchapter from making me collecting by levy; provided, however that for purposes of this subdivision, the prohibition under subdivision three of section 11-672 shall be deemed to continue in effect until the decision of the commissioner of finance has become final.

§28. Such code is amended by adding a new section 11-680.1 to read as follows:

§11-680.1 Review of commissioner's decision 1. General A decision rendered by the commissioner of finance pursuant to section 11-680 of this subchapter shall be subject to review by the tax appeals tribunal at the instance of any taxpayer affected thereby in the manner provided by and subject to the requirements of, sections one hundred sixty-eight through one hundred seventy-two of the charter.

2. Commencement of time to appeal to tax appeals tribunal. The time within which a decision of the commissioner of finance may be appealed to the tax appeals tribunal shall commence to run on the date the notice of the decision of the commissioner of finance is sent by certified or registered mail to the taxpayer.

3. Determination of overpayment after commissioner's decision. Notwithstanding any other provision of law to the contrary, if in the circumstances described in the first sentence of subdivision six of section 11-678 of this subchapter, the issue as to whether the taxpayer has made an overpayment has not been raised in a case before the commissioner of finance, the tax appeals tribunal may not determine that the taxpayer has made an overpayment In a proceeding to review the decision of the commissioner of finance in such case.

4. Assertion of deficiency after commissioner's decision. Notwithstanding any other provision of law to the contrary, if the commissioner of finance has not exercised his or her authority under subdivision four of section 11-680 of this

subchapter to assert a deficiency, an addition to tax or Penalty, or issues which offset an amount for which credit or refund is sought at or before a hearing held by him or her, no such assertion or determination with respect thereto shall be made in a proceeding before the tax appeals tribunal to review the decision of the commissioner of finance in such case.

5. Hate of finality of commissioner's decision. A decision of the commissioner of finance shall become final upon the expiration of the period specified in subdivision a of section one hundred seventy of the charter for commencing an appeal to the tax appeals tribunal if no such appeal has been duly commenced within such time, or if such appeal has been duly commenced, upon the expiration of the time for all further review, including judicial review, or upon the rendering by the commissioner of finance of a decision in accordance with the mandate of the tax appeals tribunal or the court on review.

6. Credit, re fund or abatement after review. If the amount of a deficiency determined by the commissioner of finance is disallowed in whole or in part by the tax appeals tribunal or, if an application for judicial review has been made. by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim there for, or, if payment has not been made, shall be abated.

§29. Section 11-681 of such code is amended to read as follows:

§11-681 Review of [commissioner's) tax appeals tribunal's decision. 1. General. A decision of the [commissioner of finance] tax appeals tribunal shall be subject to judicial review at the instance of any taxpayer affected thereby or the

commissioner of finance in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer or the commissioner of finance for such review must be made within four months after notice of the decision is sent by certified [or registered] mail, return receipt requested, to the taxpayer and the commissioner of finance.

2. Judicial review exclusive remedy [of taxpayer]. The review of a decision of the [commissioner of finance] tax appeals tribunal provided by this section shall be the exclusive remedy available to any taxpayer or, except as otherwise provided by law, the commissioner of finance for the judicial determination of the liability of the taxpayer for the taxes imposed by the named subchapters.

3. Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the commissioner of finance shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.]

§30. Subdivision 4 of section 11-682 of sum code is amended to read as follows:

4. Certificate; unfiled return. For purposes of this subchapter and sections one hundred sixty-eight through one hundred seventy-two of the charter, the certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by

or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied.

§31. Subdivision 1 of section 11-638 of such code is amended to read as follows:

1. Except in accordance with proper Judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, the tax appeals tribunal, any commissioner or employee of such tribunal, [or] any person who, pursuant to this section, is permitted to inspect any report or return, or to whom any information contained in any report or return is furnished, [or] any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a report filed pursuant to this chapter, to divulge or make known in any manner the amount of Income or any particulars set forth or disclosed in any report or return, under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding In any court, except on behalf of the city in an action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when of any decision rendered pursuant to section one hundred seventy-one of the charter.

§33. Subparagraph (c) of paragraph 1 of subdivision c of section 1152 of the New York City charter, as approved by the electors of such city on November 3, 1988, is amended to read as follows:

(c) the tribunal shall [begin accepting, hearing and determining appeals on the first day of January, nineteen hundred ninety, except that it shall not begin accepting, hearing or determining appeals concerning the taxes authorized by sections one and two of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six until the later of (A) the date such sections are amended to authorize or otherwise allow such actions or (B) the first day of January, nineteen hundred ninety] accept, hear and determine appeals from determinations Issued by the commissioner of finance on or after January first, nineteen hundred ninety;

§34. If any clause, sentence, paragraph, section or part of this act or the application thereof to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, Impair or invalidate the remainder of this act or the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly Involved in the controversy in which such judgment shall have been rendered and to the person or circumstance involved.

§35. This act shall take effect on January first, nineteen hundred ninety, provided that: (a) the amendments made by sections two through thirty* two shall be applicable with respect to determinations issued on or after January first,

nineteen hundred ninety by the commissioner of finance of the city of New York following a hearing or the opportunity for a hearing before such commissioner of finance; (b) the provisions of law amended by sections two through thirty-two, as such provisions existed immediately prior to the enactment of this act, shall continue to be applicable with respect to determinations issued prior to January first, nineteen hundred ninety by such commissioner of finance; and (c) sections thirty-three and thirty-four shall take offset immediately.

EXHIBIT B

TEXT

AN ACT to permit any city of the state having a population of one million or more inhabitants to establish a tax appeals tribunal which shall be separate from and independent of the commissioner of finance or other fiscal officer of such city and which shall be responsible for providing the public with a just system of resolving controversies with such commissioner of finance or other fiscal officer and to ensure that elements of due process are present with regard to such resolution of controversies.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1. Authorization and jurisdiction. Any city of the state having a population of one million or more inhabitants is hereby authorized and empowered to establish a tax appeals tribunal which shall be separate from and independent of the commissioner of finance and department of finance of such city. No tax appeals tribunal may be established by any such city except as provided herein. Notwithstanding any provision of law to the contrary, the tax appeals tribunal established by such city shall have jurisdiction to hear and determine appeals from determinations by the commissioner of finance or other fiscal officer of such city relating to all no property taxes, excise taxes and annual vault charges which such city is authorized by law to impose, except those taxes and charges administered by the State of New York on behalf of such city.

2. Composition and procedure. Such tax appeals tribunal shall be composed of commissioners who shall be appointed by the mayor of such city for fixed terms and who may not be removed prior to the expiration of such terms except for just cause. Such city may otherwise provide by charter provision or local law for the number and compensation of such commissioners, and powers, duties and procedures of such tax appeals tribunal, including the power to adopt rules of procedure and to appoint hearing officers and to review the findings and conclusions of such hearing officers.

3. Hearing as of right; no bond requirement; due process. Such tax appeals tribunal shall provide a hearing as a matter of right, regardless of amount in controversy and without requirement for any bond, undertaking or other security, to any petitioner upon such petitioner's request made within ninety days after the date of the determination of the commissioner of finance or other fiscal officer of such city. The tax appeals tribunal shall afford all parties due process of law including, but not limited to, the right to be represented by counsel, to issue subpoenas and to request that subpoenas be issued, to call witnesses, to cross-examine opposing witnesses, and to present oral and written arguments of the law and facts, and to obtain review by the tribunal of any determination rendered by a hearing officer.

4. Tribunal hearing as exclusive remedy. Notwithstanding any provision of law to the contrary, the proceedings before such tax appeals tribunal shall be in lieu of any other administrative hearing, administrative appeal or other administrative remedy, except such informal conciliation

procedure as may be provided by the commissioner of finance or other fiscal officer of such city.

5. Relevant precedents. Any tax appeals tribunal established as provided herein shall follow the controlling precedents of the federal and New York State courts and of the New York State Tax Appeals Tribunal.

6. Judicial review at instance of taxpayer. Notwithstanding any provision of law to the contrary, a taxpayer may seek judicial review of a final determination of the tax appeals tribunal in the manner provided in the civil practice law and rules for proceedings against a body or officer, provided such taxpayer has made a timely appeal to such tax appeals tribunal and has exhausted all available hearings, appeals and other remedies provided by such tax appeals tribunal. Notwithstanding any provision of law to the contrary, any action or proceeding to challenge a determination of such tax appeals tribunal shall be timely if commenced within four months after the date of the final determination of the tax appeals tribunal. Any proceeding brought pursuant to this paragraph or paragraph seven for judicial review of a final determination of the tax appeals tribunal shall be transferred directly to the appellate division of the Supreme Court, first department.

7. Judicial review at instance of commissioner of finance. The commissioner of finance or other fiscal officer of such city may seek judicial review of a final determination of the tax appeals tribunal in the manner provided in the civil practice law and rules for proceedings against a body or officer. Notwithstanding any provision of Law to contrary, such proceeding shall be timely if commenced within four months after the date of the final determination of the tax appeals tribunal, and shall be

commenced by mailing to the affected taxpayer, who shall be the only necessary respondent, or to such taxpayer's attorney or representative, at an address previously designated for that purpose, a notice of petition and petition together with supporting affidavits and exhibits.

8. Corporate Taxes and Unincorporated Business Tax. Nothing contained in sections one or two of chapter seven hundred and seventy-two of the laws of nineteen hundred sixty-six shall prevent a tax appeals tribunal, established as authorized herein, from determining appeals relating to taxes authorized by those sections.

9. Effective date. Any tax appeals tribunal established as provided herein shall begin accepting, hearing and determining appeals on the first day of January, nineteen hundred ninety.

Exhibit C

Proposed Amendments to the Charter¹

Sec. 168. Tribunal for tax appeals.

a. An independent tax appeals tribunal is hereby established. The tribunal shall have jurisdiction to hear and determine appeals from determinations by the commissioner of finance, pursuant to paragraph (a) of subdivision two of section one thousand five hundred and four of this charter, relating to all no property taxes, excise taxes and annual vault charges, except those taxes and charges administered by the State of New York on behalf of the City of New York. The tribunal shall review petitions and other documents submitted to it, hold hearings, and render decisions as provided in this charter. In rendering its decisions on claims asserted by taxpayers or the commissioner of finance, the tribunal shall have the same power and authority as the commissioner of finance to impose, modify or waive any taxes within its jurisdiction, interest thereon, and any applicable civil penalties. In appeals in which the rules of the commissioner of finance are at issue, the tribunal shall have the power and authority to rule on the legality of such rules.

b. The tribunal shall be composed of three commissioners, each of whom shall be appointed by the mayor. The mayor shall designate one of the three commissioners as president of the tribunal, who shall serve as president during his or her term as commissioner. The president of the tribunal, in addition

¹ added; [deleted]

to performing his or her duties as a commissioner, shall be in charge of the administration and operation of the tribunal. Each commissioner shall serve a term of six years, except the mayor shall specify in the case of the first three commissioners appointed that (i) the term of one of those commissioners shall expire on June thirtieth, nineteen hundred and ninety-two, (ii) the term of another of those commissioners shall expire on June thirtieth, nineteen hundred and ninety-four and (iii) the term of the commissioner designated president shall expire on June thirtieth, nineteen hundred and ninety-six. The mayor may remove any commissioner from the tribunal for neglect of duty, for inability to perform duties because of mental or physical disability, for malfeasance or for any other just cause, after providing such commissioner prior notice and an opportunity to be heard. The mayor shall fill any vacancy in the tribunal occurring other than by expiration of term in the same manner as for making original appointments, except an appointment to fill a vacancy shall expire at the end of the term of the commissioner whose departure created the vacancy. The number of commissioners on the tribunal may be increased by local law.

c. No person shall be appointed as a commissioner unless that person possesses substantial knowledge and competence in the area of taxation and has been admitted to practice as an attorney in the State of New York for at least ten years. Every commissioner, while in office, shall give his or her whole time to the duties of the office, and shall not engage in the practice of law or other occupation, profession or employment. Each commissioner shall receive an annual salary in the same amount as is payable to a judge of the civil court of the City of New York. A commissioner's annual salary shall not be diminished during his or her term of office.

Sec. 169. Rules of tribunal.

Pursuant to chapter forty-five of this charter, the tribunal shall promulgate rules of procedure, which shall include, but not be limited to, rules on the following matters:

a. The types of representatives, such as accountants, who may appear, in addition to lawyers, on behalf of a petitioner before the tribunal;

b. The form and contents of the petition, answer, affidavits and memoranda to be submitted to the tribunal, and reasonable time limitations for serving and filing such papers; [c. A reasonable fee to be paid by a petitioner to the tribunal upon commencing an appeal before it.]

c.[d] A procedure for promptly hearing and determining any appeals concerning jeopardy assessments or predecision warrants based thereon;

d. [e] A procedural system guaranteeing a hearing in compliance with chapter forty-five of this charter to be followed in all cases, which hearing shall be in lieu of any other administrative hearing, administrative appeal or other administrative remedy, except such informal conciliation procedure as may be provided by the commissioner of finance., [which the tribunal determines to involve either (1) a matter in controversy exceeding ten thousand dollars, exclusive of interest and penalties, or (2) sufficiently substantial significance to warrant a hearing pursuant to this section.]

Such a system shall be designed to assign each appeal to an individual commissioner or hearing officer designated by such tribunal to hear and determine all matters pertaining to questions of law and fact [who shall be responsible for hearing all aspects of that appeal pursuant to subdivision (f) of section one hundred and seventy]. Such a system shall be designed to enable the tribunal to review, at the request of any party, the determination rendered by a hearing officer [president to order that an appeal be heard or so heard by the tribunal in banc when consideration by the full tribunal is necessary to secure or maintain uniformity of its decisions]. Such a system also shall provide for a pre-hearing conference at which settlement is encouraged; reasonable [limited] discovery; [a method by which either a taxpayer or the commissioner of finance may request a hearing;] and the submission of [only one set of] papers addressing both the factual and legal merits in each proceeding [except in situations in which the tribunal determines exceptional circumstances require otherwise].

e.[f.] A procedural system to be followed in cases in which the matter in controversy is ten thousand dollars or less, exclusive of interest and penalties. Such a system shall be designed to provide a simplified and informal procedure for such small claims proceedings; and

f.[g.] A method for notifying taxpayers and the commissioner of finance of, and for publishing, the decisions of the tribunal.

Sec. 170. Commencing an appeal before the tribunal.

a. Any taxpayer who has been issued a determination by the commissioner of finance [subsequent to being afforded an opportunity for a hearing before the commissioner of finance,] of that taxpayer's liability for taxes or annual vault charges administered by the City of New York, pursuant to paragraph (a) of subdivision two of section one thousand five hundred and fc of this charter, may commence an appeal to the tribunal. To commence an appeal, such a taxpayer must, within ninety days after being issued the determination at issue by the commissioner of finance, both (1) serve a petition upon the commissioner of finance and (2) file the petition with the tribunal. The tribunal shall not extend the time limitation for commencing an appeal for any petitioner failing to comply with such time limitation. The petition shall contain a plain and concise statement of the facts and law on which the appeal is based.

b. Within thirty days after service of the petition on the commissioner of finance, the commissioner of finance shall serve and file an answer responding to each of the allegations in the petition and setting forth all affirmative defenses and requests for counter-relief.

[c. Neither the petitioner nor the commissioner of finance shall raise any factual or legal issue or make any requests for relief not raised or made earlier in the proceedings before the commissioner of finance without leave of the tribunal, unless a change in the law applicable to the matter in controversy is the basis for raising a new issue or making a new request for relief.]

C.[d] The filing of a petition with the tribunal shall [not] stay (1) the collection of any taxes or annual vault charges and [or] (2) the payment of any refund of taxes or annual vault charges, together with interest and penalties, due and payable as of the date of the commissioner of finance's determination, except as otherwise provided by law where the commissioner of finance believes that the assessment or collection of a tax, penalty or interest will be jeopardized by a delay. [unless (1) otherwise provided by law or (2) the tribunal issues a stay conditioned upon a showing that the petitioner has furnished sufficient security for the payment of the tax or annual vault charge, interest thereon and penalties to the commissioner of finance.]

[e. The tribunal shall not accept for determination any petition concerning a matter for which the petitioner has failed to exhaust all available hearings, appeals and other remedies provided by the commissioner of finance.]

d. [f.] [At the discretion of the tribunal, the tribunal may (1) confine its factual review to the record established below before the commissioner of finance, (2)] The tribunal shall hear and determine any issues of fact de novo, [or (3) remand to the commissioner of finance for further findings of fact. The tribunal's decision to confine its factual review in any appeal to the record below shall not prevent the tribunal from determining any legal issue or rendering a final decision contrary to the determination rendered below by the commissioner of finance.] Unless otherwise provided by law, the party seeking relief as to each issue shall bear the burden of proof. The tribunal shall follow [take into consideration] as precedent the prior precedential decisions of the tribunal (but not of its small claims division), the New York State Tax Appeals Tribunal

or [of] any federal or New York state court [or the U.S. Supreme court] insofar as those decisions pertain to any substantive legal issues currently before the tribunal.

Sec. 171. Decisions of the tribunal and judicial review.

a. The tribunal shall render each of its decisions in writing. Each of its decisions, with the exception of those rendered in the small claims division, shall contain a statement of the tribunal's judgment, its findings of fact, and the tribunal's conclusions of law. A final decision of the tribunal may (i) grant in whole or in part the relief sought by the petitioner and/or the commissioner of finance, or (ii) dismiss the petition or request for counter-relief either on the merits or with leave to renew.

b. Each decision of the tribunal, including the decisions of its small claims division, shall finally and irrevocably decide all the issues raised in the proceedings before it, unless the petitioner who commenced the proceeding or the commissioner of finance seeks judicial review of any such decision in the manner provided in the Civil Practice Laws and Rules within four months of such decision. [in compliance with the time limitations and other applicable provisions of the Administrative Code and any other applicable law relating to judicial review of determinations by the commissioner of finance.] Any determination by the commissioner of finance shall not become final and irrevocable until the taxpayer has exhausted all available hearings, appeals and other remedies provided by the tribunal.

c. A decision of the tribunal shall be deemed to have been rendered on the postmarked date on the decision sent by certified mail, return receipt requested, to the address most recently provided by the aggrieved party to the tribunal.

Sec. 172. sanctions.

a. The failure of any party to appear for a conference or hearing without having obtained an extension from all the opposing parties or the tribunal at least forty-eight hours in advance of such conference or hearing shall be grounds for the tribunal to enter a decision in favor of the opposing party or parties.

b. The signing of any paper submitted to the tribunal constitutes a certificate by the signer that the signer has read the paper, and that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that the paper is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceedings. If a paper is signed in violation of this section, the tribunal, upon motion or upon its own initiative, shall impose upon the person who signed the paper, a represented party or both, an appropriate sanction, which may include an order to pay the other party or parties such sanction. The amount of any sanction shall be related to the amount of reasonable expenses, including a reasonable attorney's fee, incurred by the other party or parties because of the serving or filing of the paper.