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ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW

The Honorable
Erie County Legislature
92 Franklin Street
Buffalo, New York 14202

RE: Opposition to Amending the Erie County Tax Act

Dear Honorable Legislators:

Tomorrow you will convene in a special session to consider a home rule request resolution to amend the Erie County Tax Act. As you know, the Tax Act has been in place for 75 years. In less than two weeks the administration has provided you two different versions to vote on. The second version needed to be provided because the first was so sloppily constructed that it actually:

- Moved up the effective due date of property taxes for nearly half of the towns in Erie County, giving residents only 11 months to save for their next tax bill instead of 12.
- Lowered the interest charge on late tax payments for towns and school districts, which would immediately blow a hole in their budgets which are balanced on the expected revenue.

What is more bizarre is that the administration proposing the changes didn't seem aware of the aforementioned concerns when they presented it to you. They only presented it to you in the first place because some of you, properly, demanded a discussion on something they had planned to ram through as an immediate consideration request without the due and proper inspection it deserves.

This is not how government should work. We can do a lot better. The taxpayers we serve deserve better than this. I agree with the New York State Association of Towns, who wrote you last week to express their opposition to rushing your legislative process. They were correct in asserting that "legislation this substantive in nature requires careful analysis, as this does not simply propose technical updates to modernize the Erie County Tax Act." They are correct in calling out a lie that has been told by the administration for two weeks.

It is also absurd for anyone to suggest that the proposed changes to the Tax Act will do anything to reduce the existence of "zombie" homes and properties. That is a totally and completely separate issue that has virtually nothing to do with tax payments. As you know, the issue with "zombie" homes is that people are forced from their homes by banks for not paying their mortgage. In those cases, the banks continue to make the property tax payments and never complete the foreclosure process on their end. That is a matter that can actually be solved with effective state and/or federal legislation. This legislation doesn't do that, so let's stop kidding ourselves and fooling those we are elected to serve.

The actual substantive changes provided to you in the second draft of this harmful legislation include:

- Lowering the penalty paid to the County for paying property taxes late. That drops by 1/3 from 18% to 12%.
- Reducing the time period for foreclosure for not paying property taxes from 2 years to 1.
- Adding a one-time homestead deferral to allow taxpayers more time before foreclosure on the home they reside in.

My office was happy to participate in your informal discussion about the first draft of amendments. It doesn't appear that your leadership will be offering you the opportunity to discuss and question the changes in the second draft. That is very unfortunate. If there were a discussion called, I would have enjoyed the opportunity to impart some more facts into this discussion that would help you.

For example, it is interesting that we keep hearing from our state officials sponsoring this legislation and the county administration that our penalty for not paying property taxes is the highest in the state. For that reason, they propose, that we should align it with other counties and reduce it from 18% to 12%. First of all, it is not true that our penalties are the highest in the state. That "fact" only considers the annual percentage rate applied against what was owed on the property tax bill that wasn't paid and ignores other counties that apply significant fines in addition to the interest charge.

As the financial arm of county government, you also need to consider the revenue generated by the late fees, and how much will be lost by the changes you are proposing. I can tell you that last year late property tax payments generated more than \$15.5 million for Erie County. Reducing that by 1/3 may create a \$5 million problem in 2019 that you will ultimately have to manage.

Last Wednesday, Deputy County Executive Maria Whyte made the case to you that lowering the interest charge on late property tax payments would help people stuck in foreclosure get out faster because they would owe less money. While it is true that they would owe less money, no evidence was provided that this theory would actually help them pay their tax bill. It is simplistic and irresponsible to state that a homeowner owing less will be able to pay the bill faster. It is also incredibly misleading and it doesn't at all consider why people are late paying their taxes to begin with. Those who are facing foreclosure and are about to lose the roof over their head didn't get there because the penalty fee was too high, they got there because taxes in general are too high and they couldn't pay them. It's insulting to suggest that lowering the fee will "help" them because they owe less. It's further insulting when the same law that lowers the fee shortens the time period for foreclosure from 2 years to 1.

This economic theory is tested every year and the results show that it doesn't work. Deputy County Executive Maria Whyte also testified proudly that Erie County property tax collections are at 97%. What was left out was that our collection rate is one of the best in the state. In fact, the only neighboring county to have a higher collection rate is Wyoming County. Yesterday I reached out to their Department of Finance to find out why they have a higher collection rate than us but a lower interest charge. Not surprisingly, in addition to the monthly interest charge they impose a fine of \$375 for delinquent property taxes if the taxes are not paid by October. To put that number in perspective to an average Erie County property tax bill, that is similar to paying an additional 40% fee on your taxes on top

of the monthly interest charge. Every other county we surveyed with the 12% monthly charge had lower collection rates, with some as low as 90%.

If lowering the interest charge to rates charged in some other counties results in collection rates similar to those counties, there will be an added burden to Erie County taxpayers – especially to those who pay their property taxes on time. The failure to timely pay property taxes results in cash flow issues. The county can address these issues by securing revenue or tax anticipation notes. Of course, these notes come at a cost to the county. If our collection rates decrease to those seen in other counties, it could come at the costs of hundreds of thousands of dollars per year.

I also think we need more time to explore the reasons people don't pay their taxes on time, and specifically inspect those who go into or near the foreclosure process. Does moving up the foreclosure time from 2 years to 1 negatively impact those who may be temporarily out of work, struggling to financially recover from a divorce, or have been stricken with illness? I don't think it does and I think it's unusually cruel.

I also don't think the homestead deferral option designed to address the aforementioned concerns was carefully crafted. I firmly believe that, absent bank-owned "zombie" homes, every vacant, foreclosed or about to be foreclosed property has a very personal story. I don't think a non-elected bureaucrat in county government would know that story or is the appropriate person to rule on whether or not a deferral should be granted. I believe that is a matter for local control, and if a homestead deferral process is to exist at all, it should be granted by the local town or village board.

Tomorrow you will convene to take a vote on a piece of legislation that will have a lasting impact on everyone you were elected to serve. It may be another 75 years before a change is made to what you approve. The hope is that the impact will be positive. The facts show that it might be harmful. Despite being totally left out of this process by state lawmakers and the administration, you are the legislative branch of government. This process should have started with you and it didn't. That is wrong. By rushing these changes, the administration is purposely punishing law abiding families that pay their taxes on time, forcing them to cover the loss of revenue from people who do not pay their taxes when they are due. This is a slap in the face to hardworking families who do the right thing. The entire discussion is absurd. This is a classic case of big government concocting a solution to a problem that doesn't exist. We should lower taxes in Erie County and reduce government spending. We should work together to find ways to cut taxes and cut spending to help all Erie County taxpayers, rather than punishing families that pay on time and going soft on families that don't.

This item belongs in committee and deserves a true discussion with all stakeholders, including city, town, village, and school district officials. You should also consider a public hearing on the matter, the same way you convene them for local laws. 97% of our constituents pay their taxes on time, maybe they should have the opportunity to say how they feel about lessening the penalty for those who don't.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stefan I. Mychajliw', with a long horizontal flourish extending to the right.

STEFAN I. MYCHAJLIW
Erie County Comptroller