



**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 City Charter, I hereby promulgate the within Amendments to the Rules Relating to the Filing of Income and Expense Statements. These amendments to rules were published in proposed form on May 25, 2012. A hearing for public comment was held on June 25, 2012. These final rule amendments include revisions of the proposed rule amendments based on the consideration of public comments, which are found in §§1, 2, 6, 7 and 8 of these final rule amendments.

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S/S  
David M. Frankel  
Commissioner of Finance

Note: New matter underscored; old matter in brackets [] to be deleted.

**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 each year for the property. The Department of Finance uses the information in the statements to assess the value of real property in the City.

The amendments will update the rules relating to requirements for filing income and expense statements set forth in Chapter 33 of Title 19 of the Rules of the City of New York by:

- Adding examples of income-producing property for which owners must file income and expense statements.
- Clarifying that certain of the examples listed will be considered income-producing property regardless of whether or not they are owner-occupied.

- Excluding utility properties (other than special franchise properties that are assessed by the State of New York under article 6 of the Real Property Tax Law) from the list of properties not considered income-producing properties so that the Department of Finance can obtain income and expense statements for utility properties. Special franchise properties will continue not to be considered income-producing properties.
- Deleting the provision that exempts owners who purchase property on or after August 1<sup>st</sup> from filing income and expense statements for the year the property was purchased. This will allow Department of Finance to obtain income and expense information to help assess these properties.
- Allowing owners to file consolidated statements for properties that are:
  1. operated together as an economic unit or related for valuation purposes,
  2. under common ownership, and
  3. in contiguous locations.

This will permit the Department of Finance to obtain accurate assessment information while reducing the number of statements that need to be filed by these property owners.

- Giving the Commissioner of Finance discretion to determine each year whether or not to require owners of properties with a final actual assessed value of \$750,000 or more to file an addendum with rent roll information. Currently, owners of these properties must always file an addendum. The amendment will allow the Department of Finance to require the addendums only if they are needed to conduct accurate property assessments. Owners will be able to determine whether or not they need to file an addendum during a particular year by referring to the instructions for filing income and expense statements that accompany the form for that particular year.
- Requiring owners of certain types of equipment defined as real property under the Real Property Tax Law to file both an income and expense statement and an inventory statement. This amendment will help the Department of Finance obtain information to accurately assess these properties.
- Requiring the filing of income and expense statements for unsold condominium and cooperative building units where the sponsor retains ownership of at least ten percent of the total number of units. This amendment will help the Department of Finance obtain information to accurately assess these properties.
- Requiring that certain owners of properties file a claim of exclusion if they believe that their property is excluded from the filing requirement. This will assist the Department of Finance in determining if the claim for exclusion is valid.
- Extending the time for filing a corrected statement from 20 to 30 days of receipt from the Department of Finance of notice of failure to file a timely statement.
- Requiring owners who are found by audit not to have filed a substantially complete and accurate statement to pay a penalty, regardless of whether they file a corrected statement.

- Permitting the Commissioner of Finance to appoint individuals who are not employees of the Department of Finance or administrative law judges to serve as hearing officers. This will allow the Department of Finance to choose other qualified individuals to serve as hearing officers, such as, for example, members of the New York City Office of Administrative Tax Appeals.
- Acknowledging that owners are currently permitted to file certain documents in paper format without a waiver from the Commissioner.

### **Amendments to Rules Relating to the Filing of Income and Expense Statements**

Section 1. Subparagraphs (vii), (xviii), and (xxi) of paragraph (1) of subdivision (b) of section 33-01 of 19 RCNY Chap. 33 (Filing of Income and Expense Statements) are amended, new subparagraphs (xxii), (xxiv) and (xxv) are added to such paragraph, and former subparagraph (xxii) of such paragraph is renumbered as subparagraph (xxiii) to read as follows:

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

(xviii) theaters (movie or stage), regardless of whether they are owner-occupied;

(xxi) warehouses; [and]

(xxii) self-storage warehouses, regardless of whether they are owner-occupied;

[(xxii)](xxiii) gasoline stations, regardless of whether they are owner-occupied;

(xxiv) car washes, regardless of whether they are owner-occupied; and

(xxv) power plants, generators, telecommunication lines and other equipment defined as real property in paragraphs (d), (e), (f) and (i) of subdivision 12 of §102 of the Real Property Tax Law, regardless of whether it is owner-occupied, other than special franchise property that is assessed pursuant to article 6 of the Real Property Tax Law.

§2. Subparagraphs (vi) and (vii) of paragraph (2) of subdivision (b) of section 33-01 of such rules are amended, to read as follows:

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

(vii) special franchise property that is assessed pursuant to article 6 of the Real Property Tax Law [classified in tax class three as defined in §1802 of the Real Property Tax Law, i.e., utility property]; and

§3. Paragraph (3) of subdivision (b) of section 33-01 of such rules is repealed, and paragraph (4) of subdivision (b) is renumbered as paragraph (3).

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

(1) Owners of income-producing property shall file with the Department of Finance an income and expense statement 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 condominium lots may file a consolidated income and expense statement where such lots are operated as a single entity], except that a consolidated income and expense statement may be filed for one or more tax lots that are:

(i) operated together as an economic unit or are otherwise related for purposes of valuation; and

(ii) are under common ownership; and

- (iii) are contiguous or within the same tax block or within adjacent tax blocks; and
- (iv) are located within the same borough of the City.

§5. Paragraph (5) of subdivision (c) of section 33-02 of such rules amended to read as follows:

(5) In addition to the income and expense statement, for any year, the Commissioner of Finance may require owners of income-producing property with a final actual assessed value at or above an amount determined by the Commissioner to file an addendum to the income and expense statement [as to which the final actual assessed value for the tax year during which the statement is filed is \$750,000 or greater must file an addendum thereto,] in a format determined by the Commissioner [of Finance], containing rent roll information for [the month of April of the year during which the income and expense statement is required to be filed] a period determined by the Commissioner. The addendum will not be required for a property with a final actual assessed value of less than \$750,000 for the tax year during which filing of the income and expense statement is required. Any [The] addendum required by this paragraph shall be considered to be a part of the income and expense statement and any filing requirement contained in these rules for the income and expense statement shall also be applicable to the addendum.

§6. Paragraph (8) of subdivision (d) of section 33-02 of such rules is amended to read as follows:

(8) [Notwithstanding any other provision of these rules, with] With respect to power plants, generators, telecommunication lines and other equipment defined as real property in paragraphs (d), (e), (f) and (i) of subdivision 12 of §102 of the Real Property Tax Law, other than special franchise property that is assessed pursuant to article 6 of the Real Property Tax Law, [the filing requirements of §11-208.1 of the New York City Administrative Code will be met by] in addition to the requirement to file an income expense statement, the owner of such property [if] must also file with the Department of Finance, no later than September 1 each year, [the owner files with the Department of Finance] a statement that includes a description of the use and the cost of:

- (i) all such property owned by such owner in the City of New York as of the end of the reporting year;
- (ii) any such property that was retired during the reporting year; and
- (iii) any such property that was added to inventory during the reporting year, including any such property the construction of which remained in progress as of the end of the reporting year.

§7. A new paragraph (9) is added to subdivision (d) of section 33-02 of these rules to read as follows:

(9) Notwithstanding the provisions of §33-01(b)(1)(xv) and §33-01(b)(2)(vi), for space in a condominium or cooperative building that represents units that have not been sold and remain owned by the sponsor, the property owner must file an income and expense statement that includes rent roll information in a format determined by the Commissioner of Finance, but this requirement will not apply unless at least ten percent in the aggregate of the total number of units in the condominium or cooperative building remain unsold and remain owned by the sponsor (or if a condominium or cooperative consists of more than one building governed by the same board of managers or directors, at least 10% of the units in the buildings in the aggregate remain unsold and remain owned by the sponsor).

§8. Paragraph (3) of subdivision (e) of section 33-02 of such rules is amended to read as follows:

(3) (i) Owners of property [described in §33-01(b)(2) and (3) of these rules] who contend that they are excluded from the filing requirement based on any provision of paragraph (2) of subdivision (b) of §33-01 of these rules, other than subparagraphs (i), (ii), (iii) or (vii) of such paragraph (2), must [notify the Department of their current status on a form prepared by the Department of Finance] file with the Department of Finance a claim of exclusion on a form prepared by the Department, no later than September 1, 2014 and on or before September 1 in every third year thereafter, for as long as the owner claims that the property is excluded from the filing requirement.

(ii) In addition to the requirements of subparagraph (i) of this paragraph, owners of properties who claim that they are excluded from the filing requirement, and are required to file a claim of exclusion, must file a claim of exclusion on a form prepared by the Department no later than the September 1 that immediately follows the date on which the owner took title to the property.

(iii) 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 rules for failure to file an income and expense statement. Owners whose claim of exclusion is approved by the Department must notify the Department 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.

§9. Subparagraph (ii) of paragraph (1) of subdivision (a) of section 33-04 of these rules is amended, and a new subparagraph (iii) is added to paragraph (1) of subdivision (a) of section 33-04 of these rules, to read as follows:

(ii) Except as provided in subparagraph (iii) of this paragraph, the [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] thirty days following the date of the notice.

(iii) Notwithstanding any other provision of these rules, or any other determination by the Department of Finance of failure to file, if the Department of Finance determines by audit that an owner failed to file a substantially complete and accurate income and expense statement, the provisions of subparagraph (ii) of this paragraph do not apply with respect to the audit determination and, therefore, the owner may not avoid penalties for failure to file with respect to the audit determination by filing a properly completed income and expense statement.

§10. Paragraph (5) of subdivision (a) of section 33-04 of such rules is amended to read as follows:

(5) *Designation of hearing officer.* The Commissioner of Finance shall designate [employees of the Department of Finance or administrative law judges] persons to serve as hearing officers to hear petitions filed pursuant to these rules. Such persons need not be employees of the Department of Finance.

§11. Subdivision (a) of section 33-05 of such rules is amended to read as follows:

(a) **Date of filing.** [In the event that the Commissioner has waived the electronic filing requirement with respect to a property, and will accept an income and expense statement filed in paper format, any] Any form or document that is permitted under these rules to be filed in paper format and which is required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of §11-208.1 of the Administrative Code, or any regulation enacted relating to the administration of such provision, that is mailed, shall be deemed delivered as of the date of the United States Postal Service postmark stamped on the envelope.

§12. The opening sentence of paragraph (1) of subdivision (b) of section 33-05 of such rules is amended to read as follows:

(b) **Filing by paper form; mailing requirements.** (1) [In the event that the Commissioner has waived the electronic filing requirement with respect to a property, and will accept an income and expense statement filed in paper format, a document] Any form or document that is permitted under these rules to be filed in paper format that is mailed will not be considered to be timely filed unless the document is mailed in accordance with the following requirements: