



**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 Refunds of Real Property Taxes. This amendment was published in proposed form on July 6, 2009. A hearing for public comment was held on August 6, 2009.

David M. Frankel
Commissioner of Finance

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

Section 1. Section 24-02 of the Rules Relating to Refunds of Real Property Taxes (Chapter 24 of Title 19 of the Rules of the City of New York) is amended to read as follows:

§24-02. Ordinary Overpayments and Double Payments.

[Applications] Any application required by the Commissioner of Finance for refunds (or transfers) of over and double payments of real property taxes, assessments, water charges and sewers rents may be made [only by filing the following with the Financial Services Unit, 25 Elm Place, 4th Floor, Brooklyn, New York 11201] by filing an application on a form or in a format established by the Commissioner of Finance, plus any documentation requested by the Department in order to evidence that the applicant is entitled to the refund or transfer of the overpayment, within six years after the date of the over or double payment. Any such documentation required may include, but is not limited to, copies of both sides of cancelled checks, receipted bills, a printout of the confirmation of payment of taxes by electronic means, statements or other documentation from the taxpayer's bank or an affidavit setting forth facts alleged by the applicant [:

(a) All original receipted bills, for periods for which such receipted bills were issued, covering payments of taxes, assessments, water charges and sewer rents involved. Where the taxes, assessments, water charges and sewer rents were paid in cash and the receipted bills evidencing payment are missing, an affidavit must be presented setting forth efforts made to locate the bills.

(b) All cancelled checks or photostatic copies of both sides thereof covering payment of the taxes, assessments, water charges and sewer rents for which a refund is being sought. If checks are missing, either bank statement(s) or a letter from the bank may be substituted in lieu thereof listing the numbers, dates, payees and dates of payment of the missing checks, and an affidavit from the applicant for the refund stating that the checks listed on either the statement or in the bank letter were given in payment of the taxes, assessments, water charges and sewer rents for which a refund is sought.

(c) In the absence of the original receipted bills for cash payments and the documentation required in subdivision (b) above, no refund will be made unless the Department of Finance can verify payment of the taxes, assessments, water charges and sewer rents, and, for refunds of \$5,000 or more, the applicant for a refund files a surety bond equal to the amount of the refund claimed.

(d) If an estate, trust, committee, power of attorney or other similar capacity is involved, an official certificate or copy of the Court Order or document showing appointment must be submitted].

§2. Section 24-03 of such rules is amended to read as follows:

§24-03. Real Property Assessment Review Proceedings.

(a) Application for refund. Refunds (or transfers) of overpayments of real property taxes resulting from a Tax Commission remission order or a Supreme Court order or judgment entered after trial or pursuant to settlement in a real property assessment review proceeding may be obtained in accordance with section 726 of the Real Property Tax Law only by filing[, in the manner set forth below,] an [Application for the Audit and Payment of a Tax Refund, as hereinafter defined,] application on a form or in a format established by the Commissioner of Finance, plus any other documentation requested by the Department in order to evidence that the applicant is entitled to the refund or transfer of the overpayment, within three (3) years of the entry of the Supreme Court order or judgment, or within six (6) years of the date of the Tax Commission order, as the case may be. Other documentation required may include, but is not limited to, a copy of the Supreme Court order or judgment, if any, copies of both sides of cancelled checks, a printout of the confirmation of payment of taxes by electronic means, statements or other documentation from the taxpayer's bank or an affidavit setting forth facts alleged by the applicant.[The application must be filed with the Department of Finance, Operations Division, Financial Services Unit, 25 Elm Place, 4th Floor, Brooklyn, New York 11201.

An application for the Audit and Payment of Tax Refund in conformity with these rules and the requirements of §726 of the Real Property Tax Law shall consist of:

(1) A completed application for refund or transfer of overpayment of real property taxes, on a form provided by the Commissioner of Finance;

(2) A copy of the Tax Commission remission order; or a certified copy of the Supreme Court order or judgment, which must be served upon the Law Department of the City of New York within three (3) years after the entry of the order or judgment;

(3) All original receipted bills, for periods for which such receipted bills were issued, covering payments of the taxes involved;

(4) All cancelled checks or photostatic copies of both sides thereof covering payment of the tax for which a refund is being sought (If checks are missing, the applicant may substitute either bank statement(s) or a letter from the bank listing the numbers, dates, payees and dates of payment of the missing checks, and an affidavit from the applicant for the refund stating that the checks listed on either the statement or in the bank letter were given in payment of the taxes for which a refund is sought.) and

(5) If an estate, trust, committee, power of attorney or other similar capacity is involved, an official certificate or copy of the court order or document showing appointment.

(b) In lieu of the documentation required in paragraphs (3) and (4) of subdivision (a) of this section, the Department will accept the following:

(1) an agreement to indemnify the City against any claims to such refund in the form provided in subdivision (c) of this section. If an estate, trust, committee, or a representative acting under a power of attorney or other similar capacity is involved, an official certificate or certified copy of the court order or other duly executed document showing the appointment must be submitted; and

(2) a completed Affidavit of Representation by the attorney of record, if any, who represented the subject property before the Tax Commission or the Supreme Court to reduce the assessed valuation of such property for the tax year or years for which such refund (or transfer) application is being made, in the form provided in subdivision (c) of this section.

(c) Except as provided in subdivision (d) of this section, the agreement to indemnify the City and the Affidavit of Representation required by paragraphs (1) and (2) of subdivision (b) of this section must be in the following form:

STATE OF NEW YORK
COUNTY OF

AFFIDAVIT AND INDEMNITY AGREEMENT

_____ (the "applicant"), being duly sworn, deposes and says:

1. The applicant undertook to seek administrative and judicial review of the assessment of real property taxes for the tax years and the property indicated on Attachment A;

2. The applicant made or caused to be made the payment that resulted in the credit balance indicated on Attachment A, or a portion thereof, and the applicant and no other party is entitled to the benefit of the credit balance that is the subject of this application;

3. In the event any person purporting to be entitled to a refund of the credit balance that is the subject of this application files a claim for such refund, the applicant agrees that if the Department of Finance determines, based on satisfactory proof, that any such person is entitled to such credit balance, the applicant will repay to the City of New York such refunded amount upon written demand; and

4. The applicant agrees that in consideration of the City issuing a refund of the amount indicated on Attachment A, the applicant will indemnify and hold the City harmless from all claims and suits for the

amount of the refund and agrees further to pay the amount of any expenses and costs (including legal fees) arising from issuance by the City of the amount or part thereof indicated on Attachment A.

(INDIVIDUAL)

On this ___ day of _____, 19 ____, before me personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing, and acknowledged to me the execution thereof.

NOTARY PUBLIC

(PARTNERSHIP)

On this ___ day of _____, 19 ____, before me personally came _____, to me known and known to me to be a member of _____, the firm described in and which executed the foregoing and he acknowledged to me that he subscribed the name of said firm thereto on behalf of said firm.

NOTARY PUBLIC

(CORPORATION)

On this ___ day of _____, 19 ____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides in the City of _____, and is the _____ of _____, the corporation described in and which executed the foregoing; that he knows the seal of said corporation; that the seal affixed to the foregoing is such corporate seal; and that it was so affixed by order of the Board of Directors of said corporation and that by like order he signed his/her name and official designation.

NOTARY PUBLIC

ATTACHMENT A

Borough Block Lot Record Owner Tax Year Credit

STATE OF NEW YORK
COUNTY OF

ATTORNEY'S AFFIRMATION

I, _____, an attorney admitted to practice in the courts of the State of New York, do hereby affirm the following to be true, subject to the penalties of perjury, pursuant to CPLR 2106:

1. I am a member of the attorney group indicated on Attachment A and I (or my firm) was retained by the taxpayer indicated on Attachment A and was the attorney of record authorized to represent the taxpayer in a proceeding before the Tax Commission of the City of New York or the Supreme Court to reduce the final assessed valuation for the property and tax years indicated on Attachment A;

2. The taxpayer indicated on Attachment A has authorized my firm to submit this application for a refund of real property taxes;

3. I make this affirmation so that the New York City Department of Finance will issue a refund of the credits indicated on Attachment A to the herein-named Taxpayer c/o my firm without requiring cancelled checks or receipts as proof of payment of the overpayment that gave rise to this request for refund.

Dated:

ATTACHMENT A

Borough	Block Lot	Taxpayer	Atty. Tax	Credit	Atty. Lien
		Group	Year(s)	in \$ or %	

(d) Application filed by condominium board. An agreement to indemnify and an Affidavit of Representation filed under the provisions of subdivision (a) of this section that are filed by or on behalf of a condominium board of managers must be in the following form:

STATE OF NEW YORK
COUNTY OF

AFFIDAVIT AND INDEMNITY AGREEMENT

_____, being duly sworn, deposes and says:

1. I am a member of the Board of Managers of _____ (the "Board") a condominium located at _____ in the borough of _____, in the City of New York, and am authorized to execute this document on behalf of the Board;

2. The Board, pursuant to a duly authorized and approved resolution, or under the authority granted by the condominium by-laws, undertook to seek administrative and judicial review of the assessment of real property taxes for the tax years and units indicated on Attachment A pursuant to section 339-y of the Real Property Law;

3. The owner of each unit listed on Attachment A has authorized the Board to submit this application for a refund of real property taxes;

4. The Board understands that it is receiving the tax refunds indicated on Attachment A to facilitate transmission of those tax refunds to the individual unit owners and undertakes to use diligent efforts to notify the individual unit owners, and will direct those funds to or for the benefit of those individual unit owners in accordance with the condominium's declaration and by-laws;

In the event any person purporting to be entitled to a refund for a unit and for a tax year set forth in Attachment A files a claim for such refund, which refund shall have been included in the aggregate paid to

the Board, the Board agrees that if the Department of Finance determines, based on satisfactory proof, that any party other than the present owner was the payor of such overpayment and is entitled to such credit and the Department of Finance is required to enter such credit, the Board will repay to the City of New York such refunded amount upon written demand;

In the event any person purporting to be entitled to a refund for a unit and for a tax year set forth in Attachment A, which refund shall have been included in the aggregate paid to the Board, commences an action in a court of law for such refund against the City, claiming that such refund should have been made to him/her rather than to the Board, and the City gives prior notice of such claim to the Board, and, if requested by the Board, turns over the defense of such action (and right to settle such action) to the Board, at the Board's sole expense, and that person obtains a final judgment in his/her favor (after exhaustion of any appeals), the Board shall pay such judgment on behalf of the City;

5. Upon the Board making payment pursuant to its indemnity obligation in paragraph 4 above, the City shall impose a lien on the unit for which an improper payment was made and pay to the Board any moneys received from enforcement of such lien to the extent of such lien; and

6. The Board agrees that in consideration of the City issuing a refund, of the amount and for the unit owners indicated on Attachment A, the Board will indemnify and hold the City harmless from all claims and suits and agrees to pay the amount of any expenses and costs (including legal fees) arising from issuance by the City of a refund of the amount or part thereof indicated on Attachment A.

On the ____ day of _____, 19 ____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of _____, the condominium described in and which executed the foregoing instrument and that he executed the foregoing instrument by authorization of the board of managers of said condominium.

NOTARY PUBLIC

STATE OF NEW YORK
COUNTY OF _____

ATTORNEY'S AFFIRMATION

I, _____, an attorney admitted to practice in the courts of the State of New York, do hereby affirm the following to be true, subject to the penalties of perjury, pursuant to CPLR 2106:

1. I am a member of the attorney group indicated on Attachment A and I (or my firm) was retained by the Board of Managers of _____, a condominium, and was the attorney of record authorized to represent the unit owners of such condominium in a proceeding before the Tax Commission of the City of New York or the Supreme Court to reduce the final assessed valuation for the property and tax years indicated on Attachment A;

2. Each unit owner listed on Attachment A has authorized my firm directly or via the Board to submit this application for a refund of real property taxes;

3. I make this affirmation so that the New York City Department of Finance will issue a refund of the credits indicated on Attachment A to the herein-named Board of Managers c/o my firm without requiring cancelled checks or receipts as proof of payment of the overpayment that gave rise to this request for refund.

Dated:

ATTACHMENT A

Borough	Block Lot	Unit No.	Record Owner	Atty. Group	Tax Year(s)	Credit	Atty. Lien in \$ or %
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(d) Notwithstanding any other provision of these rules, if the Department in its sole discretion determines that a taxpayer is unable to indemnify the City as described in paragraph (1) of subdivision (b) of this section, based on the bankruptcy or insolvency of the taxpayer, or like considerations, the Department may require, in lieu of an agreement to indemnify the City, the documentation described in §24-02 of these rules.

(e) (b) Interest on refunds. Interest shall be paid on the amount of any refund made pursuant to this section that resulted from a Supreme Court order or judgment, to be computed from the date of payment of the tax or portion thereof to be refunded until the date of such order or judgment. Interest shall also be paid on the amount of such refund for the period after the entry of a final order or judgment but shall accrue only from the date on which an application for Audit and Payment of such refund was duly made to the Department of Finance in accordance with the requirements of this section.

§3. Section 24-04 of these rules is repealed:

[§24-04. Assignment of Refund.

The taxpayer may assign the right to receive a refund or transfer of overpayment under these rules only by executing an assignment of the right to a refund or transfer on a form provided by the Commissioner of Finance.]

§4. A new section 24-04 is added to such rules to read as follows:

§24-04. Department of Finance application of overpayments to arrears in real property taxes and property-related charges. With respect to an overpayment of real property taxes or property-related charges on a property for which there are unpaid taxes or charges, the Department of Finance may apply the overpayment to satisfy such unpaid taxes and charges and refund only the balance of the overpayment, if any, that remains after the Department has so applied the overpayment.

§5. Subdivision (c) of section 24-05 of such rules is amended to read as follows:

(c) In the event that an application for a transfer of an overpayment concerns properties that are not owned by the same record owner, the applicant must furnish proof required to establish that the properties are owned by the same beneficial owner.

Example 1: In January, [1995] 2007, X made an overpayment of real property taxes on property A in the amount of \$1,000. Property B has an outstanding balance of real estate taxes and interest from July, [1996] 2008, in the amount of \$1,000. There are no other outstanding charges on either of the two properties. X is the record owner of both property A and property B and desires to transfer the overpayment from property A to property B. X must submit to the Department [an application] a request for transfer of the overpayment pursuant to §24-02 of these rules. The \$1,000 overpayment will be transferred from property A to property B to be applied to the outstanding balance on property B.

Example 2: The facts are the same as in Example 1 except that Y made the overpayment on property A. If X wishes to transfer the overpayment from property A to property B, X must submit to the Department [an assignment from Y pursuant to §24-04 of these rules together with] an application pursuant to §24-02 of

these rules certifying that X is entitled to the refund.

Example 3: In January, [1995] 2007, X made an overpayment of real property taxes on property A in the amount of \$1,000. Property B has an outstanding balance of real estate taxes and interest in the amount of \$2,000 from July, [1996] 2008. There are no other outstanding charges on either of the two properties. X owns 75% of the stock of X Corp. which is the record owner of property A. X also owns 75% of Y Corp. which is the record owner of property B. X desires to transfer the overpayment from property A to property B. X must submit to the Department an application pursuant to §24-02 of these rules together with any documentation requested by the Department to establish that X is the beneficial owner of both property A and property B. The \$1,000 overpayment will be transferred from property A to property B to reduce the outstanding balance on property B by \$1,000.

Example 4: The facts are the same as in Example 3 except that X Corp. made the overpayment on property A. If X wishes to transfer the overpayment from property A to property B, X must submit to the Department [an assignment from X Corp. pursuant to §24-04 of these rules,] an application pursuant to §24-02 of these rules certifying that X is entitled to the refund and any documentation [required] requested by the Department to establish that X is the beneficial owner of both property A and property B.

BASIS AND PURPOSES OF AMENDMENTS

The Department of Finance is amending the Rules Relating to Refunds of Real Property Taxes in order to reflect changes in the refund process that simplify the process and expedite the issuance of refunds in cases of overpayments of real property taxes and property-related charges. Documentation that had been required with all applications will now be required only if the Department deems it necessary to ensure that the refund application is being made by the party who is entitled to the refund. Further, the rules will provide that the Department of Finance may apply overpayments to arrears in real property taxes and property-related charges on the affected real property.