

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-208.1(g) of the Administrative Code of the City of New York, I hereby promulgate the within amendments to the Rules Relating to the Filing of Income and Expense Statements. These rules were published in proposed form on August 1, 2005. A hearing for public comment was held on September 1, 2005.

/s/Martha E. Stark
Commissioner of Finance

Section 1. Subparagraphs (iii), (v) (vii), (xv), (xx) and (xxi) of paragraph (1) of subdivision (b) of section 33-01 of 19 RCNY Chapter 33 (Rules Relating to the Filing of Income and Expense Statements) are amended, and a new subparagraph (xxii) is added to paragraph (1) of subdivision (b) of section 33-01 of these rules, to read as follows:

(iii) department stores; notwithstanding the provisions of subparagraph (iv) of paragraph (2) of this section, any owner-occupied department store occupying 10,000 or more square feet in a building is income-producing property for purposes of these rules;

(v) garages[, gasoline stations] and parking lots, regardless of whether they are owner-occupied;

(vii) hotels or motels, regardless of whether they are owner-occupied;

(xv) rented commercial and/or professional space in residential condominium buildings, or cooperative buildings with more than 2,500 square feet of commercial space, not including any garage;

(xx) vacant land (when income is derived from the land, e.g., unimproved land used as a parking lot); [and]

(xxi) warehouses[.]; and

(xxii) gasoline stations.

§2. Subparagraphs (iv) and (vi) of paragraph (2) of subdivision (b) of section 33-01 of these rules are amended, and a new paragraph (4) is added to subdivision (b) of section 33-01 of these rules, to read as follows:

(iv) except as otherwise provided in paragraph (1) of this subdivision, residential or commercial properties which are completely owner-occupied; for purposes of these rules, the meaning of “owner-occupied” shall include property that is leased to (A) individuals that are the spouse, parents, children or siblings of the property owner; (B) individuals that are the mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the property owner; (C) businesses that are in common control with the property owner; and (D) beneficiaries of a property owner that is a fiduciary for such beneficiaries;

(vi) exclusively residential property held in [cooperative or] condominium form of ownership, or cooperative property with no more than 2,500 square feet of commercial space;

(4) Notwithstanding any other provision of this subdivision, an income and expense statement must be filed for the commercial portion of a property owned by a not-for-profit organization or government entity if the property is leased to a commercial tenant, and in such cases, the commercial tenant may file the income and expense statement. Notwithstanding the preceding sentence, no income and expense statement is required if the use of the property by the commercial tenant is an exempt use under the provisions of the Real Property Tax Law and if real property owned by such tenant, if it owned any, is or would be exempt from taxation under the Real Property Tax Law, and if the rent paid by such tenant does not exceed the amount of the carrying, maintenance and depreciation charges of the portion of the property occupied by such tenant.

§3. Paragraph (1) of subdivision (a) of section 33-02 of these rules is amended to read as follows:

(a) Deadlines. (1) Owners of income-producing property shall file with the Department of Finance an income and expense statement [(form RPIE) and, where required, an addendum,] no later than the first day of September of each year. A separate income and expense statement shall be filed for each parcel of income-producing property. Owners of [contiguous parcels of income-producing property] condominium lots may file a consolidated income and expense statement where such [parcels] lots are operated as a single entity.

§4. Paragraph (1) of subdivision (b) of section 33-02 of such rules is amended, and a new paragraph (3) is added to subdivision (b) of section 33-02 of such rules, to read as follows:

(b) Forms. (1) Income and expense statements [and, where required, addenda,] shall be submitted on the appropriate forms prepared by the Department of Finance. The only acceptable substitute for [an addendum] required lease information is a computerized rent roll containing the same information as is required in the [addendum] form.

(3) In the discretion of the Commissioner of Finance, a copy of an income and expense statement filed with the New York City Tax Commission as part of an application for correction of assessment for a property for the year for which an income and expense statement must be filed with the Department of Finance for such property, may be submitted with the Department of Finance income and expense statement form and may satisfy either all or part of the form's requirements for income and expense information as determined by the Commissioner. A property owner submitting a copy of the Tax Commission income and expense statement must also complete the ownership and descriptive property information required by the Department of Finance income and expense statement form (Form RPIE).

§5. Paragraph (4) of subdivision (c) of section 33-02 of such rules is repealed, and paragraph (5) of subdivision (c) of section 33-02 of such rules is renumbered as paragraph (4) to read as follows:

[(4) In addition to the income and expense statement, owners of income-producing property shall file an addendum on the form specified in § 33- 02(b)(1) containing rental information for the month of April for the period set forth in the income and expense statement, when:

(i) the property's final actual assessed value for the tax year in which the statement is being filed exceeds one million dollars and is used for non-residential purposes; or,

(ii) the property's final actual assessed value for the tax year in which the statement is being filed exceeds one million dollars and is a mixed-use property ("mixed-use" is property utilized for more than one purpose, e.g., a residential apartment building with commercial space). The addendum for a mixed-use property must contain data only for the non-residential portion(s) of the property.

(5)] (4) Owners of income-producing property who purchase their property within the twelve month period prior to the first day of August immediately preceding the deadline for filing such statements, and who are without knowledge of the income and expenses of the property for the entire year, shall file an income and expense statement containing the date of purchase, the sale price, the name of the grantor(s) and all information reflecting their actual period of ownership.

§6. Paragraphs (3) and (6) of subdivision (d) of section 33-02 of these rules is amended, and paragraph (7) of subdivision (d) of section 33-02 of these rules is repealed, to read as follows:

(3) Owners of income-producing property must file an income and expense statement notwithstanding the fact that the building was vacant for all or part of the calendar or fiscal year preceding the deadline for filing such statement, unless as of the deadline for filing the income and expense statement, the property is vacant due to an impending demolition and has no existing leases.

(6) Owners of residential condominium [or cooperative buildings] with commercial and/or professional space, and owners of residential cooperative buildings with more than 2,500 square feet of commercial and/or professional space, must file an income and expense statement, but income and expense information is required only for the commercial and/or professional portion of the property.

[(7) Owners are required to file two photocopies of each form in addition to any original forms submitted to the Department of Finance.]

§7. Paragraphs (2) and (3) of subdivision (e) of section 33-02 of such rules are amended, and a new paragraph (8) is added to subdivision (e) of section 33-02 of such rules, to read as follows:

(2) Notwithstanding the submission of a form RPIE by an owner, for purposes of § 33-03 of these [regulations] rules, the term "failure to file an income and expense statement" may include, but not be limited to:

(i) [failure to submit an addendum where required (a computerized rent roll will be accepted in lieu of an addendum)];

(ii) failure to use the forms prepared by the Department of Finance[, except in the case of the addendum, where a computerized rent roll will be accepted];

[(iii)] (ii) failure to submit a separate income and expense statement for each parcel (consolidated statements may be submitted only for contiguous condominium lots operated as a single entity);

[(iv)] (iii) failure to complete forms in a legible manner;

[(v)] (iv) failure to submit an income and expense statement [and, where required, an addendum,] containing the original signature of the owner(s) (the signature of an agent is not acceptable unless a power of attorney is attached to the statement); or

[(vi)] (v) failure to file a substantially complete income and expense statement[, and where required, an addendum,] which shall include but shall not be limited to:

(A) [failure to define the accounting period (fiscal or calendar) and whether the cash or accrual method is used];

[(B)] failure to provide data for the appropriate accounting period; and

[(C)] (B) failure to provide a complete and itemized list of income and expense data.

(3) Owners of property described in § 33-01(b)(2) and (3) of these [regulations] rules who [are requested by the Department of Finance file an income and expense statement] contend that they are excluded from the filing requirement [shall] must notify the Department of their current status on a [certificate of exclusion] form [supplied] prepared by the Department of Finance. Owners who erroneously claim to be excluded from the filing requirements shall be subject to the penalties set forth in § 11-208.1 of the Administrative Code and § 33-03 of these [regulations] rules for failure to file an income and expense statement. [The Department of Finance shall notify those who file a certificate of exclusion as to whether their claim of exclusion is valid.] Owners [who file a valid certificate of] whose claim of exclusion [shall] is approved by the Department must notify the Department [of Finance] of any subsequent change in the physical condition or use of their property which would result in their being required to

file an income and expense statement in future years. Failure to notify the Department of Finance of such a change may result in the imposition of penalties for the year(s) in which an income and expense statement was required.

(8) If a property for which an income and expense statement is required is owned by either a government entity or a not-for-profit corporation, the income and expense statement may be filed by either the owner or, with respect to any space occupied by a commercial lessee, by such commercial lessee.

§8. Section 33-04 of such rules is amended to read as follows:

§ 33-04. Hearings.

(a) General Provisions. (1) Notice of failure to file timely statements and opportunity to cure. [(1)] (i) Owners of income-producing property who fail to file a timely income and expense statement in compliance with § 11-208.1 of the Administrative Code and these [regulations] rules shall be notified of such failure to comply and of the opportunity for a hearing prior to the imposition of the penalties contained in § 33-03 of these [regulations].

[(2) In cases in which owners are deemed to have failed to file for any of the reasons provided in § 33-02(e)(2) of these regulations, the] (ii) The notice shall also provide that such owners may avoid penalties for failure to file by filing a properly completed income and expense statement no later than twenty days following the date of the notice. [Nothing herein shall be construed to afford such an opportunity to cure to an owner who failed to submit a form RPIE by the filing deadline.]

[(b)] (2) Opportunity for hearings. Owners of income-producing property who were served with a notice pursuant to [§ 33-04(a)] this subdivision shall have thirty days from the date of such notice to request a hearing before the Department of Finance by filing a petition for hearing on the form provided by the Department. Failure to file a petition for a hearing within thirty days of the date of such notice shall result in the imposition of such penalty or penalties as the Commissioner of Finance deems appropriate and as provided for in [§ 33-03(a) of] these [regulations] rules.

[(c)] (3) Where to file petitions. Petitions shall be filed in person or by mail with the New York City Department of Finance at such address as may be designated by the Department.

[(d)] (4) Eligible petitioners. A petition may be filed only by an owner or by a duly authorized representative of the owner.

[(e)] (5) Designation of hearing officer. The Commissioner of Finance shall designate employees of the Department of Finance or administrative law judges to serve as hearing officers to hear petitions filed pursuant to these [regulations] rules.

[(f)] (6) Representation of petitioners. [(1)] (i) An individual owner may file a petition on his or her own behalf and may present his or her own case at the hearing. A partnership may file a petition on its own behalf and may present its own case through a general partner without filing a power of attorney. A corporation may file a petition on its own behalf and may present its own case at the hearing through an officer or an employee for whom a duly authorized power of attorney is submitted.

[(2)] (ii) Attorney or agent with power of attorney. A petitioner may appear by [a representative for whom a duly authorized power of attorney has been submitted.] an attorney or agent in a proceeding under these rules if such attorney or agent appears with the petitioner or files a power of attorney in proper form authorizing the attorney or agent to represent the petitioner.

(iii) In any case in which a power of attorney has been filed and thereafter the petitioner desires to authorize an additional or a new attorney or agent, a new power of attorney must be filed revoking any and all powers of attorney previously filed with respect to the same proceeding. The revocation of the authority of the former attorney or agent shall not be effective so far as the Commissioner of Finance is concerned until the petitioner gives notice to that effect to the Commissioner.

(iv) The power of attorney shall be filed with the hearing officer, unless one was filed with the petition.

[(g)] (7) Matters reviewable. The purpose of the hearing is to determine whether:

[(1)] (i) an income and expense statement was not filed, and if it was not filed, what penalties, if any, should be imposed;

[(2)] (ii) an income and expense statement was not timely filed, and if it was not timely filed, what penalties, if any, should be imposed; and/or

[(3)] (iii) a defective income and expense statement was filed, and if so, what penalties, if any, should be imposed;

[(h)] (8) Consolidation, joinder, severance. [(1)] (i) Any party may request the consolidation of hearings relating to the same owner or parcel.

[(2)] (ii) Any party may request the severance of a case relating to another parcel when such parcel is not owned or controlled by the same owner or identical issues of fact or law are not involved.

[(3)] (iii) Consolidation, joinder or severance of any case or issue shall be permitted at the discretion of the hearing officer, subject to the provisions of § 33-06 of these [regulations] rules.

(9) All final decisions rendered by the Commissioner of Finance are reviewable under article 78 of the Civil Practice Law and Rules.

(10) Ex parte communications. There shall be no ex parte communication with respect to the merits of any pending case between any party and the hearing officer.

(11) Burden of proof. The petitioner shall have the burden of establishing each fact relevant to a determination of the matters reviewable under § 33-04(g).

(b) Hearings without personal appearance. A petition for a hearing without a personal appearance may be made by mail or by the Department of Finance internet website in accordance with this subdivision. In addition to the provisions of subdivision (a) of this section, the provisions of this subdivision shall apply to hearings that do not require a personal appearance.

(1) Petition for hearing by mail. (i) A petition for a hearing by mail may be made only on a form provided by the Department of Finance, and must be made within the time prescribed for a request for a hearing pursuant to subdivision (a) of this section.

(ii) Submission of additional documents. The petitioner may submit legal memoranda, additional documents or other material with the petition in support of the petitioner's position. The Department of Finance may also submit additional material to the hearing officer to support its position within a reasonable time as determined by the hearing officer.

(2) Petition for hearing by website. (i) A petition for a hearing by website may be made only via the Department's website in accordance with the instructions that are found on the website for making such a request.

(ii) Submission of additional documents. Except as otherwise provided in paragraph (3) of this subdivision, no documents other than the electronically filed petition may be submitted by the petitioner. The Department of Finance may submit additional material to the hearing officer to support its position within a reasonable time as determined by the hearing officer.

(3) Request for additional documentation. Notwithstanding any other provision of this subdivision, the hearing officer may request additional memoranda or evidence from the parties where the hearing officer deems the submissions insufficient for a decision to be rendered.

(4) At any time after approval of a request for a hearing by mail or website, the Commissioner of Finance may by subpoena require the production of books, papers and documents required to be kept by statute or rule.

(5) The Commissioner of Finance shall issue a final determination based on the submissions that contains findings of fact, conclusions of law, and the dollar amount of

the penalty imposed, if any. A copy of the determination shall be mailed to the petitioner and to the petitioner's representative.

(c) Hearing in person. In addition to the provisions of subdivision (a) of this section, the following provisions shall apply to hearings at which the parties shall appear.

[(i)] (1) Subpoena. [(1)] (i) At any time during a proceeding, the Commissioner of Finance may by subpoena require the attendance of witnesses and the production of books, papers and documents required to be kept by statute or [regulation] rule.

[(2)] (ii) Upon request of a party not represented by an attorney, the Commissioner of Finance may issue subpoenas to require the attendance of witnesses at a hearing or to require the production of documentary evidence. Such request shall be made to the hearing officer by submitting a proposed subpoena. If the request is approved, service of the subpoena shall be the responsibility of the requesting party. An attorney may subpoena a witness or the production of documents as provided by article 23 of the Civil Practice Law and Rules.

[(j)] Prehearing conference, stipulated record. (1) The Commissioner of Finance may request that the petitioner meet and confer with representatives of the Department of Finance prior to the scheduled date of a hearing. The purpose of such meeting shall be to discuss and narrow disagreements as to facts or issues; to consider any matter which will tend to simplify issues or expedite the hearing; and to attempt to resolve the controversy, where possible, consistent with the applicable laws and regulations.

(2) If prior to the hearing the parties reach an agreement on substantially all the material facts, but the parties still disagree as to the imposition of penalties because of questions of law or the application of the law to the facts, the parties shall submit a stipulation of agreed facts to the hearing officer.]

[(k)] (2) Hearing officer. [(1)] (i) The hearing shall be conducted by a hearing officer, who shall be authorized to:

[(i)] (A) administer oaths and affirmations;

[(ii)] (B) regulate the course of the hearing, set the time and place for continuing the hearing, and fix the time for filing of legal briefs, memoranda and other documents;

[(iii)] (C) rule upon offers of proof and receive relevant evidence;

[(iv)] (D) require the parties at any time during the hearing to state their respective positions in support of any issues under consideration in the case;

[(v)] (E) question any party or witness for the purpose of clarifying the record;

[(vi)] (F) take any other action for a speedy and expeditious hearing.

[(2) The hearing officer may waive the appearance of the parties or their representatives, if any, for the submission of evidence where sufficient facts have been admitted, stipulated or included in the record in some way, and the parties consent in writing to have the controversy heard or submitted without need for their appearance at an oral hearing. The parties may submit legal memoranda, additional documents or other material in support of their positions to the hearing officer within a reasonable time as agreed upon by the parties, subject to the approval of the hearing officer. The hearing officer may, however, request additional memoranda or evidence from the parties where the hearing officer deems the stipulated submission insufficient for a decision to be rendered.

(3) The hearing officer may require that the parties report on the number of witnesses each party expects to call at the hearing, plus an estimate of the amount of time the parties expect will be required for the presentation of their direct case. The information received in response to such request shall be used for hearing calendaring purposes only. No party's hearing shall be limited to the estimated time reported, or to the number of witnesses listed in the report.]

[(1) (3) Hearing schedule. [(1) (i) The hearing shall be scheduled as soon as is practicable. The parties shall be given notice of the hearing date no fewer than twenty days prior to such date. The notice shall include the time, place and nature of the hearing.

[(2) (ii) No request for postponement of the hearing date will be considered unless a written application setting forth good cause for the postponement is received by the hearing officer within ten calendar days after mailing of the hearing notice. In the event of an emergency, however, a postponement may be considered on less notice than provided herein. A postponement may be granted only in writing by the hearing officer.

[(m) Ex parte communications. There shall be no ex parte communication with respect to the merits of any pending case between any party and the hearing officer.

(n) Burden of proof. The petitioner shall have the burden of establishing each fact relevant to a determination of the matters reviewable under § 33-04(g).

(o) (4) Evidence. [(1) (i) At the hearing, the parties shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses.

[(2) (ii) No decision or determination shall be made except upon consideration of the record as a whole and as supported by the evidence. In the discretion of the hearing officer, technical [Technical] rules of evidence [may be waived to the extent permitted by the decisions of the courts of this state, provided the evidence offered is relevant and material to the issues] need not be applied. However, effect shall be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record.

[(p)] (5) Failure to appear. A default shall be entered upon the failure of the petitioner to appear at a hearing or at any adjourned date thereof, provided the petitioner has been given notice of the hearing date, and no written postponement has been granted pursuant to § 33-04[(1)](c)(3). In the event of a default, the hearing shall be concluded and a final determination shall be issued pursuant to § 33-04[(r)] (c)(7) based on the record, if any, previously made.

[(q)] (6) Hearing record. Hearings shall be transcribed verbatim or recorded by electronic recording devices. A copy of the transcript or electronic recording may be purchased at such rates as may be fixed by the Commissioner of Finance. If any party deems the hearing record to be inaccurate in any material respect, that party shall promptly notify the other parties and the hearing officer not later than five calendar days from receipt of the hearing record, specifying the portions of the record believed to be inaccurate.

[(r)] (7) Final determination. [(1)] Upon completion of the hearing, the [hearing officer shall transmit to the Commissioner of Finance the entire record, including the stenographic transcript or electronic recording of the hearing, exhibits offered in evidence and any briefs or legal memoranda filed by the parties, together with findings of fact and conclusions of law and recommendations. The] Commissioner of Finance shall [review the record and the report of the hearing officer and shall] issue a final determination containing findings of fact, conclusions of law, and the dollar amount of the penalty imposed, if any. A copy of the determination shall be mailed to the petitioner and to the petitioner's representative.

[(2) All final decisions rendered by the Commissioner of Finance are reviewable under article 78 of the Civil Practice Law and Rules.

(s) Power of attorney. (1) No attorney or agent shall appear on behalf of any person, appear before, or be recognized by, any officer or employee of the Department of Finance in any proceedings under these regulations, unless such attorney or agent appears with the petitioner or files a power of attorney in proper form authorizing the attorney or agent to represent the petitioner.

(2) In any case in which a power of attorney has been filed and thereafter the petitioner desires to authorize an additional or a new attorney or agent, a new power of attorney must be filed revoking any and all powers of attorney previously filed with respect to the same proceeding. The revocation of the authority of the former attorney or agent shall not be effective so far as the Commissioner of Finance is concerned until the petitioner gives notice to that effect to the Commissioner.

(3) The power of attorney shall be filed with the hearing officer, unless one was filed with the petition.]

§9. Section 33-06 of such rules is amended to read as follows:

§ 33-06. Confidentiality--Disclosure Restrictions.

(a) Neither income and expense statements [nor addenda] filed in accordance with § 11-208.1 of the Administrative Code and these [regulations] rules, nor any information set forth or contained in such statements, shall be disclosed to any person or entity, except:

(1) to the Tax Commission;

(2) to the property owner who filed such income and expense statement or the duly authorized representative of such owner;

(3) to the duly authorized agent of the Department of Finance or the Tax Commission whose services have been retained in connection with the review, analysis, or compilation of information contained in such statements upon the execution of an agreement to maintain the confidentiality of such statements;

(4) to the legal representative of the Department of Finance or Tax Commission where an owner has brought an action to correct an assessment of real property; or

(5) pursuant to proper judicial order or as otherwise provided by law.

(b) Nothing contained in this chapter shall prevent the publication by the Department of Finance or the Tax Commission of statistics taken from income and expense statements [and addenda] which are so classified as to prevent the identification of particular statements and the items thereof.

(c) The Department of Finance shall notify any person or entity that has filed an income and expense statement [and/or addenda] in accordance with § 11-208.1 of the Administrative Code and these [regulations] rules of any proceeding commenced or motion or subpoena served to compel disclosure of such statement or of any information contained therein within five business days of receiving any papers requesting such relief, except that in the event of a proceeding, motion or subpoena seeking disclosure of more than fifty income and expense statements, the Department of Finance shall give notice to those authorized representatives whose names are on file with the Department of Finance within fifteen business days of receiving any papers requesting such relief.

BASIS AND PURPOSE OF AMENDMENTS

Section 11-208.1 of the Administrative Code of the City of New York requires that owners of income producing real property in New York City file income and expense statements relating to the property each year no later than September 1. The information provided on the statements is used by the Department of Finance in assessing real property in the City. These proposed amendments to the Rules Relating to the Filing of Income and Expense Statements reflect policy changes made by the Department of Finance, many of which generally simplify some of the filing requirements.

The Administrative Code authorizes the Department of Finance to impose monetary penalties for the failure of a property owner to timely file an income and expense statement, after providing the owner with notice and an opportunity to be heard. These proposed amendments will revise the procedures concerning notice of failure to file and the procedures for hearings before the Department of Finance at which an owner can contest a penalty. The amendments concern the opportunity afforded an owner to cure the noncompliance with the law, and will streamline administrative procedures concerning hearings.