Speaker 1 (00:00):

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Glenn Newman (00:14):

Can we hold on for a sec?

Nikki Dobay (00:16):

Yep.

Glenn Newman (00:16):

Can I call you back in about five minutes? It's a call about the pieta tear tax.

Nikki Dobay (00:21):

Yes, I'm sure there's lots of those.

Glenn Newman (00:23):

If you leave that in or take it out, I don't know which is worse.

Nikki Dobay (00:33):

Hello, and welcome to Getting Salty, a state and local tax policy podcast hosted by Greenberg Traurig. My name is Nikki Dobay, shareholder in the Portland, Oregon and Sacramento, California offices. I am very pleased today to be joined by Glenn Newman. Glenn is a colleague in our New York City office. Glenn, thank you so much for being here and joining me for the podcast.

Glenn Newman (00:55):

Good to be here, Nikki, always a pleasure to talk with you.

Nikki Dobay (00:58):

Well, today we're going to talk about New York City's pieta tear tax, so you're going to give us the skinny on all that and everything that's been going on. But before we get into that, as a new guest on the podcast, I have to ask, how did you get into state and local tax?

Glenn Newman (01:15):

I went to law school at night and was working during the day. Actually, I had a job at the New York State Department of Social Services where I was working with lawyers looking into Medicaid fraud. I applied through the honors program the city of New York was running at the time and was offered a job at the New York City Corporation Council's office, got assigned to the tax division, And that was it. Started doing collection work, city tax litigation, drafting state and local tax legislation, and took off from there.

Nikki Dobay (01:46):

The rest is history, as they say. And you spent several years as an ALJ for the city, is that right?

Glenn Newman (01:52):

I started out with the Corporation Council's office. After 10 years, I was the division chief and was offered a job as deputy commissioner of finance for audit and enforcement. So that was a fun opportunity. And then I went into private practice for eight years and came back under Mayor Bloomberg as the president of the New York City Tax Appeals Tribunal that heard business tax matters, and later on was appointed president of the New York City Tax Commission that heard real property tax appeals. So a little bit of both, property tax, income tax.

Nikki Dobay (02:25):

And I've heard that they've been having some trouble finding folks to fill those positions lately, but I feel like that's a topic for a different podcast. But let's talk about this tax, which has gotten a lot of visibility across the country. And just to level set with the listeners, can you provide an overview of this tax? How did the proposal come about? What are some of the policy goals? So how did we get to where we are?

Glenn Newman (02:52):

The city needed additional revenue, and Mayor Mamdani tried to convince the governor and the state legislators, all of whom are up for reelection this year, to go along with increases on the income and business taxes in the city of New York. He also proposed at one point that the city council raise the real property tax across the board, and that got a lot of pushback from the members of the city council, and that property tax is the only thing this New York City has real control over. And they needed a $500 million plug to plug that hole of the budget. In March or so, the governor's office came up with an idea of coming up with this pieta tear tax. I think they remembered a slogan that relates to tax policy, "Don't tax you, don't tax me, tax the guy behind the tree," attributed to Russell Long.

(03:42):

And they said, well, how about the state legislature went along with it and they enacted a non-primary residence property surcharge to get the revenue from high value second homes in the city from those who, I guess, incidentally don't vote in New York City.

Nikki Dobay (03:59):

And just also for purposes of New York City, you mentioned the property tax is in the control of the council, but the state has to blast all of the New York City's other taxes. Is that just procedurally how that works?

Glenn Newman (04:15):

Right. The state passes enabling legislation authorizing the city to impose its business taxes, its excise taxes, and there are some state limitations on property tax, but the administration of that tax is local. The governor, state legislature in their infinite wisdom proposed this and enacted this tax, but it's not just New York City. Rhode Island has a similar tax on second homes. They refer to theirs as the Taylor Swift tax because she has a home there. And I just saw in today's news that the Washington DC Council is going to consider a second home tax similar to New York. So this is an idea that seems to be catching on, imposing a tax on those who don't vote locally.

Nikki Dobay (04:59):

Yes. I could see that for policymakers it would have some appeal. To your earlier quote, imposing a tax on non-residents or folks that don't vote is often easier than imposing it on those who do. So now if you could walk us through who will be affected by it, sounds like the folks that don't live there, but can you explain some of the mechanics of the tax?

Glenn Newman (05:24):

Sure. There are two conditions for the surcharge to apply. The property must have a value that exceeds $5 million and that's for tax class one, one, two, and three family homes or an estimated market value of $1 million for co-ops and condos that are not used as a primary residence of the occupant. So you have those two pieces, evaluation over those thresholds, and it does not apply to those who are using the property as their primary residence. And that generally is done by looking at the tax returns, their federal and the state and local tax returns to determine the primary residence.

Nikki Dobay (06:05):

And for the value, are those values going to be teed off of the property tax values?

Glenn Newman (06:12):

Yes. So the assessments and the amount of property tax you pay can be capped for class one, two or three family homes. And there are different rules for taxing co-ops and condos, but this is a surcharge that's on the property tax and it is administered as a property tax.

Nikki Dobay (06:31):

So I guess, and I know we're going to talk about some of the rollout issues that are happening, but I assume this is going to heighten a taxpayer's focus on the value of their property, especially if it's hovering in that 4.89 million range or 5.12, there may be some pushback for that property tax value.

Glenn Newman (06:57):

Okay, let me get personal. I have a house in Brooklyn and I guess it was good for my next door neighbor who sold their house for $7 million. Not so good for me because for all I know they have gold fixtures or something. Finance department said my property has an estimated market value of $5,081,000 as of January 5th, 2026. Now my position is that was before this tax was imposed. What is my property worth July 1 when the property taxes is due? And I would make an argument and I'm thinking of filing a protest where I said, look, if it was worth $5,081,000 before this tax went in, it has to be worth less than $5 million once the tax is imposed. But we'll see whether that is a sufficient proof or whether the city will require me to go get an appraisal or what have you, which will be a lot more cumbersome and a lot more troublesome to taxpayers.

Nikki Dobay (07:59):

And so the appraisals maybe are one of the winners in this. We'll just put them aside. And then this other piece about what is not your primary residence. So obviously you are a New York resident, so I don't think you have that issue that you would be-

Glenn Newman (08:18):

But I did get a letter telling you prove your resident status, even though 30 years working for the city from the same address you think would be something they know.

Nikki Dobay (08:28):

Okay. So it sounds like how they're rolling this out is anybody with a value of over five million is getting one of these letters.

Glenn Newman (08:35):

So there were two parts to this. One was a list that the finance department published, which was an excerpt of the assessment role. And that list had hundreds of thousands of properties listed, including properties that had a value of less than the threshold amounts. That is the essence of the challenge that adds to the rollout that's under in litigation at the moment. They put out this list that was over-inclusive and then got people concerned. And then they sent out 17,000 letters to those property owners that met the value threshold and said basically prove your resident status.

Nikki Dobay (09:13):

All right. So one of the things we were going to talk about was catching up on the rollout. So now I see all the issues with the rollout. Folks are really clamoring about this. So this was supposed to go into effect as of...

Glenn Newman (09:26):

July 1 was the date for the property tax to be due. These bills are supposed to go out by December 1. And what they've done, just to say it, initially they sent out these letters sometime around July 21st and you had to respond by August 21st, realizing that a lot of people were away and that wasn't a lot of time. They extended it 1st of September 18th. Now the extended due date for the claim of exemption is October 6th. So the finance department will get these claims of exemption, have to process them. And then if the exemption's denied, you have an opportunity to go to the New York City Tax Commission, my old agency, my old job, and file your protest. By the way, the tax commission hired 11 new, or they got approval to hire 11 people to review these cases and make determinations.

Nikki Dobay (10:25):

Is this all done by paper? Were you able to file your exemption form online?

Glenn Newman (10:31):

Yes, I was able to-

Nikki Dobay (10:32):

I'm just thinking about the logistics of this.

Glenn Newman (10:34):

That's the thing. So they did open that portal and you can file your exemption claim online. They prefer that for simple things like taking a picture of the first page of your federal and state tax returns. It's simple for trusts and LLCs and entities that own property or the other documentation that has been provided or is suitable to claim the exemption can be a lot more voluminous and be more difficult to upload.

Nikki Dobay (11:01):

Wow. This is going to be, I think kerfuffle is going to turn into... Yikes. So the city's now going to have to review all these exemptions. And then to your point, there's probably going to be many of which that are denied that are going to result in appeals and litigation. And now if you file for an exemption and that's denied and you have to appeal, do you have to pay the tax to appeal?

Glenn Newman (11:25):

That's one of the key issues here. The tax becomes a lien on property as soon as it's assessed. They're going to send out bills December 1. By the way, if you protest the valuation, that's not something that goes to the Department of Finance. They've already made their value. They've done their work to do that. You have to protest at the tax commission. Those protests will take time. The odds on anybody getting a full determination before or by December 1st are questionable to say the least. That delinquency in property tax, if that bill isn't paid, it's an immediate first priority lien on the property. By the way, the minimum tax that's owed on this, doing the math on the five million threshold for the class one properties and the one million for co-ops and condos, the minimum tax is $40,000 in addition to the property tax.

(12:20):

So that is a decent amount of money for people to have to pay all at once because of this new tax. And there are going to be issues with respect to that once the property tax liens hit. It may cause defaults on mortgages or other agreements allowing a lien on the property. It is especially cumbersome and difficult for cooperatives. Those properties get one tax bill, right? It's the co-op corporation that is liable for the tax surcharge will apply to certain units within that co-op building, but it's the co-op building that there will be a lien on. And not only that, the law provides that they can file a tax warrant against the property, which could jeopardize sales of every apartment. Whether they're subject to this tax or not, they may have issues with respect to trying to sell because a buyer is going to want to buy it without a lien.

Nikki Dobay (13:17):

Right. All right. Another question we were going to talk about was compliance and enforcement challenges, but I feel like we've kind of ripped the bandaid off there.

Glenn Newman (13:27):

Yeah. Well, there are a couple of quirks. I mean, again, when it comes to entities, there are issues about the initial position of the Department of Finance, the entity that if it was a trust partnership or an LLC that owned property, the majority holder of the interest in that partnership or LLC or the sole beneficiary of the trust would have to be a resident filing New York tax returns in order to be exempt from this tax. That raised questions about multiple beneficiaries. If you have a trust for your three children and one of them is living there, does that qualify or not? They've tried to clarify that and the whole issue with LLCs and entities is going to be trouble to say the least.

Nikki Dobay (14:13):

Yeah. And I mean, to your comment earlier that they've sent out 17,000 letters, that's not an insignificant number of properties. So even if we're saying a quarter of those are questionable as to value and/or residency or involve one of these trickier cases, the city has a lot of work cut out for itself.

Glenn Newman (14:37):

In a very short time. I mean, that's one of the main issues here. In other contexts, somebody will propose a tax, there'll be hearings on it, there'll be discussions, they'll be taking public input for months, and then they would try to identify those problem areas and deal with that in legislation. Here we had a tax that was thought up in March or April, passed in May, and people told to collect by December 1. And to say that the city agencies are scrambling and that taxpayers are scrambling with their advisors is an understatement.

Nikki Dobay (15:12):

And do you see, I mean, if you're crystal balling this, and I know I'm bad at crystal balling, but I mean, do you think there's going to be fallout during the next legislative session from this that would create different conversations about changes potentially?

Glenn Newman (15:30):

That is an excellent question. And then it's tough to look at the crystal ball. There are challenges. I believe there will be a challenge to the imposition of the tax on commerce clause grounds or privileges and immunities grounds. One of the examples is actually two doors down from me, one of my neighbors rents to German diplomats and he used to live there, he moved out of state and he has a lease with diplomats that happen to be from Germany. I don't know if they're going to consider those folks to be paying New York tax. And frankly, I don't know enough about this and whether they're obligated to, but all of a sudden he's got a $40,000 hit on his rental income. I mean, again, depending on the lease, existing tenancies may result in the owner having to pay an extra surcharge. And by the way, why would somebody rent to a non-resident if it's going to cost the owner $40,000 minimum an additional tax?

Nikki Dobay (16:26):

Right. And they're going to either have to absorb that or pass that through to their renters, which is not resolving an issue that New York has with affordable housing.

Glenn Newman (16:36):

Yeah. It's interesting because the concept was the city isn't getting income tax from these people and they're not there, so why not hit them with a surcharge? I asked the question that I haven't gotten a straight answer to. What about if you're renting to somebody who's a statutory resident? They're paying full freight New York State and New York City income tax, but it's not their primary residence. So if the intent was to get people who aren't paying tax, that isn't covered. And then the initial answer I got was, well, the law says primary residence. So a statutory resident has a primary residence elsewhere by definition.

Nikki Dobay (17:14):

Well, Glenn, this just sounds like a big old mess.

Glenn Newman (17:17):

Well, it is big. It is messy, and apparently it's going to be a trend. And again, there are other ways to do this if people had thought about it. You could arguably raise the tax, impose a higher property tax on everyone, and then give residents either a reduction or a credit or what have you. Basically, they do that now with several personal exemptions, star exemptions in New York, veterans exemptions and others, senior citizens exemptions. They didn't do it that way, which makes it problematic.

Nikki Dobay (17:53):

Yeah. And many states have homestead exemptions and you can just kind of ratchet those up or down. And again, there's various policy arguments as to why that's not fair either. But to your point, there was a way to do this where you didn't have to create a whole new system. And then the one question, and we haven't really talked about this before, but does New York have a uniformity clause that could also create problems here?

Glenn Newman (18:24):

Yes. So I've been called a lot of things in my time, especially when I was deciding tax cases. I got called all kinds of names, but I do think of myself as a little bit of a purist in the sense of the property tax has concepts of uniformity and equality. And you base the tax on the value of the property across the board for the type of property, how it's used and what have you. This purports to be a property tax, but it's clearly not uniform in its application, and it depends on the ownership. That to me just impinges on the concepts that are supposed to be there with property tax. You own property, you're getting government services, sanitation, police, fire, what have you, and you pay your piece of that. And this says, well, but some owners are going to pay a piece of it and some owners are going to pay a piece and a half.

Nikki Dobay (19:18):

I agree with that. And that's why I think property taxes are special under most state constitutions, and we have this concept of uniformity. And we also talk about the three-legged stool, so the income tax and consumption taxes, and those are where you can move some additional levers. But property tax is meant to say if you own property, there's value there and that should be taxed uniformly. And I think I'll just say from seeing how different states have analyzed their uniformity clauses, allowing this type of tax to fall under the umbrella of a property tax will lead New York down a road where you get to create different categories and then how many category? It's a real slippery slope. I'll just say that.

Glenn Newman (20:04):

And it changes the nature of the tax. If you want to tax non-residents or tourists or what have you, states do that, higher sales tax, the hotel taxes, all kinds of things that you can do to say, "We're going to export our tax and not focus on residents." But the property taxes has a different character. And New York City has four classes of property, but within each class there's supposed to be uniformity on the way the assessments are made and how it's done. And here they're taking in particular co-ops and condos and saying, "Well, for real property tax, they're taxed. It's a hypothetical rent based on the fiction that it's a rental building." And now you're going to try to do something different saying that there's additional tax to be paid by certain properties if they're owned by or used by non-residents. It changes the nature of the tax.

Nikki Dobay (21:00):

Yeah. Well, it sounds like there'll be more to come this fall as we get closer to December 1st and see where things shake out with the exemption process goes. And then we're likely to see some litigation being filed just challenging the whole thing in the next several months. Is that-

Glenn Newman (21:23):

Yeah. The current litigation, as we mentioned, is about the rollout and how the initial list was over-inclusive and the shifting of the burden instead of what the legislation initially, what's alleged by the plaintiffs is that the legislation intended the finance department to look at the information they had access to, whether it's tax returns, exemptions on the property, there's a co-op, a condo abatement, and instead they shifted the burden to the taxpayer to prove these things. That can get resolved, but the underlying question of the merits and whether this tax is legal or constitutional, that's going to go on for quite a while. And in the meantime, people will have liens for unpaid property tax or they'll have to come up with the money, which can be a burden on people.

Nikki Dobay (22:13):

And also, as we see this in other states that pass new and unique taxes that get challenged, Maryland is an example of this. So we're going to be four, five, six years out in the litigation over whether or not this is constitutional under US Constitution or even the New York Constitution. And if taxpayers are successful, this creates an even bigger problem for the city when it has to refund all this tax.

Glenn Newman (22:42):

And again, just to point out, this tax is going to be on individuals for the most part. Yes, some entities, but even the trusts and the LLCs are holding it for people as opposed to a business that might be able to absorb the tax hit, put on their books, we'll have claims of refund or whatever. But this, because of the nature of the property tax and the fact that it's so vital revenue source, you're going to be liens on the property immediately if the people don't pay.

Nikki Dobay (23:10):

Well, and also because this is a tax on some non-residents, it is born on individuals. It doesn't apply to commercial properties or things like that. So yes, and that also begs the question, will individuals that are subject to it potentially have the means to challenge it? So I'm sure some will. I'm sure there will be challenges, but a lot of things up in the air.

Glenn Newman (23:37):

Right. Look, $40,000 is real money, but the person who's going to get hit with $40,000 a year, at least for the next five years, subject to extensions, you know as well as I am better than I how taxes that are supposed to be temporary tend to linger.

Nikki Dobay (23:53):

Yes. Yep.

Glenn Newman (23:55):

But a person who has to pay $40,000 a year may not be the one to initiate the lawsuit, but if they put together a group or you have a few people who are paying for $100,000 a year, it makes a difference.

Nikki Dobay (24:07):

All right. So again, I think more to come on this and we'll stay tuned to see what happens after December 1st and into the new year. Glenn, thank you so much for chatting with me about this because I know it's been one big topic of conversation. And to your point, this is an idea that we're going to see other states looking at because it seems too good to be true and maybe because it is, but...

Glenn Newman (24:33):

But very attractive for the political sphere.

Nikki Dobay (24:36):

Yes. All right. Well, I can't let you go without a surprise non-tax question. I was thinking about this one and I may have gotten a little help on it, but what is, and how this works is I ask a question and then I answer first. So tell me about one of your first jobs that it could be pre or post law school, but I'll tell you the first job that I had was at a place called... It was a restaurant job called Just For the Fun of It. And I worked as a hostess and a server for some time. I worked with my sister for a while and we had quite some fun. But what's funny about this is every time I say where I worked, which is just for the fun of it, people are like, "So you didn't get paid?" And I was like, "No, no, we definitely got paid. That was just the name of the restaurant."

(25:25):

So I did a lot of serving in college and even in law school, but that was the first place I did get paid, but it was called Just For the Fun of It. So what about you? Do you have an interesting work story?

Glenn Newman (25:37):

So just to pick up on the food service side, when I was in college, I worked in the kitchens part-time, and every time I go to a restaurant and I try to either pile the plates up or help something, my wife gives me an argument and I say, "But I used to work in food service."

Nikki Dobay (25:54):

Right. It stays with you.

Glenn Newman (25:56):

She say, "What they served at the university was barely food and there was no service. But my first job at 16 years old was as a psychiatric attendant at Creedmoor State Hospital in Queens. And it gave me an education in many different ways, including that some of the craziest people were not necessarily the patients. One of the things they first told me was wear your keys on the outside, have them hanging in a locked ward. And they would say, "The only way you can tell the difference between the staff and the patients is who has keys."

Nikki Dobay (26:33):

How long did you do that?

Glenn Newman (26:34):

Well, it was a summer job. I did it for four summers going from the adult wards in the hospital. Later on, I was at the children's hospital doing the work.

Nikki Dobay (26:44):

It makes you want to go into something like tax, I would think. There's rules and you follow them and the consequences are tax or no tax. That's one of the things I like about tax.

Glenn Newman (26:55):

It was an eye-opening job to say the least.

Nikki Dobay (26:59):

Well, Glenn, thank you so much again for joining and talking about this. As we've noticed, it is a topic that a lot of folks are talking about, and I'm sure lots of questions you're getting on a daily basis. So thank you to the listeners for tuning in. Information for Glenn and I will be in the show notes. If you have any questions or comments, please leave them there and I will be back soon in a few weeks on the next Getting Salty.