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THE CITY RECORD

AGENCY RULES

CONFLICTS OF INTEREST BOARD

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

Notice of Adoption of Rule Defining "Particular Matter" for Tax Commissioners and Certain Other Public Servants in the Tax Commission, Department of Finance, Comptroller's Office, and Law Department in Relation to Tax Assessments

NOTICE IS HEREBY GIVEN THAT, pursuant to the authority vested in the Conflicts of Interest Board by Section 2603(a) of the New York City Charter, the Conflicts of Interest Board had adopted a new rule, ~~Section 1-12~~ of Title 53 of the Rules of the City of New York, defining "particular matter" for Tax Commissioners and certain other public servants in the Tax Commission, Department of Finance, Comptroller's Office, and Law Department in relation to real estate tax assessments. Pursuant to a notice published on January 13, 1997, in *The City Record*, a public hearing on the proposed rule was held on February 18, 1997, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received comments from Local 1757 of District Council 37 and adopted the proposed rule as final. The text of the new rule is set out below.

Dated: May 30, 1997

SECTION 1-12. DEFINITION OF "PARTICULAR MATTER" FOR TAX COMMISSIONERS AND CERTAIN OTHER PUBLIC SERVANTS IN THE TAX COMMISSION, DEPARTMENT OF FINANCE, COMPTROLLER'S OFFICE, AND LAW DEPARTMENT IN RELATION TO REAL ESTATE TAX ASSESSMENTS.

(a) Pursuant to City Charter § 2604(d)(4), no former public servant who has served on or been employed by the Tax Commission, the Department of Finance, the Comptroller's Office, or the Law Department shall appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, in relation to a proceeding involving a tax year or the immediately subsequent tax year for a given parcel of property with respect to which the public servant engaged in one or more of the activities described in subdivision (b).

(b) Subdivision (a) shall apply with respect to a parcel and tax year about which the former public servant: (i) heard an application for correction of assessment for taxation ("protest") from any real estate tax assessment; or (ii) reviewed any proposal to settle or offer to reduce the assessment with respect to any such protest; or (iii) participated personally and substantially in (i) the preparation or review of an appraisal, (ii) the review, analysis, or recommendation of a real estate tax assessment, or (iii) the conducting of a tax certiorari proceeding, which shall include but not be limited to its negotiation, settlement, trial, or review.

STATUTORY AUTHORITY: Section 2603(a) of the New York City Charter.

STATEMENT OF BASIS AND PURPOSE: Charter § 2604(d)(4) permanently bars a former public servant from appearing, whether paid or unpaid, before the City, or from receiving compensation for any services rendered, in relation to any "particular matter" involving the same party or parties with respect to which particular matter the former public servant participated personally and substantially as a public servant through decision, approval, recommendation, investigation, or the like.

This permanent bar as to particular matters has created a quandary for those involved in real property tax assessments. If "particular matter" is defined as the particular parcel, then assessors and tax commissioners, who consider thousands of parcels during their City careers, would, upon leaving City service, find themselves permanently barred from working on any assessments involving those parcels. That result, while a literal reading of the Charter, may appear unduly harsh and, some might argue, may discourage public service in this area.

On the other hand, limiting "particular matter" in this context to the matters pertaining to the assessment of a parcel in a single tax year would permit an assessor or tax commissioner to determine an assessment one day, leave City service the next, and within months represent individuals contesting their assessment for the following tax year and, in that regard, rely upon evidence and knowledge gained in City service about that very piece of property a few months earlier. Although each tax year may be separate and distinct for tax purposes (see *People ex rel. Hilton v. Fahrenkopf*, 279 N.Y. 49 (1938)), that tax concept would seem to bear little relation to the purposes of the City conflicts of interest law, which is designed to protect integrity in City government. Furthermore, although under *Hilton* a determination in one tax year does not bind assessors in subsequent tax years, as a practical matter evidence found and determinations made in one tax year will tend to be replicated in the next tax year. The danger, or at least the perceived danger, that confidential information may be used by a former assessor or tax commissioner to promote the interests of his or her private clients over the interests of the City compounds these problems. Thus, interpreting the term "particular matter" to mean assessment-related activity for a parcel in a single tax year would appear ill-advised.

The new rule permits the former public servant to work on an assessment involving a parcel of property he or she worked on while a public servant, provided that (1) the former public servant does not appear before his or her former agency within one year after leaving City service (existing provisions of Charter § 2604(d)(2)); (2) the former public servant does not disclose or use any confidential City information (existing provisions of Charter § 2604(d)(5)); and (3) the former public servant does not work on matters pertaining to an assessment for the tax year he or she had worked on such assessment or for the subsequent tax year. The following example will help illustrate how the rule will work.

Example. In April 1996 a tax commissioner hears a protest from an assessment involving a parcel of property for tax year 1996-1997. During the fall of 1996, the tax commissioner is involved in a tax certiorari proceeding relating to that same piece of property for the tax year 1990-1991. The matter is before the Tax Commission for the year 1990-1991. The tax commissioner leaves City service on March 1, 1997. Under Charter § 2604(d)(2), the tax commissioner could not appear before the Tax Commission on non-ministerial matters until March 1, 1998. In addition, he or she may not appear before the City, or work for compensation, in connection with the assessments for that parcel of property for the tax years 1990-1991, 1991-1992, 1996-1997, or 1997-1998.

Two final points with respect to the new rule should be noted. First, although primarily aimed at assessors and tax commissioners, the rule is not limited to those public servants but, rather, regulates any public servant in the Office of the Tax Commission, Comptroller's Office, Department of Finance, or Law Department who engages in the conduct specified in the rule. Secondly, the rule does not expressly require that a public servant (e.g., a tax commissioner) hearing a protest from an assessment or reviewing a proposal to settle such a protest be personally and substantially involved in those activities. The Conflicts Board has determined that any public servant who hears such a protest or reviews such a proposal is, of necessity, personally and substantially involved in those matters. If in a particular case a public servant believes that his or her involvement was not personal and substantial, he or she may seek a ruling to that effect from the Board.

The Board conducted a public hearing on February 18, 1997, during which time it received testimony from the president of the City union representing assessors, appraisers, and mortgage analysts (Local 1757 of District Council 37). The union is generally supportive of the rule proposed by the Board but suggested that with respect to tax certiorari proceedings the two-year proscription on appearing before the City be enlarged to a three-year ban. The Board has considered this and other comments and suggestions submitted by the local and has concluded that the uniform two-year ban applicable to all tax proceedings should be retained.