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BUDGET REVIEW



**NASSAU COUNTY LEGISLATURE**  
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**Inter-Departmental Memo**

To: Hon. Norma Gonsalves, Presiding Officer  
Hon. Kevan Abrahams, Minority Leader  
All Members of the Nassau County Legislature

From: Maurice Chalmers, Director  
Office of Legislative Budget Review

Date: November 21, 2016

Re: Clerk Item 540-16

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Attached is a copy of the Fiscal Impact Statement for Clerk Item 540-16 which will be on the Legislative Calendar for the November 21, hearing.

540-16: A Local Law to authorize a Voluntary Partial Amnesty Program for Income Producing Property Owners that are liable to pay fines pursuant to the Nassau County Administrative Code §6-30.0.



**THE NASSAU COUNTY LEGISLATURE  
OFFICE OF LEGISLATIVE BUDGET REVIEW  
MAURICE CHALMERS, DIRECTOR  
FISCAL IMPACT STATEMENT**

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**TITLE:**

A local law to authorize a voluntary partial amnesty program for income producing property owners that are liable to pay fines pursuant to the Nassau County Administrative Code section 6-30.0.

**SUMMARY OF LEGISLATION:**

Currently, all income producing properties are required to file an Annual Survey of Income and Expense statement (ASIE) annually with the Department of Assessment. Those who fail to submit their statement, face a fine based upon their properties' fair market value which increases over time for non-compliance according to the following parameters.

<b>Penalty</b>	<b>Fail to File By:</b>
Not to Exceed .25% of Fair Market Value	April 1st and/ or any extension
Not to Exceed .50% of Fair Market Value	If unfiled by September 30th of same year
Not to Exceed .75% of Fair Market Value	If unfiled by following year's deadline (April 1st and/or any extension)

\*Penalties of up to .75% of fair market value can be levied retroactively if two conditions are met. First, the property owner missed the filing deadline, and second, was eligible for a penalty of up to 0.75% in the previous year.

This proposed local law offers a partial-amnesty program whereby those income producing property owners that have failed to provide income and expense statements due in years 2014, 2015 and 2016 and that are liable for fines, shall be authorized to pay 75.0% of such fines in full satisfaction of all amounts for which such owners are liable, provided the following conditions are met.

First, the Department of Assessment must notify each income producing property owner no later than January 15, 2017 of the following information:

- That he or she has failed to file an income and expense statement as required by Nassau Administrative Code section 6-30.0.
- That the Department of Assessment is authorized to impose a fine on the property owner.
- The amount of the fine along with the years for which the fine is being assessed.

Second, the notification will inform the property owner that a partial amnesty program has been authorized. According to the program, Nassau County will accept a payment of 75.0% of any such fines in full satisfaction of all amounts for which such owners are liable, provided that such payment is made within 60 days of the date of such notification and that the owner signs an agreement stating that such action constitutes a final resolution, whereby both the owner and the County waive any additional actions.

**EFFECTIVE DATE:**

This local law shall take effect immediately after becoming a law.

**FISCAL IMPACT:**

According to the County Attorney’s Office, as of October 17, 2016, the temporary restraining order (TRO) which had precluded the County from enforcing fines or penalties for failing to provide income and expense statement was lifted. As such, the County Attorney is of the opinion that the County can now proceed to enforce payment for non-filers. The County Attorney also specified that the TRO did not stop time to calculate the fine; however, there was a stipulated agreement with the first TRO that permitted the commercial taxpayers additional time to file without penalty after the TRO was lifted. A timeline of the two separate TRO’s which impacted the collection of this fine is shown in Appendix A. There is uncertainty on whether property owners will take advantage of the amnesty program or whether there could be any other legal challenges to the law, which may halt any progress should that be the case.

To date, there would have been three filing years which could be subject to enforcement; the years for which penalties are due were the survey years of 2013, 2014 and 2015.

The County Attorney’s office and the Assessment department provided data which shows that in total, for survey years 2013 and 2014, the County could collect roughly a net of \$46.9 million from non-filers alone should all the properties that have been identified for those two years participate in the program.

<b>2013 - 2014</b>	<b>Non-Filers</b>	<b>Full Penalty</b>	<b>75.0% Amnesty</b>	<b>Amnesty Forgiveness</b>
Total	6,622	\$ 62.5	\$ 46.9	\$ (15.6)

Source: Nassau County Attorney's Office

Furthermore, the statements due in 2016, from the 2015 survey, are being analyzed and are not considered final yet. More time will be needed in order to properly vet the projected liability from that year, as there have been some computer issues which are being addressed and the department states that there is still time to cure.

Assuming that the 2015 survey year penalty amount is in line with the average penalty amounts experienced in 2013 and 2014, one could expect an average impact of approximately \$23.5 million in discounted liability. **If these amounts hold true, the universe for 100% non-filers compliance, for 2013 through 2015 surveys, can be estimated to be approximately \$70.4 million.** It is important to understand that there may exist many levels of participation that can impact the outcome of how much fines are collected. For example, the total can be decreased to:

- \$17.6 million for a 25.0% participation,
- \$35.2 million for a 50.0% participation, and
- \$52.8 million for a 75.0% participation.

There are two areas that may increase the estimated \$70.4 million for the non-filers, illustrated above, and will be considered opportunities. In addition to the non-filers, the departments have identified an additional pool of late filers from which there can also exist the potential for an additional \$11.1 million post amnesty from 2013 and 2014 which would increase the total from \$70.4 million to approximately \$81.4 million. However, that amount was not included in the above table as property specific data would need to be well vetted. OLBR believes this approach to be cautious and the most conservative methodology.

Furthermore, the departments used a 0.5% penalty in their calculation for survey year 2013. It is not clear why 0.75% was not used which could have yielded a net additional revenue of \$9.9 million. This can be a factor of extensions granted and will need to be further explained before any additional revenue is added.

Also of significance, is the inclusion of \$10.0 million in the current FY 17 budget that would need to be covered.

Moving forward, although some property owners may opt to pay the fine instead of providing the information, the fine revenues are expected to diminish as more individuals comply. The ultimate goal of the ASIE law is to achieve a more accurate assessment roll and have fewer property tax grievances. As demonstrated, there is a significant revenue opportunity that has accumulated from non-compliance. There is also a possible cost avoidance in the future from correctly assessing commercial properties. Participation will dictate how much revenue is collected and it will be a matter of policy how the funds are used.

This law is not unique to Nassau County. The New York City law, the Real Property Income and Expense (RPIE) law, incorporates a non-filer penalty. According to their law, on an annual basis, owners of income producing properties in New York City are required to submit to the Commissioner of Finance a statement outlining all income and expense associated with the operation of that property. The Commissioner of Finance can grant a statement filing extension of up to 30 days (60 days for Class 2 properties) for good cause. If an income producing property owner fails to file by the statement deadline (June 1 or any extension), the Commissioner of Finance may impose a penalty calculated off a percentage of Assessed Value, whereas the Nassau law is based on Fair Market Value.

In NYC, a 3% maximum penalty is imposed if a property owner fails to file by the initial statement deadline (June 1<sup>st</sup> or any extension). A 4% maximum penalty is imposed if the statement is not filed by December 31<sup>st</sup> of that year. A 5% maximum penalty is imposed if a property owner fails to file a statement by the following June 1<sup>st</sup>. Penalties of up to 5% of Assessed Value can be levied retroactively if two conditions are met. First, the property owner missed the filing deadline, and second, the property owner was eligible for a penalty of up to 5% in the previous year.

Historic NYC data reveals that on average from 2012 to 2014 the number of non-filers averaged 7,379 per year. This data is shown in the table on the next page and is as of the year-end for each

year. Additionally, NYC continues to collect penalty revenues after the year ends. In 2014, an additional \$6.7 million was collected from penalties imposed in prior years. Accounting for that adjustment, the revenue collection rate in NYC from 2012 to 2014 is approximately 47.3%. Prior to 2012, the Department of Finance did not exert much effort to impose and collect RPIE fines. However, beginning in 2012, the Department began imposing and collecting the fines more vigorously, which is reflected in the table below:

<b>NYC RPIE Non-Filers 2012 to 2014</b>				
<b>Fiscal Year- End</b>	<b>Properties</b>	<b>Non-Filers</b>	<b>Compliance %</b>	<b>Charges</b>
2012	115,000	8,335	92.8%	3,200,000
2013	115,000	6,765	94.1%	25,000,000
2014	115,000	7,036	93.9%	27,000,000
<b>Total</b>	<b>345,000</b>	<b>22,136</b>	<b>93.6%</b>	<b>55,200,000</b>

NYC Independent Budget Office

Helping to reduce NYC’s non-compliant properties, is the tax commission’s ability to deny a hearing for any property that does not file their RPIE by the June 1<sup>st</sup> deadline.

**ECONOMIC IMPACT:**

The proposed law will impact those properties subject to the penalty and can be avoided in the future by complying with the law. This can also result in a more equitable assessment roll. These fines are not expected to hinder overall economic activity.

**FISCAL IMPACT PREPARED BY:**

Deirdre Calley, Deputy Director

**Appendix A**

	2013 AISE	2014 AISE due	2015 AISE
Assessor sends annual letter to commercial taxpayers to file ASIE	February 1, 2014		
Boeing (commercial taxpayer files TRO and Court granted	March 4, 2014		
AISE due	April 1, 2014	April 1, 2015	April 1, 2016
TRO #1	dissovled December 9, 2014		
	75 day extension dissolved December 17, 2014		
	2013 AISE now due January 12, 2015		
	County sent out letters Dec. 7, 2015 for non-filers 2013, 2014 and 2013 & 2014	County sent out letters Dec. 7, 2015 for non-filers 2013, 2014 and 2013 & 2014	
TRO #2	granted December 2015		
Court dismisses Boeing cases and TRO is Lifted	October 17, 2016		