



FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

Section 7 of Local Law 15 of 2011 amended Administrative Code section 11-322 by adding a new paragraph (b)(4) that requires that by September 1, 2011, "the commissioners of finance and environmental protection shall promulgate rules governing installment agreements, including but not limited to, the terms and conditions of such agreements, the payment schedules, and the definition and consequences of default." These amendments to the Rules of the Department of Finance Relating to the Sale of Tax Liens address these requirements in providing guidance to property owners in preventing the sale of tax liens on their property by entering into an installment agreement.

Early implementation of these rule amendments is necessary to meet the requirement of the law that these rule amendments become effective no later than September 1, 2011. Therefore, pursuant to section 1043(e)1(c) of the New York City Charter, the Department of Finance hereby finds that there is a substantial need for the earlier implementation of these amendments to the Rules Relating to the Sale of Tax Liens. Consequently, the attached rule amendments shall be effective upon the final publication of the rule amendments in the City Record, and the requirement that thirty days first elapse after such publication before rules become effective shall not apply.

_____/S/_____
David M. Frankel
Commissioner of Finance

Approved:

_____/S/_____
Michael R. Bloomberg, Mayor

Dated: August 29, 2011

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

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by section 11-322(b)(4) of the Administrative Code of the City of New York and sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within Amendments to Rules Relating to the Sale of Tax Liens. These rules were published in proposed form on July 22, 2011. A hearing for public comment was held on August 22, 2011.

S/S
David M. Frankel
Commissioner of Finance

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

Statement of Basis and Purpose

Section 11-322(b)(4) of the Administrative Code of the City of New York requires that no later than September 1, 2011, the New York City Department of Finance promulgate rules governing installment agreements. These agreements would enable property owners to prevent the sale of tax liens on their property.

In accordance with the requirements of the Administrative Code, these rule amendments include:

- The terms and conditions of installment agreements
- The payment schedules
- The definition and consequences of default on an agreement

This rulemaking action also repeals outdated provisions of the rules, and adds a section that describes the authority of the Commissioner of Finance, based on the provisions of section 11-319(b) of the Administrative Code.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this office, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Amendments to the Rules Relating to the Sale of Tax Liens

Section 1. Section 40-02 of the Rules Relating to the Sale of Tax Liens (19 RCNY Chapter 40) is repealed and replaced by a new section 40-02 to read as follows:

[§40-02 Payment of Tax Liens Prior to Sale.

(a) *Payment due date.* Prior to the sale of a tax lien, the Commissioner shall provide the notice required by Administrative Code §11-320, and shall include in such notice the date by which any such tax lien must be satisfied in full in order to prevent the sale of the lien. In the event that no such date is included in the notice, the lien must be satisfied prior to the date of sale specified in the notice.

(b) *Method of payment.* Payment of a tax lien in accordance with subdivision (a) of this section may be made only in cash or by certified check or money order drawn to the order of the New York City Department of Finance, or in the case of water and sewer charges, the New York City Water Board.]

§40-02. Sale of tax liens.

The Commissioner, on behalf of the City of New York, may sell tax liens, either individually, in combinations, or in the aggregate, pursuant to the procedures provided in Chapter 3 of Title 11 of the Administrative Code, and is authorized by law to establish the terms and conditions of a sale of a tax lien or tax liens. The Commissioner may, in his or her discretion, sell a tax lien or tax liens through a competitive sale or a negotiated sale, including the negotiated sale of tax liens to a trust or other entity created by the City or in which the City has an ownership or residual interest.

The Commissioner shall sell such tax liens at a purchase price that, in the determination of the Commissioner, is in the best interests of the City. The amount of a tax lien that is sold shall be the unpaid amount of the lien as of the date of sale, including: any interest and penalties thereon, any taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of Chapter 3 of Title 11 of the Administrative Code, the costs of any advertisements and notices given to effectuate the sale, any other charges that are due and payable, any surcharge imposed by law, and interest and penalties thereon, or such component of the amount thereof as shall be determined by the Commissioner, notwithstanding the amount paid for purchase of the tax lien or component of the amount thereof.

§2. Section 40-03 of such rules is amended to read as follows:

§40-03. Installment agreements.

[(a) Execution of installment agreements following 60-day notice. Notwithstanding any other provision of these rules, in the event that a tax lien is to be sold pursuant to a notice of sale of tax liens published not less than 60 days preceding the date of sale in compliance with Administrative Code §11-320, the Commissioner of Finance will not execute an in rem installment agreement for the affected property on or after the date of publication of such notice, unless

(1) the Commissioner includes in the 60-day notice published pursuant to Administrative Code §11-320, or publishes in the City Record on or prior to the date of publication of such 60-day notice, notice to the effect that an in rem installment agreement for an affected property may be executed under the terms specified in Administrative Code §11-405 or §11-409, whichever is applicable;

(2) such agreement is executed, and the required down payment is made, no later than the last date for payment specified in the notice pursuant to subdivision (a) of §40-02 of these rules, and in the manner specified in subdivision (b) of §40-02 of these rules;

(3) there is no outstanding in rem installment agreement for the affected property; and

(4) any unpaid water rents, sewer rents and/or sewer surcharges on the affected property, the collection of which is administered by the Department of Environmental Protection, are the subject of an agreement to pay such unpaid water rents, sewer rents and/or sewer surcharges in installments, executed with the Department of Environmental Protection, and any installments or other charges that have come due under such agreement have been paid.

(b) Notwithstanding the provisions of subdivision (a) of this section, the Commissioner of Finance, in his or her discretion, may, subsequent to the first date on which liens were sold pursuant to the 60-day notice, execute an installment agreement for a property whose liens were included in the 60-day notice, but were not sold on such first date on which liens were sold.

(c) *Preexisting installment agreements with unpaid installments or current taxes or charges.*

In the event that for any property that is included in the 60-day notice published pursuant to Administrative Code §11-320, an in rem installment agreement was executed prior to such publication, but for which timely payment of all required installments and current charges was not made, payment of any such installments and current charges on or after the date of publication of such notice will not prevent the sale of any liens remaining unpaid on the property.]

(a) Generally.

A property owner may enter into an installment agreement with the Department of Finance that allows for the payment in installments of any delinquent real property taxes or any charges that are made a lien on real property under Chapter 3 of Title 11 of the Administrative Code, excluding any delinquent sewer rents, sewer surcharges and water rents that are collected by the New York City Water Board. Except as provided in subdivision (g) of this section, when a property owner enters into an agreement with the Department of Finance for the payment of any such lien(s), any proposed sale of a tax lien(s) on a property will be cancelled.

(b) Down payment

The property owner is not required to remit a down payment for an installment agreement with the Department of Finance. However, the property owner may elect to remit a down payment in any amount.

(c) Payment schedule

An installment agreement must provide that the property owner make payments on a quarterly or monthly basis as determined by the Commissioner.

(1) Monthly installments: If an installment agreement requires monthly payments, then payments must be made by the first day of each month.

(2) Quarterly installments: If an installment agreement requires quarterly payments, then payments must be made by January 1, April 1, July 1 and October 1.

(d) Term of agreement

Installment agreements are for a term that is no less than eight years and no more than ten years. However, a property owner may elect for a term that is less than eight years.

(e) Default

(1) Definition of default:

The property owner will be in default of such agreement, if any installment required under an installment agreement remains unpaid for a period of six months from the date payment is required to be made under subdivision (c) of this section, or if any other tax or charge that becomes due on the property during the term of such agreement remains unpaid in whole or in part for a period of six months.

(2) Consequences of default; cure of default:

In the event of default of an installment agreement pursuant to paragraph (1) of this subdivision, the agreement may be cancelled and the tax lien(s) on the property that were required to be paid under the agreement, including any tax liens that became due during the term of the agreement, may be sold.

However, such default may be cured upon property owner's payment, prior to the date of the first tax lien sale that occurs following a default, of all past due installments required by the agreement, and all other charges that became due during the term of the agreement that are past due and unpaid at the time of the default, including interest and fees.

(3) Bar from executing future installment agreements:

If a default is not cured as described in paragraph (2) of this subdivision prior to the date of the first tax lien sale that occurs following such default, the owner of the affected property will not be eligible to enter into an installment agreement with the Department of Finance for the affected property for five years from the date of such sale, unless there is a finding of extenuating circumstances by the Department of Finance as described in paragraph (4) of this subdivision.

(4) "Extenuating circumstances" for purposes of paragraph (3) of this subdivision:

(i) "Extenuating circumstances" shall mean (1) the death of the signatory to the agreement, of any person named on the deed for the property or of a contributing household member, (2) a loss of income to the signatory, to any person named on the deed for the property or to a contributing household member due to his or her involuntary absence from the property for any consecutive period of six months or more for treatment of an illness, for military service, or pursuant to a court order, that results in a default of the agreement or inability to cure the default prior to the date of sale of the tax lien or tax liens or (3) a loss of income to the signatory to the agreement, to any person named on the deed for the property or to a contributing household member due to his or her unemployment for any consecutive period of six months or more that results in a default of the agreement or inability to cure the default prior to the date of sale of the tax lien or tax liens.

(ii) For purposes of this paragraph, “contributing household member” shall mean any person eighteen years of age or older who has lived in the property that is the subject of the installment agreement at least since the execution of the agreement and has paid household expenses since the execution of the agreement in an amount equal to at least fifty percent of each installment amount due under the agreement.

(iii) An application for a finding of extenuating circumstances may be made only on a form prepared by the Commissioner or his or her designee and shall include a certification by the applicant that extenuating circumstances exist. The Department of Finance may require additional documentation to support a claim of extenuating circumstances by a property owner. If the Department of Finance determines that the applicant has provided inaccurate information in the application, any installment agreement entered into based on the finding of extenuating circumstances shall be revoked and the property owner shall not be eligible to enter into an installment agreement with the Department for the subject property for five years from the date of sale. The determination on an application for a finding of extenuating circumstances or on the accuracy of such application will be made by the Payment Operations Division of the Department of Finance. If the application is denied or if the information in the application is determined to be inaccurate, the property owner may appeal the determination within 30 days to the Commissioner or his or her designee.

(iv) No signatory to an installment agreement who has defaulted on such agreement and who, as a result of a finding of extenuating circumstances, has been allowed to enter into a second installment agreement for the subject property, shall be eligible to enter into any subsequent agreement on the subject property by applying for a finding of extenuating circumstances for the default of such second installment agreement. The same restriction shall apply to any other person whose change of circumstances was the basis, in whole or in part, for the original finding of extenuating circumstances.

(f) Information regarding exemptions

Before a property owner enters into an installment agreement, the Department of Finance will give the owner information regarding eligibility for real property tax exemption programs. The Department of Finance may give such information to the owner in a manner that may include, but is not limited to, providing the information within the text of an installment agreement and with lien sale notices.

(g) Property with multiple qualifying tax liens; installment agreements with the Department of Environmental Protection

Notwithstanding the execution of an installment agreement with the Department of Finance, any tax liens that are not made subject to the installment agreement with the Department of Finance will remain subject to the laws regarding eligibility for the sale of tax liens.

Example:

Under the Administrative Code, real property tax liens that are on property classified as class two, that is not a condominium or cooperative, may be sold if the real property tax liens are at least one year past due. Also under the Administrative Code, for the same type of class two property, tax liens for water and sewer charges may be sold if the liens have been unpaid for at least one year and total at least \$1,000.

If such a class two property has real property tax liens that have been unpaid for at least one year, and also has water and sewer liens that have been unpaid for at least one year and total at least \$1,000, the Department of Finance will cancel the tax lien sale of those real property tax liens when the owner of the property enters into an installment agreement with the Department of Finance to pay the unpaid real property tax liens that are subject to the proposed tax lien sale. However, the water and sewer liens may still be sold in a tax lien sale unless they are paid or the owner enters into an installment agreement with the Department of Environmental Protection to pay those water and sewer liens pursuant to that agency's rules for installment agreements.

(h) Effect on in rem foreclosure

Entering into an installment agreement pursuant to section 11-322(b) of the Administrative Code and this section will have no effect on whether a property will be excluded or severed from an in rem foreclosure action brought under Chapter 4 of Title 11 of the Administrative Code. Notwithstanding any other provision of these rules, the terms of installment agreements entered into with the Department of Finance that affect whether a property will be included in an in rem foreclosure action will continue to be governed by the provisions of Chapter 4 of Title 11 of the Administrative Code.