Written Public Comments Submitted to the Department of Finance

Rule Relating to Surcharge on Certain Non-Primary Residences

If you would like to review the original submission of any comment, including attachments, please email dofrules@finance.nyc.gov

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1. **S – 6/10/2026 – NYC Rules**
   Communism at its finest. This law will ensure that anyone with a second home here will be driven out of NYC if they have not already left. You are chasing your tax bases away.

2. **Mohamed Fathelbab – 6/10/2026 – NYC Rules**
   As a real estate agent, I'm telling you all, this tax will not chase a single multimillionaire or billionaire away from the city. And the revenue that'll come in will be of great benefit.

3. **Adrian Jones – 6/10/2026 – NYC Rules**
   I support a surcharge on certain properties in NYC that do not serve as a primary residences. Too many expensive apartments are sitting empty in this city while many residents struggle to be able to afford rent and basic necessities.

4. **Sheila Jamison – 6/10/2026 – NYC Rules**
   In favor of this surcharge proposal. We need to strengthen our communities by supporting the businesses and neighbors who actually live here.

5. **Kikelomo Amusa-Shonubi – 6/11/2026 – NYC Rules**
   It is no secret that wealthy people often use purchasing a secondary (or tertiary) resident as a way to invest wealth. One of the many problems is that these apartments then sit empty when there is such a desperate need for housing. A surcharge on these residences could help to not only build true affordable housing in working class neighborhoods, but also help to strengthen our city's social services at a time when drastic, damaging cuts are being made to the federal social safety net.

   What has always made New York City a place to be is our amazing diversity in class, culture and race. We should be doing everything we can to protect and stregnthen our unique society so that ALL people who want to live here can choose to "Be a part of it, New York, New York."

6. **Maureen Godwin – 6/12/2026 – NYC Rules**
   I am 100% in favor of this surcharge.

7. **Anonymous from Queens Village – 6/16/2026 – NYC Rules**
   Re: Proposing changes to the rule relating to surcharge on certain non-primary residences

   To whom it may concern,

I appreciate the opportunity to comment on the implementation of the new non-primary residence surcharge. I am a lifelong resident of New York City and a data scientist working in the nonprofit sector, and I recommend that the Department of Finance (DOF) make two changes to the surcharge rules:
– Amending the “arm’s length” definition in section 62-01 to exclude leases where the owner holds a majority economic interest in the lessee
– Applying a uniform penalty rate to total surcharge avoided in section 62-04 instead of the current two-tier penalty

If adopted, these changes will ensure that:
– the surcharge applies equally to all covered owners, regardless of how their ownership is structured
– penalties deter fraud in proportion to the magnitude of the attempted fraud

Recommendation 1: Amending the “arms length” definition

DOF should amend the “arm’s length” definition in section 62-01 to exclude leases where the owner holds a majority economic interest in the lessee, closing a self-rental loophole. Currently, a leasing agreement “between two informed and willing parties, where neither is under any compulsion to participate in the transaction” exempts the owner from the surcharge as long as there is no “reasonable possibility” that the lease is intended to avoid the surcharge. This does not explicitly cover the case of an LLC renting to another LLC that it owns; analysis by the Comptroller’s office states that “it may be possible for some LLC owners to rent to themselves and avoid the tax.”

DOF can simply add a single additional exclusion to the “arm’s length” definition saying that a lease or sublease is not “arm’s length” if the owner is an entity that holds a majority economic interest in the lessee. With this small change, LLCs could no longer avoid the surcharge by renting to LLCs that they control, closing an unintended loophole in the rules. Without the fix, the Comptroller’s revenue projection of $340-380 million is at risk because the kinds of owners capable of using the loophole are the ones with the legal resources to do so.

Recommendation 2: Applying a uniform penalty rate to total surcharge avoided

DOF should replace the two-tiered penalty structure in section 62-04 with a single rate applied to the total surcharge avoided. This would eliminate a perverse incentive that

currently makes large fraud as expensive as small fraud, thus inadvertently incentivizing larger fraud. The two tiers currently are:
– When a false filing would result in full exemption, a penalty of 50% of the full surcharge
– When a false filing would result in a lower surcharge, a penalty of 300% of the surcharge difference (capped at 50% of the full surcharge)

Here is a scenario that exemplifies the perverse incentive: Suppose there is a property whose surcharge would be $180,000.
– An owner who falsely claims primary residence to avoid the entire surcharge would face a penalty of 50% of the surcharge, or $90,000
– The same owner who does not claim primary residence, but only misrepresents their property value so that their surcharge is reduced by $30,000 to $150,000, would face a penalty of 300% of $30,000, which is the same $90,000 as above.

The result is that someone who attempted to avoid paying $180,000 faces the exact same penalty as someone who only attempted to avoid paying $30,000. The owner would not lose anything by trying to dodge the entire surcharge instead of just some of it, so they are incentivized to attempt larger fraud rather than smaller fraud.

The DOF should replace the two-tier penalty structure with a uniform penalty rate (such as 50%) applied to the total surcharge avoided. This ensures that the penalty scales with the amount of fraud attempted, eliminating the perverse incentive above.

8. **Salha Aboushi – EY LLP – 6/16/2026 – Email**
Please see comments below relating to the Pied a terre tax.

1. Certificate of Occupancy (CO) Status During Renovations:
    How does the Department of Finance interpret the exemption related to properties without a temporary or permanent certificate of occupancy?

    If a property has a CO but expects to lose it temporarily due to renovations, does this loss qualify the property for exemption from the surcharge?

    Is a temporary lost CO treated the same as never having a CO issued?

    Is there any documentation or certification process required to prove renovation status and CO loss?

2. Assessment Date and Annual Tax Application:

What is the official assessment date or period used to determine the property's status for the annual Pied-à-terre tax?

How are changes in property use or occupancy during the tax year treated for surcharge purposes?

Is there any proration or partial-year treatment available?

3.Treatment of Properties Listed for Sale:

Does listing a property for sale affect its exemption status if it remains vacant during the sale period?

Are there any specific rules or exceptions for properties actively marketed for sale?

4.Qualifying Lease Arrangements:

How does the city verify and document qualifying leases?

5.Overlap Period and Multiple Property Ownership:

How does the surcharge apply during periods when a taxpayer owns multiple NYC properties, with one transitioning from primary residence to non-primary?

Are there any relief provisions or planning opportunities for such overlap periods?

6.Proof of Primary Residence for Newly Occupied Properties:

Given that the Pied-à-terre tax applies to the current fiscal year but the Department's documentation requirements for proving primary residence rely on prior year information (such as prior year tax returns and voter registration), what types of documentation can a taxpayer provide to demonstrate that a property will be newly occupied as a primary residence in the current tax year?

How does the Department evaluate and verify primary residence status for properties that have recently changed use or are expected to be newly occupied?

9. Anonymous – 6/17/2026 – NYC Rules

Why not provide that if the unit is rented by the owner to a full-time user, the tax surcharge is either reduced or eliminated? If the purpose of the tax is in part to free up some rental units or reduce the price, while this may be at the top of the market, it would create more available units potentially driving down the price of some rentals. To the folks that own these units for investment purposes (not so much as a pied a terre), this would be an attractive opportunity.

10. **Anonymous NYer – 6/21/2026 – NYC Rules**
    I am in favor of this surcharge for certain real estate not being used as primary residence.

11. **John Samtoy – Holthouse Carlin & Van Trigt LLP – 6/26/2026 – Email**
    I am writing with a question regarding the new NYC real property tax surcharge for certain properties that do not serve as a primary residence.

    The fact pattern involves a New York City residential property owned by a trust. The trust beneficiary is an individual, and is the relevant beneficial owner / covered owner for purposes of the trust ownership rules. He does not personally live in the property.

    The property is instead occupied full-time by his spouse's mother. So the mother-in-law is a full time occupant. The beneficiary's spouse is not a beneficiary of the trust as it was set up by the beneficiary's family.

    We are trying to confirm whether this would qualify as a primary residence based on occupancy by an immediate family member of a covered owner. The occupant does use the property as her full-time residence, but the family relationship is mother-in-law / son-in-law, rather than parent / child. So does this extend to in laws or would a spouse of covered owner also be considered covered and would it extend that way?

    As we read NYC Administrative Code § 11-3201, "immediate family member" is defined to include a spouse, child, sibling, parent, grandparent, or grandchild. We did not see in-law relationships specifically addressed so wanted to confirm for clarity.

    Could you please let us know whether the Department would view a spouse's parent as an immediate family member of the covered owner for this purpose? Or is the definition limited to the relationships specifically listed in the statute?

    Thank you for your help.

12. **Rajiv Kumar, MD – 6/28/2026 – Email**

I am writing to comment on the Department of Finance's proposed rule relating to the surcharge on certain non-primary residences.

I respectfully request that DOF revise the proposed rule to address mid-year sales of residential condominium and cooperative units where the property is not functioning as a pied-à-terre for the fiscal year, but may nonetheless be subject to a full annual surcharge because of timing.

Specifically, DOF should add a rule providing that where:

1. a residential unit was formerly the owner's primary residence;
2. the unit becomes temporarily non-primary because the owner moved out and listed or prepared the property for sale;
3. the unit is sold during the fiscal year; and
4. the purchaser certifies that the unit will be used as the purchaser's primary residence after closing,

then the surcharge should either not apply for that fiscal year or should be prorated only for the portion of the fiscal year during which the unit was actually owned and held as a non-primary residence.

Without such a rule, the surcharge can operate as a full-year tax on a property that is not being used as a pied-à-terre for the fiscal year. This is different from the policy concern the surcharge is intended to address. A unit that was recently a primary residence, is temporarily vacant or non-primary only because it is being sold, and is then sold to a buyer who will use it as a primary residence is not a long-term second home or investment apartment being kept out of the housing supply.

My own situation illustrates the problem. I owned and occupied a New York City condominium as my primary residence for most of the prior calendar year. I moved out in late 2025 and am selling the unit during the first fiscal year of the surcharge. The buyer will use the unit as a primary residence. If the rule treats the unit as fully taxable for the entire fiscal year, the surcharge would be imposed even though the unit would be held as non-primary for only a short portion of the fiscal year before being transferred to a primary-residence buyer.

That outcome is inequitable and inconsistent with the way real property taxes and assessments are normally allocated in residential closings. It would also create avoidable transaction friction, because buyers and sellers will be forced to negotiate escrows, indemnities, and closing credits for a tax that may not reflect the actual use of the property during the fiscal year.

DOF's proposed rule already recognizes the need for administrative procedures relating to primary-residence determinations, corrections, refunds, and notice. I ask DOF to add a specific rule for change-of-ownership situations so that ordinary home sales are not unintentionally penalized.

Suggested rule language:

"For any fiscal year in which a covered residential condominium dwelling unit or residential cooperative dwelling unit is transferred in an arm's-length sale, the surcharge shall not be imposed, or shall be prorated, if the owner demonstrates to the Department that: (i) the unit was used as the owner's primary residence during the immediately preceding calendar year or before being listed for sale; (ii) the unit became non-primary only in connection with the owner's relocation and sale of the unit; and (iii) the purchaser certifies that the unit will be used as the purchaser's primary residence after the transfer. In such circumstances, any surcharge shall be limited to the period, if any, during which the unit was owned and held as a non-primary residence, and no surcharge shall be imposed for the period after transfer to a purchaser who certifies primary-residence use."

In the alternative, if DOF determines that the statute requires imposition of the surcharge for the fiscal year, DOF should adopt a rule requiring proration upon an arm's-length sale to a primary-residence purchaser and should provide a clear refund or abatement mechanism where the surcharge is paid before the purchaser's primary-residence use can be verified.

This change would not create a loophole for true pied-à-terre ownership. It would simply prevent the surcharge from applying in full to ordinary sale-transition periods where the property is moving from one primary-residence use to another primary-residence use.

Thank you for considering this comment.

13. **LT – 7/1/2026 – NYC Rules**

Finally! This is right and equitable.

14. **Joel Ackerman, CPA, MST – Grodsky, Caporrino & Kaufman, LLP – 7/6/2026 – Email**
    With regards to the deadline to appeal for response to DOF for a NYC property owner being 30 days if the taxpayer just happens to be on vacation or doesn't get the notice in mail until later is 30 days enough time to require the appeal. Is there any discussion to make that something that can be done in any way post the 30 day period?

15. **Mordechai from NYC – 7/7/2026 – NYC Rules**
    Hi,
    Why isn't the IDNYC Card accepted as proof of residence for this law??
    IDNYC is New York City's own ID Card for residents. Read about it here,
    https://www.nyc.gov/site/idnyc/about/about.page
    Please add IDNYC Card to the list of documents accepted as proof of residence.
    Thank you!!!

16. **Eric H. Berger, Esquire – 7/7/2026 – NYC Rules**
    I have three comments:
    1. Individual coop owners should have the right to show that their market value is less than $5 million for 2026 and 2027;
    2. Multiple coop owners in the same building should be permitted to join their appeals together for hearings;
    3. Section 1354(c) should be clarified to automatically amend all proprietary coop leases so the Board can pass through the surcharge through the proprietary lease without amending the proprietary lease.

    First, individual coop owners should have the right to show that their market value is less than $5 million for 2026 and 2027. The statute provides that for 2026 and 2027 for coop units there is a formula based upon the building assessed value divided by the number of building shares multiplied by the number of shares for each unit, with a value above $1 million potentially subject to the surcharge, and value below $1 million not subject to the surcharge. For 2028 and thereafter, coop units are valued at market value with the cutoff being $5 million rather than $1 million. The reason for the difference is because coop buildings are assessed at 20% of true value. The formula for 2026 and 2027 is a crude way to determine whether coop units really have a market value greater than $5 million, so individual coop owners should be able to file an appeal to show that in fact their value is less than $5 million. Otherwise, for 2026 and 2027 the surcharge will hit some coop owners in coop units with a market value less than $5 million.

Second, multiple coop owners in the same building should be permitted to join their appeals together for hearings. Joinder is permitted if there is a penalty proceeding brought by the City, but not if the challenge as to primary residence or market value brought by the property owners. Joining the appeals in a single building is more efficient for the litigants as well as the board hearing the appeals. Moreover, the statute requires that the board take into account the board's market value determination of other units in the same building in determining market value so it only makes sense to allow multiple owners in the same building to join their appeals.

Third, Section 1354(c) should be clarified to automatically amend all proprietary coop leases so the Board can pass through the surcharge through the proprietary lease without amending the proprietary lease. Amending proprietary leases is arduous and expensive, which expense is passed on to unit owners, including those whose primary residence is in the building. The statute as written requires coop boards to pass through the surcharge to the owner of the unit subject to the surcharge. However, if the coop unit owner refuses to pay, a case would have to be brought in the Supreme Court. Also, since the failure to pay would not be a lease default, the corporation could not recover its attorneys' fees.

Thank you for considering my comments. I am available should further clarification assist in the rule-making process.

17. **Josh King, CPA – 7/7/2026 – Email**

What if the DOF determines a property is a primary residence but the taxpayer does not actually meet the rules and should be assessed the City Surcharge. Is there a method of self-reporting?

Will the City Surcharge appear on the NYC website in the same area that property tax is displayed and if so, will this constitute notice?

Section 62-06(a)4 provides that notice may be provided electronically if the department has an email address for an owner of a covered property in department records. How will we know what email address the department has on file if any?

Section 62-06(b) reads that an appeal is required within 30 days after the date that notice of the initial determination is transmitted. What is considered transmitted?

Is there step by step guidance on how to appeal?

If Property is owned though a multi-tiered structure but the property serves as the primary residence for an individual who indirectly ultimately owns more than 50% of the property, will it be exempt from the City Surcharge? If yes, is there a maximum number of tiers allowed before reaching the indirect property owner using the property as a primary residence?

For the first year, please confirm if the City Surcharge is going to be based on the market value that the DOF uses for property tax on January 5, 2026?

What if the individual that uses the property as a primary residence is a family member of the ultimate beneficial owners of the property who own more than 50%, but they own that through multiple tiers? Do we look through to the ultimate 50% or more owner that is a natural person and then apply the family attribution?

The law is not clear on whether a covered owner includes an individual who owns 50% or whether they have to own more than 50%. For example, if spouses own a property 50/50, but only one of them uses the property as a primary residence, is it exempt?

What if we have a trust with multiple beneficiaries, where the beneficiary distributions and use of property is fully discretionary by the Trustee as to amount and specific beneficiary, and one of the beneficiaries uses the property as a primary residence? Since the individual is properly a beneficial owner of the property through the trust and uses the property as a primary residence, can that individual be a covered owner? If the goal of the law is to tax residences not used as primary residences, this would seem to be in line with the intent.

If a Class 2 property is valued at $1,000,001, is the entire amount subject to the City Surcharge or is it just the amount that exceeds $1,000,000?

Is it possible for a NY resident to have multiple primary residences?

18. **Jim – 7/8/2026 – NYC Rules**
    This is a ridiculous tax. Tax the people who don't use the services that the said taxes are supposed go towards (schools mainly) is just wrong.

19. **Anonymous – 7/8/2026 – NYC Rules**

Many states across the U.S. already have policies that impose higher property taxes on second homes than on primary residences. The rationale behind these policies is that a primary residence is considered a necessity, while a second home is viewed as a discretionary asset. As a result, many jurisdictions offer tax benefits, exemptions, or lower assessment rates to homeowners who occupy a property as their primary residence, while applying higher tax rates or limiting exemptions for secondary properties.

For this reason, the concept of taxing second homes at a higher rate is not new. It has been part of the property tax framework in various states for many years and is generally intended to encourage owner occupancy, improve housing affordability for local residents, and generate additional revenue for public services without placing the same burden on primary homeowners.

20. John A Gillette – 7/8/2026 – Email

Comment on the Rules Related to the Pied-A-Terre Tax

The New York City Department of Finance (“DOF”) is proposing to promulgate rules relating to the administration of a surcharge on certain real properties that do not serve as a primary residences.
See Attached Document.

Suggested Testimony - if you would like to write to them:
[please feel free to copy and paste]

Testimony to the New York City Department of Finance

Public Hearing on Proposed Rules: Surcharge on Non-Primary Residences

July 9, 2026

To Whom it May Concern:

I am writing as a co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building.
The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholders triggered the liability and recover the money from them. This is a tax collection function.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document. It cannot create new categories of financial obligation. The Department has created a collection obligation and provided no collection mechanism.
Because the surcharge attaches as a lien on the cooperative building as a whole, every shareholder in the building is exposed to the consequences of one shareholder's failure to pay. This is not an edge case. It is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders must not bear the financial risk of one shareholder's delinquency.

I recognize that the Department is working under significant time pressure but the co-op community is not asking for delay for its own sake. We are asking for rules that can actually be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

21. **Johanna Zafferese – 7/8/2026 – Email**

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22. **Pat Sebastian– 7/8/2026 – Email**

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23. **Laurence Guittard – 7/8/2026 – Email**

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24. **Rama Dadarkar – 7/8/2026 – Email**

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25. **Joshua Shapiro – 7/8/2026 – Email**

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26. **Melanie F Davidson – 7/8/2026 – Email**

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27. **Raymond Persaud – 7/8/2026 – Email**

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28. **Igor Oberman - Trump Village West – 7/8/2026 – Email**

I am the general manager and assistant secretary of Trump Village West a free-market co-op in South Brooklyn consisting of 1,144 units.

The core problem with the pied-a-terre tax is that it was written for condominiums that has a NYC DOF assigned block and lot, a cooperative does not have an assigned block and lot, and the rules must reflect that difference.

A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building.

The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholders triggered the liability and recover the money from them. This is a tax collection function that should be administered by the NYC DOF.

The pied a terre tax surcharge attaches as a lien on the cooperative building as a whole, every shareholder in the building is exposed to the consequences of one shareholder's failure to pay. Innocent shareholders must not bear the financial risk of one shareholder's delinquency.

29. **Alexis Hill – 7/8/2026 – Email**

I am writing as a co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building.

The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholders triggered the liability and recover the money from them. This is a tax collection function.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document. It cannot create new categories of financial obligation. The Department has created a collection obligation and provided no collection mechanism.

Because the surcharge attaches as a lien on the cooperative building as a whole, every shareholder in the building is exposed to the consequences of one shareholder's failure to pay. This is not an edge case. It is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders must not bear the financial risk of one shareholder's delinquency.

I recognize that the Department is working under significant time pressure but the co-op community is not asking for delay for its own sake. We are asking for rules that can actually be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

30. **Erin Goodman – Holland & Knight – 7/8/2026 – Email**

I am writing to express my concern about the Surcharge. I am a shareholder and live in NYC full time with my family, but the Surcharge creates liability for us. I am therefore writing to comment on the proposed rules to be discussed tomorrow at the public hearing.

The proposed rules add the surcharge to the cooperative corporation's consolidated tax bill. My co-op Board or Managing Agent is then expected to identify which shareholders triggered the liability and recover the money from them. This is a tax collection function.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document. It cannot create new categories of financial obligation. The Department has created a collection obligation and provided no collection mechanism.

Because the surcharge attaches as a lien on the cooperative building as a whole, I am exposed to the consequences of one shareholder's failure to pay. This is not an edge case. It is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders like me must not bear the financial risk of one shareholder's delinquency.

I recognize that the Department is working under significant time pressure but the co-op community is not asking for delay for its own sake. We are asking for rules that can actually be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

31. **Roberts & Holland LLP – 7/8/2026 – NYC Rules**
The attachment reflects our comments to the Proposed Rule Relating to Surcharge on Certain Non-Primary Residences. Our comments request a fuller explanation of the mechanics and timing relating to the determination of "primary residence" and clarification of certain provisions to ensure that persons who are paying their share of income and sales taxes and are contributing to the City's economic well-being are not covered by the surcharge. Roberts & Holland LLP respectfully requests that the New York City Department of Finance address these issues before adopting final regulations. Thank you for your consideration.

The New York City Department of Finance (the "Department") requested comments on proposed regulations it issued in connection with chapter 32 of title 11 of the New York City Administrative Code ("Administrative Code"), which imposes a surcharge (the "surcharge") on certain residential properties that do not serve as the primary residence of the owners of such properties, their immediate family members or a tenant.

These comments are submitted in response to the Department's request. Each of the changes and clarifications described below should apply to the fiscal year beginning July 1st, 2026, and to each subsequent fiscal year until the surcharge is no longer in effect.

1. Regulations Should Explain the Timing for the Determination of Primary Residence.

The surcharge applies if a covered owner does not use a covered property as a primary residence. Under Administrative Code § 11-3201, the determination of primary residence is made as of the taxable status date (January 5th) immediately preceding the fiscal year in which the surcharge is imposed. The regulations should clarify that the surcharge for a July 1st through June 30th fiscal year is determined based on the facts for the prior calendar year. For example, the determination of whether a surcharge applies for the fiscal year July 1st, 2027, through June 30th, 2028, would be based on a covered owner's use of the property during the 2026 calendar year. Additionally, a mechanism should be provided to permit a covered owner to establish that the surcharge should not apply based on facts that develop during the current calendar year relating to primary residence.

2. Regulations Should Provide that a New York City Residence of a Person that is a Statutory Resident of New York City Should be Considered a Primary Residence.

The legislative findings of the statute indicate that residents of New York City and many who do business here contribute daily to the city through their economic activity and the taxes they pay. The findings suggest that the surcharge is intended to apply to those who own second homes because they contribute less to the city's economy and pay less taxes than those who live in the city.[1] However, without further guidance, the surcharge could apply to many individuals who are regularly present in the city, who contribute to its economy and who pay income taxes and sales taxes to the city. We believe additional guidance is needed to provide that the surcharge should not apply to statutory residents of New York City who own second homes in the city.

Under New York Tax Law § 1305(a)(2), Administrative Code § 11-1705(b)(1)(B) and 20 NYCRR § 105.20(a)(2), for purposes of New York City's personal income tax, a person is a resident of the city if he maintains a permanent place of abode in the city and spends in the aggregate more than 183 days of the taxable year in the city (unless such individual is in active U.S. military service).2 20 NYCRR § 105.20(c) provides that presence within New York City for any part of a calendar day generally constitutes a day spent within the city.

Many second homes in New York City are owned by people that are statutory residents of New York City for income tax purposes. These statutory residents pay income taxes and sales taxes to the city and contribute to its economy. Consider, for example, a New Jersey resident who owns a residential condominium dwelling unit in the city and who is taxed as a statutory resident because she commutes to work in Manhattan five days a week. This individual pays New York City personal income taxes on her worldwide income and New York City sales taxes with respect to her purchases of goods and services. These taxes help fund and maintain important city services. Additionally, this individual contributes to the city's economy through her labor and consumer spending. Nonetheless, without further guidance, this individual – and many other similarly situated statutory residents – could be subject to the surcharge.

Guidance is needed to clarify that the surcharge should not apply to statutory residents of New York City who own second homes in the city. Regulations should provide that a New York City residence of a person who is a statutory resident of New York City should be considered a primary residence for purposes of Proposed 19 RCNY § 62-06 and Administrative Code §§ 11-3201 and 11-3203.3

3. Guidance is Needed to Clarify the Application of the Surcharge to Leased or Subleased Property

Under Administrative Code §§ 11-3201 and 11-3202, if a property is leased or sub-leased to a natural person occupying such property pursuant to a bona fide lease agreement negotiated in an arm's-length transaction with a term of not less than one year, and the lessee or sub-lessee occupies the property as his primary residence as of the January 5th immediately preceding the fiscal year in which the surcharge is imposed, the surcharge will not apply for such fiscal year. We believe additional guidance is needed to clarify the application of these rules to common leasing and subleasing circumstances.

First, there are many scenarios in which a leased property may not be occupied as a primary residence for short periods of time, which could coincide with the January 5th taxable status date. If a leased property is not occupied as a primary residence on January 5th, then, absent further guidance, the surcharge will apply for the immediately following fiscal year. For instance, a one-year lease may end on December 31st, and the landlord may only be able to find a new lessee willing to start a one-year lease on February 1st, which would result in the imposition of the surcharge. Additionally, consider for example a lessee who enters into a lease that begins on February 1st, 2027, and ends on January 31st, 2028. If, for any reason, the lessee ceased to use the residence as a primary residence starting on January 1st, 2028, then the property would be subject to the surcharge for the fiscal year beginning July 1st, 2028, even if a new lessee entered into a one-year lease starting on February 1st, 2028. We believe that a single taxable status date with respect to leases and subleases could lead to impositions of the surcharge in circumstances where the landlord is leasing the property for all or substantially all of the year, and regulations should provide clarity on this issue.

Second, it is common for bona fide, arm's-length lease arrangements to involve month-to-month tenancies. For instance, when a tenant remains in a property after their one-year lease has expired without a formal renewal, the landlord may accept rent and thereby convert the agreement into a month-to-month tenancy under state law. Assuming that the lease arrangement is bona fide and an "arm's length transaction" within the meaning of Proposed 19 RCNY § 62-01, we believe that holdover month-to-month tenancies after a one-year lease and other month-to-month tenancies that have a cumulative term of at least one year should not be subject to the surcharge. Regulations should provide clarity on bona fide, arm's-length lease arrangements with month-to-month tenancies with a cumulative term of at least one year.

4. Guidance is Needed to Clarify the Application of the Surcharge to Ownership by Trusts and Entities.

Administrative Code § 11-3201 provides that if property is held in trust, the beneficial owners of the trust that are the sole beneficiaries of the trust are considered covered owners. Administrative Code § 11-3201 also provides that if property is held by a partnership, corporation, or limited liability company, partners, shareholders, or members of the partnership, corporation, or limited liability company holding a majority interest in such entity are considered covered owners. We believe additional guidance is needed to clarify the application of these rules to more complicated situations involving trusts and tiers of entities.

First, it is extremely common for trusts to provide for contingent or residual beneficiaries, and the existence of those beneficiaries should not cause the surcharge to apply to property held in trust where the trust's primary beneficiaries use the property as their primary residence. Accordingly, regulations should provide that contingent beneficiaries of a trust are disregarded in determining whether a person is a covered owner of property held in trust.

Second, guidance is needed to clarify the application of these rules to situations involving tiers of entities or trusts that own interests in entities. For example, a trust may own an interest in a limited liability company that owns property, or a limited liability company may own an interest in another limited liability company that owns property. The existence of such tiers alone should not cause property to be subject to the surcharge if persons that own a majority of the beneficial interests in the entity use the property as a primary residence.

Accordingly, regulations should provide that if a trust holds an interest in a partnership, corporation, or limited liability company that owns property, then covered owners should include persons who are the sole beneficiaries of a trust that owns a majority interest in such partnership, corporation, or limited liability company. In addition, if a partnership, corporation, or limited liability company is owned by one or more other partnerships, corporations, or limited liability companies, then covered owners should include the natural persons who own a majority of the ultimate beneficial interests in the property-owning entity (looking through intermediate entities).

As stated above, these changes with respect to the treatment of trusts and tiers of entities should apply to the fiscal year beginning July 1st, 2026, and to each subsequent fiscal year until the surcharge is no longer in effect.

5. Regulations Should Provide that a Bona Fide Purchaser of a Covered Property Should Not Be Responsible for Any Surcharge Liabilities or Tax Liens Resulting from a Prior Owner's Actions or Residency Status.

Proposed 19 RCNY § 62-04(a) provides that the Department may conduct an audit for the purposes of determining the amount of the surcharge owed by a covered property, including any determination relating to primary residence, and the Department may audit any certification or documentation of primary residency submitted to the Department within six years of submission. Under Administrative Code § 11-3205, both the surcharge and any resulting tax lien attach to the covered property.

Over the course of a six-year audit lookback period, legal title to a covered property may change hands many times. Consider, for example, a situation where a prior owner had submitted inaccurate or misleading information in his certifications and documentation of primary residency, and subsequently, legal title to the covered property changed hands within the six-year audit lookback period. At the time of an audit and receipt of a notice of penalty from the Department pursuant to Proposed 19 RCNY § 62-04(c), the current owner of the covered property may be subject to the surcharge and any resulting tax lien because of the prior owner's actions, even if the current owner occupies such property as his primary residence.

A bona fide purchaser of a covered property should not be responsible for any surcharge liabilities or tax liens resulting from a prior owner's actions or residency status. Regulations should provide that a bona fide purchaser of a covered property should acquire such property free and clear of (i) any potential surcharge liabilities or penalties imposed with respect to a prior owner's actions or residency status and (ii) any related tax liens.

Roberts & Holland LLP respectfully requests that the Department address these issues before adopting final regulations. If you would like to discuss any aspects of our comments, please contact [EMAIL]. Thank you for your consideration.

1 We are not aware of any legislative hearings or studies on which the legislative findings are based.

2 See 20 NYCRR § 295.3(a) (providing that New York City residency is determined under the same rules and definitions used for New York State residency).

3 Note that for income tax purposes, undergraduate college students are deemed not to have a permanent place of abode in New York City even if they own or lease a covered property in New York City. See 20 NYCRR § 105.20(e)(1). Undergraduate college students who reside in a covered property should be considered to have a primary residence in New York City

32. **Judith Densky – 7/8/2026 – Email**
I am writing as a co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building.

The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholders triggered the liability and recover the money from them. This is a tax collection function.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document. It cannot create new categories of financial obligation. The Department has created a collection obligation and provided no collection mechanism.

Because the surcharge attaches as a lien on the cooperative building as a whole, every shareholder in the building is exposed to the consequences of one shareholder's failure to pay. This is not an edge case. It is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders must not bear the financial risk of one shareholder’s delinquency.

I recognize that the Department is working under significant time pressure but the co-op community is not asking for delay for its own sake. We are asking for rules that can actually be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

33. **Jennifer LaMarch – Continental Gardens – 7/8/2026 – Email**

I am writing as a co-op shareholder and Board Member to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building.

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34. **Richard J. Haas and Katherine Sokolnikoff Haas – 7/8/2026 – Email**
    I am writing as a co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

    The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules should reflect that difference.

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35. **James E. Raved – 7/8/2026 – Email**

I am writing as an NYC co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

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36. **Luis Farias – 883 E 165th Street HDFC – 7/8/2026 – Email**

I'm writing on behalf of an HDFC co-op in The Bronx.

We're concerned about how the DOF plans to implement surcharges designed to target individuals. As a cooperative, we're a single tax lot. However, as an HDFC, we're limited to mostly primary residences. In a perfect world, this would not affect us much.

Unfortunately, we're already extremely strained financially and enforcing our no-sublet policy has become increasingly expensive and lengthy. Some cases take years to resolve due to backlogs in housing court. The Bronx has the longest backlog of the five boroughs.

We ask that if the DOF plans to move forward with these necessary changes to encourage primary residency, they coordinate with coops like ours to ensure enforcement is fair to shareholders who are not responsible for the actions of their neighbors.

If the DOF moves forward with the rules as-is, we need stronger enforcement mechanisms for buildings like ours to carry the intended goals of a surcharge like this. With limited enforcement mechanisms on the housing court side, buildings like ours will shoulder the cost of these surcharges while individual owners continue their behavior at the expense of the rest of the community.

That being said, we support any movement to encourage home ownership for primary residency which includes vacancy taxes. We're always happy to lend our support in policy discussions like these to prevent unintended consequences.

37. Rita Hattem – 7/8/2026 – Email

I am writing as a co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

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I recognize that the Department is working under significant time pressure but the co-op community is not asking for delay for its own sake. We are asking for rules that can actually be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

38. Zachary Steinberg – Real Estate Board of New York – 7/8/2026 – Email

The Real Estate Board of New York (REBNY) is the City’s leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to comment on the Department of Finance’s proposed rule to implement a surcharge on certain non-primary residences.

Notwithstanding our serious concerns about the underlying policy, REBNY appreciates the Department's efforts to promptly create an administrative framework for implementation and enforcement. The proposed rule provides important guidance regarding the determination process, appeals, audits, and enforcement.

However, several provisions would benefit from clarification or modification to ensure that the surcharge is fairly administered, provides appropriate due process to owners, and does not inadvertently impact primary resident New Yorkers who are not its intended targets.

PROVISIONS IN THE RULE THAT WOULD BENEFIT FROM ADDITIONAL CLARIFICATION

Notice Procedures Require Additional Clarification

The proposed rule establishes a process by which the Department issues an initial determination that a property is subject to the surcharge. For Fiscal Year 2026-2027, those determinations must be issued by August 30, 2026, and in future years by January 30. However, the rule does not explain how notices are to be transmitted, who receives them, or how notice procedures operate in common ownership situations. These questions are particularly important because an owner's ability to challenge the determination depends on receiving timely and accurate notice. The final rule should clarify the following:

Where Will Notices Be Sent: The Department must clarify where notices will be sent when it does not possess an owner's email address. Specifically:

• Will notices be mailed and/or emailed directly to each condominium unit owner determined not to qualify for the exemption?

• Will notices be sent to the apartment itself or to another mailing address on file?

•If a condominium owner receives tax bills at a different address, which address will the determination be sent to?

• How will notices be handled where tax bills are directed to a mortgage lender or other third party?

• For housing cooperatives, will notices be sent to the cooperative corporation, the shareholder, the managing agent, or some combination thereof?

• Will cooperative boards and managing agents receive copies of the determinations or a summary identifying affected units?

These questions are critical because owners, boards, and managing agents all will play a significant role in communicating determinations, assisting owners, and administering billing obligations.

How Will Notices Be Sent: The Department must also clarify the method of delivery. If notices are transmitted solely through regular mail, there may be no proof of delivery. Given that the notice triggers a short appeal period and may ultimately result in substantial tax liability and penalties, owners (and the Department) should have confidence that they received the notice. The final rule must clarify whether notices will be transmitted electronically, by mail, or both, when a notice will be deemed received, and whether any delivery confirmation procedures will be used.

What Information Will Notices Include: The final rule must specify the contents of the Department's initial determination. At a minimum, these initial determination notices should:

- Explain the basis for the Department's determination, including the market value of the property, how the value was determined, the reason the Department believes it is a non-primary residence, and in the case of a cooperative shareholder the Department’s understanding of share ownership;
- Identify the information relied upon by the Department to make such a determination;
- Explain available exemptions;
- Describe appeal rights and procedures;
- Identify documentation that taxpayers may submit in support of an appeal; and
- Include the projected surcharge amount that will be imposed if the determination is not overturned.

Proof of Primary Residence Must Be Expanded and Clarified

Section 62-06(b)(2)(i) permits proof of primary residence through a tax return listing the property as a permanent home address, a DMV-issued identification card, a Board of Elections voter identification card, or "other proof of primary residency determined to be acceptable by the department." As such, under the proposed rule, an owner seeking to establish primary residence on appeal may do so only through (A) a permanent-home address on a state or federal income tax return, or (B) two or more enumerated identity documents (§ 62-06(b)(2)(i)).

However, Administrative Code § 11-3203(a)(1) identifies occupancy — whether the unit "was occupied in aggregate for a majority of days during a calendar year by a covered owner" — as a central factor in determining primary residence. Direct evidence of occupancy appears in the rule only as a factor the Department "may" consider on its own initiative when the automatic pathway is not met (§ 62-06(a)(3)(i)); it is not among the forms of proof an owner may affirmatively submit.

This is not consistent with the statute. A genuine primary resident who occupies the unit for the majority of the year — but whose most recent tax return reflects a different mailing address, who has recently moved in, who files jointly under a spouse's address, has moved from a foreign country, or who is not required to file at all — is left, under the enumerated list, only with the residual "other proof … acceptable to the department" catch-all, which is governed by no standard. The final rule should expressly permit an owner to establish primary residence through direct occupancy evidence — including the majority-of-days measure the statute itself names, together with utility usage records and comparable documentation — rather than confining the owner's affirmative case to a tax-return address and identity documents.

To address this issue, the final rule must identify additional documents or certifications that constitute acceptable proof of primary residence. These should include, at minimum:

• An affidavit executed by the owner (or her attorney) attesting to primary residence status;

• A bank statement or insurance policy showing the accountholder or policyholder's unit address as the account address;

•For a foreign-purchaser, a letter from a foreign tax authority or professional confirming primary tax residence;

• An affidavit from a student or a letter from an educational institution confirming the student's enrollment and local residency; and

• A letter from an employer attesting to the employee's primary residence status.

Affidavits are routinely accepted in real property tax proceedings and other administrative contexts. Likewise, students, retirees, and other individuals may not possess all forms of documentation specified in the proposed rule. Expanding and clarifying acceptable documentation would improve compliance, reduce unnecessary disputes, and ensure consistency with the statute.

The Rule Must Recognize Ultimate Beneficial Ownership in Entity Structures

The proposed rule does not adequately address common entity ownership structures. Among others, common examples entity ownership structures not contemplated in the proposed rule include:

- A property held by an LLC owned by another LLC;
- An LLC owned equally by two individuals;
- A property owned by multiple LLCs;
- A trust that owns an LLC that owns property;

Without further clarification, a person who genuinely occupies a property as a primary residence may be unable to establish covered-owner status simply because the property is held through common and legitimate ownership structures like the above.

Section 62-02 of the proposed rule expressly forecloses multi-tier look-through by requiring that the title-holding entity hold “an undivided fee interest” in the property. For these types of circumstances, the Department should revise Section 62-02 to adopt a look-through approach that traces beneficial ownership through each layer of ownership to the ultimate natural person who exercises control over the property. That individual should be treated as the relevant control person for purposes of determining eligibility for the primary residence exemption. Such an approach is consistent with concepts already utilized elsewhere in New York tax law and in federal tax law, and reflects the fact that layered ownership structures are typically established for legitimate estate-planning, asset-protection, and privacy purposes that predate the surcharge and have no relationship to its avoidance. The Department should also clarify how the “majority interest” requirement is measured, given that many operating agreements and partnership agreements allocate voting, economic, and profits interests independently.

The Treatment of Trusts Is Unduly Restrictive

Section 62-06(b)(2)(v) requires proof that an individual is the sole beneficiary of a trust. However, most trusts utilized for legitimate estate-planning purposes have multiple beneficiaries, often including spouses and children. The policy rationale underlying the surcharge is to tax underutilized properties that do not serve as anyone's primary residence. That rationale is not implicated where a trust beneficiary occupies the property as a primary residence. As such, the surcharge should not apply where any beneficiary of the trust uses the property as a primary residence. Similarly, given that many trusts provide for contingent or residual beneficiaries, the final regulations should provide that contingent beneficiaries of a trust are disregarded in determining whether a person is a covered owner of property held in trust.

Separately, the proof provision in the proposed rule does not match the statutory text. Administrative Code § 11-3201 recognizes covered-owner status where the beneficial "owner or owners are the sole beneficiaries" of the trust — language that, by its plural terms, contemplates that multiple individuals may together constitute a trust's entire beneficiary class (for example, two spouses who are the trust's only beneficiaries and who occupy the unit as their primary residence). The proposed rule § 62-06(b)(2)(v), however, provides a proof pathway only for "the sole beneficiary" of a trust, in the singular, and requires a trust agreement and trustee affidavit each identifying a single beneficiary. As drafted, the rule provides no mechanism by which co-beneficiaries who together are a trust's sole beneficiaries — a structure the statute plainly covers — can establish their eligibility. Read strictly, the current sole beneficiary requirement would disqualify nearly every revocable living trust, because remainder beneficiaries are almost always named for what happens after the grantor’s death. The final rule should conform § 62-06(b)(2)(v) to the statutory text by accommodating one or more beneficiaries who together constitute the entire beneficiary class of the trust.

The Definition of Arm’s Length Transaction is Too Subjective

The proposed rule defines the term “arm’s length transaction,” which is relevant in the context of demonstrating that a unit is a primary residence by virtue of a lease or sub-lease to a primary resident tenant. However, the definition includes vague language that provides the Department with unfettered discretion to determine that a lease or sub-lease was entered for the purposes of avoiding the surcharge. This creates significant uncertainty as the Department could, for example, disagree with the fair market rent agreed between the owner and tenant in good faith. The final rule should, at minimum, establish a safe harbor that deems rents within 20% of the median market rent for comparable units in the same neighborhood to be “fair market.”

Additionally, the definition’s reference to leases entered into “for the purpose of avoiding imposition of the surcharge” is unbounded and permits the Department to disregard leases that serve legitimate commercial purposes but where surcharge planning was one of several considerations. The final rule should clarify that a lease satisfies the arms-length requirement where the lease has a legitimate commercial purpose independent of the surcharge, even if surcharge implications were considered in the decision to enter into the lease. Only where surcharge avoidance is the sole or primary purpose of the lease, or where the lease lacks legitimate commercial purpose, should the arms-length requirement fail.

APPEALS PROCESS

The Appeal Period Must Be Extended

Section 62-06(b)(1) provides owners with 30 days to appeal an initial determination that a property is not a primary residence subject to the surcharge. The 30-day appeal period is unreasonably short to provide meaningful due process, particularly given the uncertainty surrounding notice procedures and the significant consequences that result if an appeal is not filed in a timely manner. The final rule should provide significantly more time for taxpayers to appeal.

Additional time is warranted given that it is highly likely that many owners will not receive notification from the Department directly. Among others, this includes circumstances in which:

• Notices may first be received by a lender, managing agent, board, trustee, or other intermediary such as the managing agent before reaching the ultimate owner;

• The Department’s records may not have been updated to reflect a change in ownership or the managing agent;

• Condominium owners who may maintain alternative mailing addresses; and

• International and seasonal residents who may not promptly receive mailed notices, particularly in the summer months.

In addition, owners will likely require substantial time to assemble supporting documentation. This is particularly critical this year given that the surcharge applies retroactively to January 5, 2026, which preceded the law's enactment. This year in particular, owners could not have contemplated needing documentation to demonstrate their residence status as of January 5, 2026 because as of that date, this surcharge was not even proposed.

The 30-day window creates particularly acute challenges for cooperatives. In cooperative buildings, the managing agent or board appears likely to receive the initial determination and will then be required to notify shareholders. Those shareholders will then need time to assemble documentation and determine whether to seek review. Executing this work rapidly may not be possible in all circumstances and even in the best circumstances; a significant portion of a 30-day appeal period may be consumed simply by transmitting notice to the affected owner.

Notably, a longer appeal period would not meaningfully interfere with the Department's ability to administer the surcharge, and taxpayers would remain subject to the surcharge if their appeal is unsuccessful. Accordingly, REBNY recommends extending the appeal period to a minimum of 90 days, and preferably 180 days, to ensure that owners have a meaningful opportunity to receive notice, gather documentation, seek professional advice, and exercise their appeal rights.

The Rule Must Clarify Who May Contest a Determination and the Role of Managing Agents

The proposed rule does not clearly identify who is authorized to submit documentation, challenge a determination, or appeal on behalf of the owner. For properties owned through entities, trusts, or estates, authorized representatives routinely act on behalf of beneficial owners. The final rule should clearly identify:

• Who may submit exemption documentation;

• Who may request administrative review;

•Who may file an appeal;

• Whether attorneys, accountants, trustees, executors, or other representatives may act on behalf of owners; and

• What evidence of authority is required.

Managing agents are engaged by the boards of the cooperatives and condominiums who are their clients, and the boards may have adverse interests to the owners of the individual units. However, there is a fundamental difference between condominiums and cooperatives in the imposition of this surcharge and

the role of the managing agent. In condominiums, the surcharge is imposed on the tax bill for each unit owner and paid directly by that unit owner. Thus, there is no role for the managing agent. In cooperatives, the surcharge will be imposed on the tax bill of the cooperative, and the managing agent will be obligated to bill the shareholders of the units subject to the surcharge. Thus, they will be involved, and clearer guidance as to their role in the process will promote a more efficient administration of the surcharge.

Additional clarity is important to address potential liability facing managing agents. The final rule should include a provision making clear that managing agents who assist in the surcharge administration process in good faith are not personally liable for errors, miscalculations, or collection failures attributable to shareholder, board, or owner conduct, inaccurate data, or deficiencies in the proprietary lease. The absence of such a provision exposes managing agents to liability for a tax collection function that the statute imposed on the cooperative corporation without providing the legal tools necessary to perform it.

Address Challenges Unique to Cooperatives

Unlike condominiums, the surcharge, penalties, and interest are attached as a lien on the entire cooperative property not on the individual shareholder's shares. As such, if one pied-à-terre shareholder refuses to pay, the cooperative board faces an unavoidable binary choice: advance building reserve funds — forcing all innocent shareholders to subsidize one owner's tax liability or allow the lien to compound with interest against the building's tax account. A sufficiently large or aged lien could trigger a default under the building's blanket mortgage, jeopardize every shareholder's ability to close a sale or refinancing, and potentially expose the cooperative to tax lien sale proceedings. The proposed rule provides no mechanism to protect innocent shareholders from this exposure, no indemnification for the cooperative corporation that advances funds, and no grace period before enforcement begins.

To better support cooperatives, the final rule must establish a specific procedure for correcting imputed cooperative unit values in fiscal year 2027 and 2028 if the underlying share allocation data used by the Department is not accurate. The January 5 taxable status date and the novel share-imputation methodology make year-one valuation errors likely, and owners must not be permanently bound by a miscalculated imputed value with no correction pathway. In addition, as referenced above, the final rule should require the Department to disclose the two inputs behind each imputed unit value — the unit's share allocation and the corporation-level market value — so owners can verify the imputation should they appeal.

In addition, most cooperative proprietary leases predate the imposition of this surcharge and do not explicitly authorize the board to bill the surcharge as additional rent, impose interest or late fees on unpaid surcharge amounts, require surcharge escrow as a condition of transfer approval, or treat non-payment as a lease default. As such, boards may not have the authority to compel shareholder payment independent of whatever the proprietary lease happens to say, and litigation against a non-paying shareholder is expensive, slow, and uncertain. The final rule should expressly provide that the cooperative corporation has an independent right to recover the surcharge and all associated costs directly from the affected tenant-shareholder, and that the corporation may condition transfer consent on satisfaction or escrow of any outstanding surcharge obligation.

Similarly, the Department must clarify how it will determine the phase-two market value for cooperative units. Because cooperative apartments are not separately assessed and do not convey as real property, a comparable-sales method necessarily operates at the building level or relies on share structure to compare across units. The final rule should make explicit whether the Department will determine the market value for the cooperative corporation and allocate to units by shares, or proceed unit-by-unit, and in either case how shares enter the calculation.

ADDITIONAL GUIDANCE

Liability when Ownership Changes

Under the proposed rule, the surcharge is determined using a taxable status date of January 5 preceding the applicable fiscal year. However, the statute and proposed rule are silent regarding whether liabilities that occur after a change in ownership are borne by the current owner or the prior owner, even if the current owner is a primary resident. Uncertainty about liability following an ownership change could occur in the year in which ownership is transferred or because of an audit conducted by the Department of Finance in later years.

The rule should address circumstances in which a bona fide primary resident purchaser acquires a property after the taxable status date. If the surcharge must be paid by the purchaser, a purchaser who acquires and occupies a property as a primary residence could remain subject to a surcharge attributable solely to a prior owner's use of the property. This result creates unnecessary transactional friction, including escrow demands, indemnification provisions, and disputes between buyers and sellers. The final rule should provide that a purchaser who certifies their use as a primary residence after closing may obtain removal of the surcharge.

Similarly, the Department's ability to audit a property for six years and to impose liens on the property raise concerns for purchasers of units that could potentially have been non-primary residences. A purchaser who acquires a unit after a prior owner has submitted inaccurate information could potentially inherit liabilities associated with conduct in which the purchaser played no role. The final rule must expressly provide that penalties and other liabilities – including the risk of a lien being placed on the property – arising from inaccurate certifications submitted by a prior owner do not transfer to a bona fide purchaser for value who had no involvement in the prior submission.

Common Situations in Which the Tax Should Not Apply Must Be Clarified

The proposed rule fails to provide clarity about how the Department will treat certain types of units, including the situations outlined below. To address these types of circumstances, the Department should look to its current "contemplated use exemption" for not-for-profit organizations in addressing these types of circumstances so as to avoid unfair application of the surcharge when the unit is intended to be a primary residence but may not be for good reason.

The Treatment of Estates: The proposed rule does not specify how primary residence status will be determined after the death of an owner. The final rule should provide that:

• During the fiscal year in which an owner dies, primary residence status shall be determined based on the decedent's use of the property immediately prior to death; and

• During administration of the estate, the property shall continue to qualify for the exemption if it constituted the decedent's primary residence before death.

Probate and estate administration in New York routinely takes twelve to thirty-six months depending on estate complexity, litigation, and court backlogs. The final rule should provide that an estate should not become subject to the surcharge solely because a decedent is no longer physically occupying the property while probate and estate administration are ongoing.

The Behavior of a Primary Resident Tenant Should Not Impact an Owner Operating in Good Faith: The proposed rule does not clarify how the surcharge will be imposed in circumstances in which a property owner is listing a unit for rent on the taxable status date and leases the unit in a reasonable period of time in a good faith transaction. Similarly, it does not address situations in which an owner has entered into a lease with a primary resident tenant in an arm’s length transaction, but on the taxable status date the tenant either no longer uses the unit as a primary residence or no longer occupies the unit. In these cases, the owner could be subject to the surcharge even though they have made or are making a good faith effort to ensure that the unit is occupied as a primary residence. In these circumstances, the Department should establish a process for the owner to demonstrate their good faith efforts to comply and not be subject to the surcharge. Additionally, the final rule should recognize that a month-to-month lease arrangement following completion of an initial one-year lease does not disqualify a unit from being considered a primary residence.

Treatment of Unit Renovations and Combinations: Often, current New York City residents buy a new apartment in a different building or combine two apartments in the same building. When this happens

(which could be for factors entirely outside of the owner’s control such as flood, fire, or major building construction) it often requires renovation or construction work in the new or existing home that can take several months, if not years, to complete. As such, the local resident may own two homes in the five boroughs. In these circumstances, it would be deeply unfair for the tax to apply in situations where the resident intends to sell one of their homes after renovations/construction is complete in their new home. The final rule must clarify the documentation that primary residents who own two apartments as a result of purchasing a new home or combining multiple units can submit to substantiate their primary residence status.

The Treatment of Class 1 Properties with Mixed Occupancy is Unclear

The proposed rules do not address the situation in which a multi-unit Class 1 building has mixed occupancy between a primary resident owner and other occupants who could potentially be considered non-primary residents. The final rule should provide clarity as to how the Department will treat these types of situations.

The Sponsor Exclusion Should Reach Successor Sponsors, No-Action-Letter Projects, and Bulk Transfers The excluded property definition applies only to units subject to an offering plan held by the original plan filer. This produces unintended results for functionally identical categories of projects: (i) successor sponsors that acquire a project and continue to offer and sell units under the offering plan; (ii) residential projects proceeding under Attorney General no-action letters rather than filed offering plans, which are subject to the same substantive regulatory framework; and (iii) bulk transfers of unsold inventory to affiliated entities, joint venture partners, or investors for continued offering. None of these has any relationship to surcharge avoidance, given that the units are still sponsor inventory being marketed and sold in the ordinary course. The final rule should exercise the Department's authority under Sections 1354(e)(1) and 11-3205(i)(1) to extend the exclusion to any successor to the original plan filer that holds units for continued offering or sale, any project operating under an Attorney General no-action letter, and any bulk transfer of unsold inventory to an entity that continues to offer the units for sale.

The Department Should Explain How It Will Determine Values in Phase 2

Phase 2 of the surcharge begins July 1, 2028, and requires the Department to develop and implement an entirely new comparable-sales valuation methodology for individual cooperative and condominium units. The Department must provide owners, shareholders, boards, and other market participants with the ability to understand how these values will be determined.

REBNY respectfully requests that the Department address these issues before adopting a final rule. Thank you for your consideration.

39. John Pelet – Loeb & Loeb LLP – 7/8/2026 – Email

This letter sets forth questions and comments on the newly enacted chapter 32 of title 11 of the New York City Administrative Code (also N.Y. Tax Law Article 30-C, §§ 1350 – 1356), referred to as the pied-à-terre tax. References in this letter are to sections of the Tax Law.

Text of the Law

Section 1351. Definitions. As used in this article, the following terms shall have the following meanings: ...

(d) "Covered owner" means: ...

(4) where real property classified as class one or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation are held, in trust, a beneficial owner or owners of such trust, provided that such beneficial owner or owners are the sole beneficiaries of such trust;

Questions and Comments

What does the term "beneficial owner of a trust" mean in paragraph (d)(4)?

The final clause in paragraph (d)(4) implies that there is a difference between a beneficial owner of a trust and a beneficiary of a trust. If "beneficial owner" and

"beneficiary" have the same meaning, the final clause would never apply because the beneficial owners would always be the only beneficiaries of the trust. The rules should clarify the meaning of "beneficial owner."

- At a minimum, the term should include a trust beneficiary who is entitled to receive distributions of trust income and/or principal, or to reside in property owned by the trust, whether or not such right is subject to the trustee's discretion.

- The term might also include a trust beneficiary with a general power of appointment over the trust assets. This would cover grantors of revocable living trusts and beneficiaries of trusts who can withdraw trust property.

What beneficiaries are counted in determining the "sole" beneficiaries of a trust?

Many trusts have current beneficiaries and remainder beneficiaries, and they are often different persons or entities. Even revocable living trusts have remainder beneficiaries (subject to revocation by the grantor during the grantor's lifetime). It is unclear under the statute whether the term "beneficiaries" is intended to include both current and remainder beneficiaries or only current beneficiaries.

"Beneficiaries of a trust" should be defined to mean the beneficiaries of a trust to whom distributions of trust income and/or principal may currently be made and/or who have the current right, under the terms of the trust agreement, to reside in the property owned by the trust. The definition should exclude remainder beneficiaries, beneficiaries with future interests and deceased and unborn beneficiaries. If remainder beneficiaries are counted, almost no beneficial owners of trusts (regardless of the meaning of that term) will qualify as covered owners because they will almost never be the only beneficiaries of the trust. Moreover, beneficiaries of qualified personal residence trusts (QPRTs) would not qualify as covered owners. This result would be unnecessarily harsh because properties actually used by natural persons as primary residences would be subject to the surcharge.

It would be helpful for the rules to include examples illustrating the application of the statute to various fact patterns involving trusts. Such examples could include the following as situations where the beneficiary or beneficiaries of a trust qualify as covered owners and the covered property is not subject to a surcharge:

- The grantor/beneficiary of a revocable living trust uses the covered property owned by the trust as his or her primary residence.

-The life tenant of a QPRT uses the covered property owned by the QPRT as his or her primary residence.

- The sole living beneficiary of an irrevocable trust that permits distributions to a class of beneficiaries, such as the grantor’s descendants (but no other descendants are then living) uses the covered property owned by the trust as his or her primary residence.

- All of the current beneficiaries of a trust (such as an individual and his or her children) use the covered property owned by the trust as their primary residence.

Must all of the beneficiaries who qualify as covered owners use the property as a primary residence in order to avoid the surcharge?

It is unclear under the statute whether the reference to “sole beneficiaries” of a trust is intended to require that the beneficiaries using a trust-owned property as a primary residence be the only beneficiaries of the trust. There does not appear to be any policy reason to apply such a restrictive rule. The rules should clarify that use of a trust-owned property by any one of multiple trust beneficiaries as a primary residence is sufficient to avoid the surcharge. The rules could then include the following additional examples illustrating the application of the statute in the trust context:

- One of multiple living beneficiaries of an irrevocable trust that permits distributions to a class of beneficiaries, such as the grantor’s descendants, uses the covered property owned by the trust as his or her primary residence.

- One of multiple living beneficiaries of an irrevocable trust that permits distributions to a class of beneficiaries, such as the grantor’s descendants, uses the covered property owned by the trust as his or her primary residence along with one or more immediate family members who are not beneficiaries of the trust.

Text of the Law

Section 1351. Definitions. As used in this article, the following terms shall have the following meanings: …

(d) "Covered owner" means: …

(5) where real property classified as class one or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation are held, by a partnership, corporation or limited liability company, a partner or partners, shareholder or shareholders or member or members of such partnership, corporation, or limited liability company, respectively, provided that such partner or partners, shareholder or shareholders, or member or members hold a majority interest in such partnership, corporation or limited liability company respectively.

Questions and Comments

If two or more partners of a partnership1 together hold a majority interest in the partnership and all of such partners use a covered property as their primary residence, are all of such partners considered covered owners under paragraph

(d)(5)? Will the interests of partners using the same property as a primary residence be aggregated for purposes of determining whether the partners hold a majority interest in the partnership under paragraph (d)(5)?

The rules should permit aggregation of interests of owners of entities who are immediate family members and aggregation of interests owned by trusts and their beneficiaries.

It would be helpful for the rules to include examples illustrating the application of the statute to various fact patterns involving entities. Such examples could include the following as situations where the owners of interests in an entity qualify as covered owners and the covered property is not subject to a surcharge:

- Two spouses each own a 50% interest in an entity that owns the property that both of them use as their primary residence.

- Two spouses each own a 50% interest in an entity that owns the property that an immediate family member uses as his or her primary residence.

- An individual owns a minority interest in an entity that owns the property used by the individual as his or her primary residence, that individual is the sole current beneficiary of a trust that owns an interest in the same entity, and together the individual’s and the trust’s interests constitute a majority interest.

Text of the Law

Section 1351. Definitions. As used in this article, the following terms shall have the following meanings: ...

(m) "Primary residence" means the use of a covered property, or, in the case of a residential cooperative property, a residential cooperative dwelling unit, as of the taxable status date immediately preceding the fiscal year in which the surcharge described by this article is imposed, as a primary residence of (1) one or more of the covered owners, or an immediate family member of one or more of the covered owners, provided such covered owners are natural persons; or (2) one or more lessees, and any sub-lessees to which a lessee has sublet the covered property or residential cooperative dwelling unit pursuant to subdivision two of section two hundred twenty-six-b of the real property law, provided any such lessee or sub-lessee is a natural person occupying such covered property or residential cooperative dwelling unit pursuant to a bona fide lease agreement negotiated in an arms-length transaction with a term of not less than one year. For purposes of this article, the phrase "immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild.

Questions and Comments

The definition of “primary residence” is circular. The definition appeals to the term it is defining. It says that a primary residence is a property used as a primary residence (by a covered owner or other applicable person). The rules should clarify that a primary residence is a property used as a “principal dwelling place,” “permanent home,” or “as a residence for 183 days or more in a year”, etc.

While the proposed rules add a helpful definition of “arm’s length transaction,”2 the definition could provide additional guidance regarding leases between related parties. The rules should clarify that a lease may qualify as an arm’s length transaction even if it is between related parties such as immediate family members, a trust and its beneficiary or a trust and its grantor.

Thank you for your consideration of the foregoing comments. Please contact me with any questions.

1 “Partners of a partnership” used for convenience. This question applies also to shareholders of a corporation and members of an LLC.

2 Arm’s length transaction. The term “arm’s length transaction” means a lease or sub-lease for a covered property or a dwelling unit in a covered property entered into in good faith and for valuable consideration that reflects the fair market rental value of such covered property or dwelling unit between two informed and willing parties, where neither is under any compulsion to participate in the transaction and circumstances do not indicate a reasonable possibility that the lease or sub-lease was entered into for the purpose of avoiding the imposition of the surcharge.

40. LZ – 7/8/2026 – NYC Rules

NY Tax Law § 1350 imposes a pied-à-terre tax on certain NYC properties that are generally not used as a "primary residence" by a property owner, a property owner's immediate family member, a lessee, or a sublessee.

NY Tax Law § 1354(e)(1)(A) and NYC Admin. Code § 11-3205(i)(1) allow the NYS and NYC Departments of Finance to promulgate rules addressing the "illness or death" of a property owner.

Internal Revenue Code (IRC) § 121 is a federal tax provision for a taxpayer's "principal residence," which is similar to the "primary residence" concept in the pied-à-terre tax.

The following exceptions under IRC § 121 may extend principal residence status, which the pied-a-terre tax regulations should consider as similarly applying to a property owner, immediate family member, lessee, or sublessee for purposes of extending primary residence status under the pied-à-terre tax:

1. Death (IRC §§ 121(b)(4) and 121(d)(2)),

2. Divorce (IRC § 121(d)(3)), given that an ex-spouse is not an immediate family member,

3. Move to a nursing home or other state-licensed facility (IRC § 121(d)(7)),

4. Serving in the uniformed military services, United States Foreign Service, or the intelligence community (DNI, CIA, NSA, DIA, etc.) (IRC § 121(d)(9)),

5. Serving in the Peace Corps (IRC § 121(d)(12)),

6. Temporary absence due to change of employment, health conditions, or unforeseen circumstances, including natural or man-made disasters, acts of war or terrorism, multiple births resulting from the same pregnancy, or a facts and circumstances test for other events such as incarceration (IRC §§ 121(b)(5)(C)(ii)(III) and 121(c)(2)(B)), and

7. Transfer to a bankruptcy estate (Treasury Regulations § 1.1398-3).

Thank you for your attention to this matter.

41. Anonymous – 7/8/2026 – NYC Rules

This surcharge on non-primary residences is a terrible idea. The owners of these properties receive few, if any, government services and already pay property taxes so they are a significant net plus for the city. The only reason this is being done is because these people can't vote in NYC. The continued expansion of government services with no regard to cost will ultimately backfire. No amount of money is enough!

42. **Council of New York Cooperatives & Condominiums – 7/8/2026 – NYC Rules**
Fundamentally, CNYC supports the stated goal of the pied-a-terre tax of raising needed funds without making housing less affordable for homeowners who have participated in stabilizing New York City's neighborhoods and/or pay New York City income taxes.

However, CNYC is concerned that portions of the enacting legislation will cause unintended hardships for New York Homeowners due to:

(i) the requirement that cooperatives be held responsible for collecting and paying a tax surcharge on behalf of individual shareholders, an issue which is compounded by the lack of a provision providing satisfactory enforcement mechanisms,

(ii) the use of an imputed $1 million market value for inclusion in the pied a terre tax and the lack of the exemption suggested in the NYC Comptroller's report for units appraised for less than $5 million, when New York City's rolling sales data shows many of these same apartments have recently sold for less than $5 million, particularly in cooperatives and condominiums with fewer than 11 units,

(iii) critical ambiguities in the definition of a primary-resident and the failure to define statutory residents of New York City, who pay New York City income tax, as primary-residents, and

(iv) the retroactive nature of a tax of this magnitude, given the effective date of January 2026 for determining residency during this first year of the tax, which denied long-term homeowners the opportunity to weigh potential repercussions when making residency decisions.

CNYC recognizes that the Department of Finance cannot change the existing legislation. Therefore, CNYC's comments, attached below, do not address these legislative concerns, and focus solely on the draft rules.

CNYC's comments are targeted to ensure implementation of the legislation is consistent to the fullest extent possible with the clearly articulated legislative intent that the burden of the pied a terre tax fall on second homeowners of homes worth in excess of $5 million and not impact those homeowners who contribute to New York City.

Please see the attached file for CNYC's comments.

The Council of New York Cooperatives and Condominiums, CNYC Inc., ("CNYC"), submits these comments in response to the Notice of Public Hearing and Opportunity to Comment on Proposed Rules issued by the New York City Department of Finance in connection with a proposed rule adding a new Chapter 62 of Title 19 of the Rules of the City of New York relating to the "pied a terre tax" and entitled "Surcharge on Property that Does Not Serve as a Primary Residence".

Who CNYC Is and Who CNYC Represents

CNYC is a member funded not-for-profit organization, providing information, education and advocacy to and for housing cooperatives and condominiums since 1975. CNYC's member buildings are home to shareholders and unit owners spanning the full economic spectrum; all have invested in their home, neighborhood and New York City. CNYC member buildings are located throughout all five boroughs, and range in size from two apartments to well over 3,000 apartments.

The Legislature's Intent in Enacting the Pied a Terre Tax
In proposing the pied a terre tax, in a release entitled "Proposal Will Help Close New York City's Budget Gap By Generating Needed Revenue Without Impacting New York City Residents", Governor Hochul's office stated that: "[t]he tax would ensure that those that own luxury homes, but do not live in the City or pay City income tax are still fairly contributing towards the funding of the essential services like policing and parks that make New York City a global destination. The tax would only apply to those homes that are not the primary residence of the owner or are not rented to a primary resident or occupied by the owner's family."1

The New York State Legislature, evidencing a similar desire that the pied a terre tax not impact New York City residents and instead be imposed on owners of second homes, in enacting the pied a terre tax found that "many of the city's most valuable homes are held as second homes, allowing the owners of those homes to reap considerable benefits from the city's broader economy, from city services, and from a vibrant real estate market. The legislature finds that it is prudent to impose a surcharge on the owners of these second homes to maintain important city services."[2]

CNYC's Concerns with New York State's Pied a Terre Legislation and Implementation

Fundamentally, CNYC is not opposed to a pied a terre tax and supports the stated goal of securing needed funds without making housing less affordable for resident-homeowners who participate in stabilizing New York City's neighborhoods and pay New York City income taxes. However, CNYC notes that portions of the enacting legislation raise specific concerns, including:

(i) the requirement that cooperatives be held responsible for collecting and paying a tax surcharge on behalf of individual shareholders, an issue which is compounded by the lack of a provision providing satisfactory enforcement mechanisms to utilize if shareholders do not make timely payments,

(ii) the use of an imputed $1 million market value for inclusion in the pied a terre tax, when New York City's rolling sales data shows many of these same apartments have recently sold for less than $5 million, particularly in cooperatives and condominiums with fewer than 11 units given the lack of the exemption suggested in the NYC Comptroller's report for units appraised for less than $5 million[3],

(iii) critical ambiguities in the definition of a primary-resident and the failure to define statutory residents of New York City, who pay New York City income tax, as primary residents, and

(iv) the retroactive nature of a tax of this magnitude, given the effective date of January 2026 for determining residency during this first year of the tax, which denied long-term homeowners the opportunity to weigh potential repercussions when making residency decisions.

CNYC recognizes that the Department of Finance cannot change the existing legislation. Therefore, for purposes of today, CNYC's comments do not address these legislative concerns, and focus solely on the draft rules in front of us. Given the above, it is essential that the rules promulgated by the Department of Finance are:

(i) consistent with the clearly articulated legislative intent to the fullest extent permitted by the legislation that the burden of the pied a terre tax fall on second homeowners of homes worth in excess of $5 million and not impact city residents who pay NYC income taxes,

(ii) clarify omissions and ambiguities in the existing legislation and

(iii) facilitate enforcement of the collection of the tax by subject housing cooperatives.

In that connection CNYC presents the following comments on the proposed rules:

Death of Owners of [and Certain Primary Residents of] Covered Property or a Residential Cooperative Dwelling Unit

Upon the death of a New York City resident owner, that owner ceases to be a primary resident of the covered property or residential cooperative dwelling unit. As a result, the estate of a person who has resided and paid income taxes in New York City, possibly for decades, and has never had a second home, may become subject to the pied a terre tax, depending on the date of death, the occupancy of the apartment, and status of the apartment on January 5, contrary to the intent of the legislation establishing the pied a terre tax. This may also impact the heirs of the decedent who may themselves also be taxpaying New York City residents.

If a covered property is jointly owned by a married couple / domestic 4 partners and is occupied by an immediate family member of one of the owners as a primary residence, upon the death of the owner who is related to the occupant, the covered property would cease to be a primary residence as defined by these rules. This could impose the pied a terre tax on the remaining owner who is providing housing to a New York City resident who pays income tax. In addition, it could force a surviving spouse /domestic partner to cease providing housing to the family member of the deceased, certainly an unintended result.

If covered property is not jointly owned by a married couple / domestic partners, then upon the death of an owner of covered property which is a primary residence because it is occupied by a member of the immediate family of the owner that property will often cease to be a primary residence and become subject to the pied a terre tax. Even if the immediate family member of the deceased owner is also an immediate family member of the heir of the decedent, the pied a terre tax could apply until the estate is settled, potentially indirectly imposing tax on a taxpaying New York City resident.

Finally, the untimely death of the immediate family member using the covered property as a primary residence could also result in the imposition of tax, inadvertently harming owners, including tax paying New York City residents, who are providing homes to ill or elderly members of their immediate family, who are also taxpaying New York City residents.

Fortunately, the Legislature, in passing the pied a terre tax, gave the Department of Finance the authority to introduce additional rules to avoid unintended consequences, such as those highlighted above. Section 1354(e)(1)(A) of the New York State Tax Law specifically authorizes the Department of Finance to promulgate rules "to address a change in ownership of a covered property or a residential cooperative dwelling unit, or illness or death of an owner of a covered property or residential cooperative dwelling unit" (emphasis added). In addition, pursuant to Section 1354(e)(1) of the New York State Tax Law, the Department of Finance is authorized to promulgate any rules necessary to administer the pied a terre tax.

Accordingly, we respectfully urge the Department of Finance to promulgate a rule which provides in substance that (i) ownership by an estate shall be deemed ownership by the related decedent and if covered property (or a residential cooperative dwelling unit) would not have been subject to the pied a terre tax when owned by the decedent, it will not be subject to the pied a terre tax while owned by the estate; [and] (ii) if covered property (or a residential cooperative dwelling unit) which is jointly owned by spouses / domestic partners was the primary residence of a member of the immediate family of one spouse / domestic partner, then, notwithstanding the death of such spouse / domestic partner, the covered property (or residential cooperative dwelling unit) shall continue to be treated as a primary residence as if the immediate family member was a member of the immediate family of the surviving spouse / domestic partner; [and (iii) if covered property (or a residential co-operative dwelling unit) was the primary residence of a member of the immediate family of an owner then such covered property or residential co-operative dwelling unit) shall remain a primary residence for 180 days after the death of such immediate family member.

We believe that by promulgating such a rule related to the illness or death of an owner of a covered property or residential cooperative dwelling unit, the Department of Finance will be following the intent of the legislation establishing the pied a terre tax and prevent it inadvertently being a burden on income tax paying New York City residents

Transfers of Covered Property or A Residential Cooperative Dwelling Unit

Purchasers often wish to, or need to, undertake substantial renovations. These renovations can take a significant period of time and regularly delay the date upon which the purchaser(s) can move into the apartment. The duration is typically outside of the control of the purchaser. In the interim, the purchaser will often reside at their prior residence.

The tax law, in the absence of any clarifying rules, would seem to provide the purchaser of covered property would be liable for the pied a terre tax with respect to such property during the period that renovations are being made to the property if the purchaser is not residing in the covered property. This would be true even if the purchaser is a New York City resident, paying New York City income taxes and moving from one New York City primary residence to another

We believe that subjecting this purchaser, especially if a tax-paying NYC resident, to the pied a terre tax in these circumstances is inconsistent with the legislative intent behind the pied a terre tax. Fortunately, the legislature foresaw the possibility of such unintended results and included Section 1354(e)(1)(A) of the New York State Tax Law which specifically authorizes the Department of Finance to promulgate rules "to address a change in ownership of a covered property or a residential cooperative dwelling unit, or illness or death of an owner of a covered property or residential cooperative dwelling unit" (emphasis added). In addition, pursuant to Section 1354(e)(1) of the New York State Tax Law, the Department of Finance is authorized to promulgate any rules necessary to administer the pied a terre tax.

Accordingly, we respectfully urge the Department of Finance to promulgate a rule which provides in substance that a purchaser of a covered property (or residential co-operative dwelling unit) who files a New York City resident income tax return during the relevant period may be deemed a primary resident of two residences if one of such residences was purchased in the past 18 months and this exemption is not used more than once every five years. Further, CNYC requests the Department of Finance promulgate a rule which provides in substance that the purchaser of a covered property (or residential co-operative dwelling unit) who does not file a New York City tax return, provides (i) an affidavit stating that they intend to occupy the covered property (or residential co-operative dwelling unit) as a primary residence upon the completion of renovations, (ii) a fully executed and dated contract for renovations to the covered property (or residential cooperative dwelling unit), and (iii) a utility bill in their name(s) for the covered property (or residential co-operative dwelling unit) may be deemed a primary resident for 6 months following the date of closing and provided that this exemption is not used more than once every five years.

A similar issue would exist when a bank forecloses on a covered property or residential cooperative dwelling unit. The tax law, in the absence of any clarifying rules, would seem to hold a lender liable for the pied a terre tax with respect to such property during the period from the foreclosure on the property or residential cooperative dwelling through the transfer, leasing or subleasing of the unit. This would likely see an increase in interest rates for apartments that qualify for the pied a terre tax, and in the case of a cooperative, would require the cooperative to collect the surcharge from the lender.

Accordingly CNYC respectfully requests the Department of Finance promulgate a rule which provides in substance that the lender who forecloses on a covered property (or residential cooperative dwelling unit) be deemed a primary resident for 18 months following the date of closing

We believe that this suggested use by the Department of Finance of the power specifically granted by the legislature to promulgate rules to address a change in ownership of a covered property or a residential cooperative dwelling unit will serve to more fully effect the intent of the legislation establishing the pied a terre tax and prevent it inadvertently being a burden on tax-paying New York City residents

Evidence of Primary Residence and Immediate Family Relationships

The proposed rules limit what evidence the Department of Finance may consider in determining primary residence and immediate family membership. We believe that these limitations will hinder the submission of the best evidence available, resulting in erroneous determinations by the Department of Finance, and lead to unnecessary expenses, uncertainty, and the unfair implementation of the pied a terre tax

(1) Evidence of Primary Residence

Section 62.06(a)(2) of the rules proposed by the Department of Finance provides that, absent other credible information for tax years starting after July 1, 2027, the Department of Finance will rely on information in Federal and State tax returns filed by the owner of covered property (or a residential cooperative dwelling unit in covered property) which contain information that such property or unit was the primary residence of the owner.

We commend the Department of Finance for this rule and understand the timing issues related to implementing it for Fiscal Year 2027. However, we believe that a failure to preemptively consider tax return data in 2026 will greatly increase the chance of errors in determining primary residence during this initial implementation period. This concern is exacerbated by the 30-day deadline to reply to notification of residency status, with notification likely to be received over the course of the summer when many tax-paying New York residents are on vacation. As a result, CNYC respectfully requests that the Department of Finance promulgate a rule extending the initial response period for notices received by August 30, 2026 for an additional 60 days, and provide a second notice at the end of the first thirty days for those from whom a response has not been received.

(2) Evidence of Immediate Family Relationships

Section 62.06(b)(ii)(6) of the rules proposed by the Department of Finance provides that “[u]nless credible information in the possession of the department indicates otherwise, proof that an individual is an immediate family member of a covered owner includes either of the following: (A) one or more birth certificates indicating that such individual is an immediate family member of such covered owner; or (B) affidavits from both such covered owner and such individual indicating that such persons are immediate family members.”

Limiting the evidence that may be offered to prove that an individual is an immediate family member of a covered owner to birth certificates and affidavits from both family members is problematic for multiple reasons.

People who are adopted or have immigrated from other countries may not have access to 5 their birth certificates. This is especially likely if the country from which a person emigrated was a less developed country or if the person who immigrated did so as a refugee or asylee. However, such people (or their parents) may often have other official documents such as adoption papers or immigration records, which are official documents evidencing a family relationship. Such documents should also be accepted as evidence.

Similarly, other official documents such as family court records, marriage licenses, evidence of joint property ownership as tenants by the entirely, green cards or other immigration records and other judicial or administrative records and proceedings may provide strong evidence of the existence of family relationships and should be admissible as evidence thereof. Such records may be more accessible to the Department of Finance than records from other countries issued in other languages. This is done in other contexts. The US Citizenship and Immigration Services agency accepts evidence of parent child relationships other than birth certificates. Finally, federal or state 6 tax returns which show joint filing as spouses or dependent relationships should be admitted as evidence of such relationships.

In addition, people other than the two directly involved may have sufficient knowledge to provide affidavits acceptable as proof. For example, other members of the immediate family may well have sufficient knowledge to certify as to the existence of the family relationship. As noted above, the US Citizenship and Immigration Services agency accepts third party affidavits to evidence family relationships. 7

Given the six-year time frame for auditing primary residence status that the Department of Finance has included in Section 62.04(a) of the proposed rules., there may be a number of reasons why “affidavits from both such covered owner and such individual” may be impossible or impractical to obtain. These reasons include the death of one of the two people, the severe illness of one of the two people, the absence from the United States of one of the two people and the estrangement of the two people. While these conditions may make obtaining an affidavit impossible or impractical, none of them are probative of the presence or absence of a family relationship. For example, the tragic untimely death of a family member should not result in a tax payment that could have been easily avoided had the family member remained alive.

Similarly, the thirty-day time frame for appeals increases the problem of limiting proof other than affidavits from both the owner and immediate family member to birth certificates as it may not be possible to obtain relevant birth certificates within a thirty-day time frame. And in the case of illness or foreign travel it may not be possible to obtain affidavits from both specified people within the thirty-day time frame.

Accordingly, CNYC respectfully requests that the Department of Finance make clear that all of the documents we have referenced above, and any documents which are similarly probative, may constitute proof of an immediate family relationship and be offered as evidence to establish the same.

(3) Evidence of Primary Residency with Respect to Beneficiaries of a Trust

Section 62.06(b)(ii) of the rules proposed by the Department of Finance provides "that with respect to a beneficiary of a trust who is a covered owner pursuant to paragraph (iv) or a partner, shareholder or member who is a covered owner pursuant to paragraph (v) of the definition of covered owner in section 11-3201 of the administrative code, such appeal must also include proof set forth in subparagraph (iv) or (v) of paragraph (2) of this subdivision." Subparagraph (v) states that "[u]nless credible information in the possession of the department indicates otherwise, proof that that an individual is the sole beneficiary of a trust includes: (A) a copy of the trust agreement indicating that such individual is the sole beneficiary of such trust; and (B) an affidavit indicating the same from a trustee of such trust."

By implying the trust must be in the name of one beneficiary, the rules do not appear to match the intent of the legislation, which reads, "where real property classified as class one or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation are held, in trust, a beneficial owner or owners of such trust, provided that such beneficial owner or owners are the sole beneficiaries of such trust."

Many long-term covered owners have put their residential condominium dwelling units, or shares of stock in a cooperative corporation into trusts, some of which are irrevocable. CNYC respectfully requests that the Department of Finance amend Subparagraph (v) to read,"[u]nless credible information in the possession of the department indicates otherwise, proof that that one or more individuals are the sole beneficiaries of a trust includes: (A) a copy of the trust agreement indicating that such individuals are the sole beneficiaries of such trust; and (B) an affidavit indicating the same from a trustee of such trust."

CNYC further requests that the Department of Finance promulgate a rule that in the event there are current and residual beneficiaries to a trust, it is a sufficient proof of primary residency if all the current beneficiaries reside in the covered property or residential cooperative unit, and such proof of residency not be required of residual beneficiaries.

Errors in Connection with Share Ownership

In the case of residential cooperative dwelling units in covered property the Department of Finance is required to allocate the market value it determines for the covered property among the residential cooperative dwelling units therein based on the relative number of shares attributable to each unit. This is not a procedure the Department of Finance needs to employ generally in calculating real estate taxes (although it is relevant to the Cooperative and Condominium Property Tax Abatement in the case of cooperatives).

The Department of Finance may not have correct or updated shareholding information for all residential cooperative dwelling units in covered property (especially in the case of cooperatives that have not recently taken advantage of the Cooperative and Condominium Property Tax Abatement) and the Department of Finance may have incorrect information about such shareholdings.

Accordingly, CNYC respectfully requests that the Department of Finance promulgate procedures for cooperatives (i) to provide information to the Department of Finance with respect to the number of shares attributable to each unit and the total number of shares outstanding if they have not done so and (ii) make any necessary corrections to information about shareholdings in the possession of the Department of Finance. Promulgating such rules will reduce the possibility for erroneous imposition of the pied a terre tax on those who should not legally be paying it.

Imposition of Penalties on Cooperative Corporations

Section 62.04(c) of the proposed rules provides for the imposition of penalties if "any certification or documentation submitted to the department in connection with the imposition of the surcharge on a covered property contains inaccurate or misleading information that: (A) is material to the determination of the imposition of such surcharge, including a determination relating to primary residence; and (B) was submitted negligently or in bad faith."

In the case of covered property which is owned by a cooperative corporation any penalties would be imposed on the cooperative. On the other hand, information may be submitted to the Department of Finance in connection with the imposition of the pied a terre tax on a covered property by both the cooperative and the affected shareholder of a residential cooperative dwelling unit in covered property.

Penalties should not be imposed on the cooperative for the actions of one of its shareholders over which the cooperative has no control and who have no authority to act on behalf of the cooperative. Doing so would be unfair and a gross violation of due process. This is true even if the cooperative might be able to recover the penalty from the shareholder.

Accordingly, CNYC respectfully urges the Department of Finance to promulgate a rule clarifying that no penalty may be imposed on a cooperative in connection with any certification or documentation submitted to the Department of Finance by someone other than the cooperative.

Penalizing Cooperative Corporations for Circumstances Beyond Their Control.

The legislation holds the cooperative corporation responsible for paying the pied-a-terre tax even before it might be able to collect it from a covered shareholder. In many cases in smaller cooperatives, this pied a terre tax is greater than the real estate taxes attributable to the unit, and in the case of some cooperatives, the pied a terre tax may exceed the taxes for the entire cooperative. As the burden of establishing primary residency falls on the “covered owner”, CNYC respectfully urges the Department of Finance to take whatever steps it can under the current legislation to enable the cooperative to defer payment while the surcharge is contested and to facilitate collection of the surcharge by the cooperative from a delinquent shareholder.

Such steps might include allowing the cooperative corporation to bond the amount of any surcharge and thereby remove the lien from its property and avoid a default under its underlying mortgage; Despite the short time required for implementation, CNYC urges the department of finance to explore options such as this suggestion, and proposes it convene a group of New York City focused co-op/condo attorneys to analyze potential solutions with respect to cooperative governance.

CNYC thanks the Department of Finance for the opportunity to comment on the proposed rules and appreciates the efforts of the Department of Finance in proposing these rules on short notice.

CNYC is available to discuss or clarify the issues raised in this letter. In the event that the Department of Finance wishes to engage in such discussion, CNYC may be contacted via the following email address: [EMAIL ADDRESS} or telephone number: [PHONE NUMBER].

43. **Lawrence Garrett – New York State Bar Association Tax Section – 7/8/2026 – Email**

This letter (the "Letter")1 of the Tax Section of the New York State Bar Association (the "Tax Section") addresses the new surcharge on certain New York City residential properties adopted as part HH of chapter 59 of the laws of 2026 (known as the "Pied-a-Terre tax") and the proposed regulations that were released on June 5, 2026. As the surcharge's first fiscal year began on July 1, 2026, before final regulations have been adopted, this Letter focuses on the Tax Section's questions and concerns regarding the administration of the surcharge in its first fiscal year, particularly related to the determination of whether a covered property serves as a qualified primary residence. The Tax Section intends to submit a subsequent report addressing longer-term issues related to the surcharge and its administration.

We commend the Department of Finance (the "Department") for issuing proposed regulations promptly. Yet, even after the release of these proposed regulations, we are concerned that the definitions of "primary residence" and "covered owner," as applied to a number of relevant circumstances, remain unclear, with a very short time frame for the Department to issue initial determinations of who is subject to the surcharge and for taxpayers to contest those determinations. Moreover, neither the statute nor the proposed regulations create a clear mechanism to request a refund should a taxpayer believe the surcharge was improperly imposed. As a result, we believe there will be significant confusion among affected taxpayers and subsequent challenges of the surcharge. While we understand that there is no perfect process of administration, and a new law or tax always requires further refinement and guidance as issues arise, we believe that clarifying the definitions of "primary residence" and "covered owner," ideally by identifying standards that will guide the Department's administration of the tax and by including examples that illustrate the application of these standards and address issues discussed in this Letter, will reduce confusion and disputes. We would also urge the Department not to impose penalties in the first year of the surcharge for taxpayers taking a reasonable position under the law in recognition that guidance is still in the process of being developed and issued.

This Letter first summarizes the new law and proposed regulations with respect to the definitions and treatment of "primary residence" and "covered owner," as well as administration of the surcharge in the first year. It then identifies where the Department might provide additional guidance (whether in the regulations or other, more informal guidance) so that owners have a clearer understanding as to what properties are subject to the surcharge and the process for contesting the applicability or calculation of the surcharge.2 The Tax Section may have additional comments on the law and regulations, particularly regarding Phase Two of the surcharge, but we have focused this Letter on the most critical issues in the first year of administration.

I. Summary of City Surcharge on Property That Does Not Serve as a Primary Residence
Part HH of the 2027 Budget includes legislative findings that establish the purpose of the new surcharge. Most importantly, the findings establish that, "[M]any of [New York City's] most valuable homes are held as second homes, allowing the owners of those homes to reap considerable benefits from the city's broader economy, from city services and from a vibrant real estate market. The legislature finds that it is prudent to impose a surcharge on the owners of those second homes to maintain important city services."3 As Governor Hochul stated in her announcement of the surcharge when it was proposed in mid-April, "New York City is the greatest city in the world, and the people who call it home should not be left carrying the burden alone."4 Based on the legislative findings and public statements about the surcharge, the principal intent appears to be to impose the surcharge on owners whose New York City properties are not used as a primary residence by those owners or other qualified users (e.g., an immediate family member or arm's-length lessee).5

New Article 30-C of the N.Y. Tax Law and Chapter 32 of the NYC Administrative Code impose a surcharge for the fiscal year July 1 – June 30 (consistent with the fiscal year for property taxes), beginning July 1, 2026.6 The surcharge is applicable to all "covered properties" in New York City that are not primary residences. That is, the Pied-a-Terre tax is not imposed on a residence used as a "primary residence" by a "covered owner," an immediate family member of the covered owner, or a tenant pursuant to an arm's-length lease. Class One covered property includes 1-3 family residential homes with assessed values at over $5 million. Class Two covered property includes cooperative and condominium dwelling units with assessed values of over $1 million.7 The lower threshold for co-ops and condos is due to the historically low assessment values on these properties.

For the first two years of the surcharge (fiscal years beginning in 2026 and 2027), the tax rate is between 0.8% and 1.3% of assessed value for Class One property and between 4.0% and 6.5% of assessed value for Class Two property.8 The Department will establish a methodology for determining the fair market value of condos and co-ops that will be used in the second phase beginning July 1, 2028 and until the surcharge sunsets at the end of the fiscal year beginning in 2031. During the second phase, the surcharge will be imposed on properties valued at more than $5 million with the surcharge rates ranging from 0.8% to 1.3% on all covered properties not used as a primary residence.[9]

For all covered properties, the Department must determine annually whether they are used as a primary residence, either by the covered owner or an immediate family member of the covered owner, or by a tenant pursuant to an arm's-length lease. Section 1352 of Article 30-C states that, "[t]he Department of Finance shall make a determination of primary residence based on factors identified by rules of the Department of Finance, including but not limited to whether such covered property or residential cooperative dwelling unit was occupied in aggregate for a majority of days during a calendar year by a covered owner [and] shall make such initial determination based on information available to such department."[10] Primary residence for a fiscal year is determined as of January 5th prior to the beginning of the fiscal year (the "taxable status date").[11] For the first year of the surcharge, the law requires the Department to provide notice of the initial determination of primary residence no later than August 30th, 2026.[12] In other words, the Department must make an initial determination by August 30, 2026 of whether the owner, immediate family member, or tenant used the property as a primary residence as of January 5, 2026.

Article 30-C grants the Department substantial authority to promulgate rules to both "specify additional factors or documentation that may assist in the initial or final determination" of whether a property is a primary residence and to establish a process for the Department to audit "any certification or documentation of primary residency submitted" within six years of the submission.[13] The statute further permits the Department to establish "any rules necessary to implement" the Pied-a-Terre tax, including but not limited to such things as addressing a change in ownership of a property potentially subject to the surcharge, the notice requirements, and penalties.[14]

The proposed regulations state that, "[u]nless credible information in the possession of the department indicates otherwise, the department will make a determination" that a covered property is used as a primary residence if, beginning for the second year of the surcharge, the owner indicates on the owner's state or federal personal income tax return for the most recent year available that the covered property is the owner's permanent home address; or received the STAR credit for that address.[15] For the first year of the surcharge and afterwards, if the owner received a property tax exemption based on the covered property serving as the owner’s primary residence for the immediate prior fiscal year, that would also result in an initial determination that the covered property will be exempt from the surcharge, absent evidence in the Department’s possession to the contrary. Pursuant to the proposed regulations, if the Department cannot make an initial determination based upon tax returns or residency-based exemptions or credits, it can use information such as a covered owner having occupied the covered property for a majority of days during the“immediately prior calendar year”16 or other documents submitted to New York City reflecting the covered property as the owner’s primary address.

The initial determination as to whether the property is exempt from the surcharge must be sent (by mail or email, if the owner’s email address is on file with the Department) to the owner by August 30, 2026 for the first fiscal year of the surcharge, and no later than January 30th for subsequent fiscal years.17 Nevertheless, failure to provide notice of an initial determination of non-exemption from the surcharge will not invalidate the imposition of the surcharge.18 Assuming the initial determination of non-exemption is transmitted, the owner will have 30 days from the date that the initial determination is transmitted to file an appeal through a portal to be set up by the Department.19 That appeal must include a certification that the property is used as a primary residence plus some form of proof.20 Such proof includes tax returns showing the owner, immediate family member, or lessee used the covered property as a primary residence for the most recently-filed year; or two or more documents, such as a New York driver’s license or voter ID card, showing the property as the primary address.21 If the property is used by an immediate family member or lessee as a primary residence, the owner must provide proof of that relationship in the appeal.22

Based on that information, the Department then makes a final determination of primary residence that can only be challenged through a formal appeal.23 The Department may, however, audit an owner’s certification or documentation of residency up to six years after that information is submitted to the Department.24 Certifications determined to be fraudulent or submitted in bad faith can result in penalties of up to 50 percent of the surcharge amount.25 For the first fiscal year, the surcharge is due and payable on the same date as the second semi-annual installment of real property taxes on January 1st and is administered by the Department.

II. Implementation Concerns for the First Fiscal Year

As discussed below in detail, the statute does not clearly specify how "primary residence" will be determined, how the Department will weigh various types of evidence to establish primary residence, or who qualifies as a "covered owner" in various ownership structures. The statute does, however, grant broad regulatory authority for the Department to further define these terms and refine how they are applied in specific circumstances. We ppreciate that the proposed regulations address ambiguities in the statute, but many questions remain. We address a number of those questions below.

A. Definition of "Primary Residence"

Article 30-C defines the term "primary residence" simply as "the use of a covered property . . . as of the taxable status date . . . as a primary residence" by a qualified individual.26 We note that, on the one hand, the statute does not explicitly equate the use of a property as a primary residence with income tax residency—i.e. that is, income tax residency either because the property is an individual's one true permanent home (domicile) or because the individual spends more than 183 full or part days at the property (statutory residency)27—although, as discussed further below, the types of proof that might be offered to show that a property is a primary residence touch on one or both of these income tax concepts. On the other hand, the statute does not simply require that a covered owner occupy the property for a majority of days in the year, which is the rule in Rhode Island's Non-Owner Occupied Property Tax, although this is also a factor to be considered. In short, the statute does not provide a detailed and comprehensive definition of primary residence. Rather than provide such a definition, the statute focuses on the mechanisms and information that will be looked at to determine primary residence.

It is clear from the statute that a covered property where the owner essentially lives full time generally will qualify for the exemption. It is also clear from the statute that a property occupied by an owner for only a few weeks a year generally will be subject to the surcharge. But there are many common uses of a property between these two endpoints for which it is not clear from the statute or proposed regulations whether the surcharge will apply.

This problem is exacerbated by the fact that the time periods used to determine primary residence (i.e., the taxable status date of January 5th preceding the surcharge's fiscal year as reflected in documentation from the immediately preceding calendar year), are disconnected from the period to which the surcharge applies. While we recognize the administrative hurdles to gathering information to determine primary residence in the context of a surcharge that is imposed prospectively, the disconnect between the time period used to make the determination and the time period to which the surcharge applies (and the significant changes that might arise to how the property is used between those two time periods) is likely to create confusion among taxpayers.

Our principal concern is the lack of clarity around the definition of primary residence that will make both compliance and administration more burdensome for taxpayers and the Department alike. The statute grants the Department broad regulatory authority to further define the term and the standards that will be imposed to make initial and final determinations. We urge the Department to use this authority, not to just lay out different types of proof that could be offered to demonstrate primary residence, but to offer a definition that explains the principles that will be considered and includes examples to illustrate them. Without such standards, it is not clear how the Department will weigh one type of evidence (e.g. the address on the owner's driver's license and tax return) versus another type of evidence (e.g. the number of days spent at the abode).

In light of the considerations and challenges discussed above, we also urge the Department to permit more than the 30 days provided in the proposed regulations, at least in the first year of the surcharge, for taxpayers to respond to initial determinations. In addition, we note that the regulations include additional types of proof, such as the address on a driver's license or voter registration, that can be submitted in a judicial appeal (but not in an informal appeal), to demonstrate that the covered property is used as a primary residence.28 The types of proof that will be accepted should be the same, whether in an informal appeal of an initial determination or in a formal judicial appeal. We would suggest that final regulations indicate that, in all years of the surcharge, such proof can be submitted as evidence of primary residence in an informal appeal of an initial determination.

To help illustrate the need for regulations to provide more clarity around the definition of primary residence and how the term will be applied, we have included some common situations below.

1. Statutory Residency

By definition, a statutory resident, who pays income tax to New York City, has a residence and is domiciled elsewhere.29 For example, if an individual is domiciled in Florida, the individual may have a home there that the individual treats as the individual's permanent home, as evidenced, for example, by a homestead exemption for Florida property tax purposes. But the individual can also be taxed as a statutory resident of New York City for income tax purposes by spending more than 183 full or part days in New York City, either at the covered property or elsewhere, even though the individual does not treat the New York City abode as the individual's domicile. In these circumstances, it is not clear that the individual could certify that the New York City abode is the primary residence for purposes of the surcharge, even though the individual is a statutory resident; although the individual spends a majority of days in the year (i.e., more than 183 days) at the New York City abode, the individual considers the individual's non-New York City residence to be the individual's permanent home. In light of the factor specified in Section 1352 of Article 30-C (i.e., that the New York City abode was occupied by the owner for a majority of days in the year), it would seem, as a general matter, that the covered property can qualify as the owner's primary residence where the owner is a statutory resident and, in fact, occupies the New York City abode for more than 183 days during the year. If so, final regulations should clarify the point, as well as identify the circumstances, if any, under which the covered property does not so qualify.

Similarly, an individual could be a statutory resident of New York City even though the individual does not spend a majority of days during the year at a covered property in question. The legal definition of statutory residency does not rely on days at the covered property; only full or part days anywhere in New York City are required for statutory residence for income tax purposes.30 Consider, for example, an individual domiciled in New Jersey who commutes regularly into New York City for work and owns a covered property. The individual might spend only 60 days at the covered property but nonetheless file and pay taxes as a New York City resident because the individual spends more than 183 full or part days in New York City. The surcharge could still apply if the Department determines that the New York City property does not qualify as the primary residence of the commuter; in any event, the Department's determination (and the applicable principles underlying that determination) should be made clear in the final regulations, particularly if the individual uses the New York City property as the address on the individual's resident personal income tax return.

The types of proof that the statute and proposed regulations suggest can be used to demonstrate primary residence reflect the lack of a clear definitional standard. The Department can look to the address used on a tax return or that is used for a STAR exemption or property tax abatement—generally intended to reflect that the residence is the individual's permanent home—or whether the individual used the property for a majority of days in the year—information more relevant to the concept of statutory residency. A covered owner might be able to demonstrate primary residence through one type of proof but not the other. We urge the Department to clarify whether a covered property in such situations is subject to the surcharge.

2. Domiciled in New York City but Not a Tax Resident

The personal income tax laws contain an exception to being taxed as a New York City resident, even when the individual is domiciled in New York City. If the individual spends 450 days of a 548-day period outside of the United States and only 90 days during that period in New York City (e.g., because the individual was temporarily transferred to London for employment reasons), the individual is taxed as a nonresident during that period, even though the individual remains domiciled in New York City.31

Under the language of the statute, it is unclear whether such an individual would be subject to the surcharge. As of January 5, 2026, the individual would still be domiciled in New York City and the property would likely still be the individual's permanent home. But the individual would not be taxable as a New York City resident as of that date and the individual may not have spent the majority of days at the residence in the immediate preceding year or even during the surcharge period, depending on when the 548-day period begins and ends. Clarification as to whether the surcharge would apply in these circumstances (and the underlying reasoning) would be helpful.

3. Domiciled in New York City but Limited Use of the Covered Property

There are many situations where an individual who is domiciled in New York City files as a New York City resident using a covered property as the primary address but does not use the residence for a majority of days. For example, the individual might have a number of residences in various locales and not spend a majority of days in any one location. The individual might be absent from New York City for six months or more for the individual's job or for military service. Or the individual might stay elsewhere while the covered property undergoes renovations.

The proposed regulations appear to use the address on a tax return as creating a presumption that the property is a primary residence, although not in the first fiscal year of the surcharge. Information such as a property tax abatement or the address on a driver's license or voter registration can also be used to demonstrate primary residence. But if the address on such records is not dispositive, the Department may rely on whether the covered owner occupied the property for a majority of days during a calendar year.32 The final regulations should clarify whether a property whose owner is domiciled in New York City and uses the property address on one or more New York State documents, but does not spend a majority of days at the property, would qualify for the exemption. For clarity, the final regulations also should describe the principles underlying the result reached.33

4. Primary Residence as of January 5th vs. During the Surcharge Period

The law aligns the surcharge period with the New York City property tax period. The fiscal year for both the surcharge and property tax runs from July 1 to June 30, with the surcharge payment for the first fiscal year payable with the second semi-annual installment of property taxes on January 1.34

Whereas the surcharge is forward-looking, the determination of whether the property is a primary residence is backward-looking. The determination of primary residence for the first fiscal year is made as of January 5, 2026 (prior to passage of theegislation), seemingly based on information for the 2025 calendar year. Moreover, while the surcharge is based on the fiscal year, proof of primary residence uses a calendar year.

This will create a disconnect between the period used for a primary residence determination and the period used to impose the tax. For example, consider a covered property that is leased to a tenant pursuant to an arm's-length lease. The tenant certifies that the tenant used the property as the tenant's primary residence as of January 5, 2026 based on the tenant's use of the property for a majority of days in 2025. The tenant's lease terminates March 1, 2026, when the tenant moves out, and after that date, no one uses the property as a primary residence. Based on the definitional period in the law, the property should still qualify for the exemption from the surcharge for the July 1, 2026 – June 30, 2027 period.

Conversely, consider the example of an individual who purchases a condo subject to the surcharge before January 5, 2026, but does not start using property until January 15, 2026, at which time the individual treats the property as the individual's primary residence, spends the majority of days there, and files as a full year resident of New York City for the 2026 and 2027 calendar years. Under the law, because this individual was not using the condo as the primary residence as of January 5, 2026, the property would not be exempt from the surcharge, even though it will be used for the entirety of the fiscal year as the primary residence of the owner.

Neither of the above examples seems to reflect a fair application of the surcharge based on the stated legislative intent to tax owners of second homes. We recognize that the taxable status date serves as a proxy and may reflect the practical challenges of making that determination prior to the due date of the surcharge. But the disconnect between the periods used to make the determination and for the imposition of the tax will result in situations where the surcharge is imposed on a property that is used as a primary residence for the surcharge's fiscal year but with no avenue for the taxpayer to request a refund. It will also result in situations where the property is determined to be exempt for the fiscal year based on the documentation that the residence was used as a primary residence for the immediate prior calendar year, even though it was no longer used as such during the surcharge period. The statute includes a six-year period for the Department to audit a primary residence certification or market assessment of the value of the residence in Phase Two of the surcharge[35] and this may offer the Department an avenue through regulation to redetermine the applicability of the surcharge based on the usage of the property during the actual surcharge period.

The January 5th taxable status date creates other complexities for implementation of the surcharge, especially in its first year. For example, suppose a purchaser bought a residence from a seller on January 15, 2026, and uses it as the primary residence. The purchaser will not be subject to the surcharge for the 2026-2027 fiscal year if the property was used as the primary residence of the seller on January 5, 2026, but will be subject to the surcharge if the property was not the primary residence of the seller on that date. In subsequent years of the surcharge, purchasers can obtain representations from sellers as to their former residency status, as well as appropriate indemnities for incorrect representations. However, for purchases (or even binding contracts signed) in the first part of 2026, purchasers will be subject to the surcharge under the law if the seller did not use the residence as a primary residence and a seller will have no obligation or incentive to cooperate with the purchaser in establishing the seller's primary residence before the sale.

B. Definition of a "Covered Owner"

A covered property is considered a primary residence if either the owner (or owners), an immediate family member (spouse, child, sibling, parent, grandparent or grandchild), or a tenant as part of an arm's-length lease uses the property as a primary residence.[36] A covered owner also includes the sole beneficiary (or beneficiaries) of a trust if the trust owns the property[37] and a majority owner of a corporation, partnership, or limited liability company if one of those entities owns the property.38 Here, too, there is a lack of clarity around who is included and excluded from the definition of "covered owner" and critical differences between the language in the statute versus the proposed regulations, particularly with respect to a property owned by a trust or another entity. We also note that the statute is not clear when referring to ownership by multiple individuals or multiple sole beneficiaries of a trust whether only one of the individual owners or beneficiaries need to use the property as that owner's or beneficiary's primary residence or whether they must all use it as their primary residence. Guidance would be helpful to clarify the statute's use of the plural in these instances.

1. Trust Ownership

Under Tax Law § 1351(d)(4), where real property classified as Class One or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation are held, in trust, a "covered owner" includes "a beneficial owner or owners of such trust, provided that such beneficial owner or owners are the sole beneficiaries of such trust."39 The "sole beneficiaries" requirement of Tax Law § 1351(d)(4) contrasts with Tax Law § 1351(d)(5), which requires the covered owners of property held through a partnership, corporation, or limited liability company to hold a majority interest. Tax Law § 1351(m) goes on to define a "primary residence," in relevant part, by reference to the use of the property as a primary residence of "one or more" of the covered owners or an immediate family member of "one or more" of the covered owners.

The foregoing provisions present a number of ambiguities and uncertainties. For example, it is unclear whether Tax Law § 1351(d)(4) is intended to draw a distinction between the "beneficial owner" of a trust and the "beneficiaries."40 It is also unclear whether "beneficiaries" includes current beneficiaries, as well as remainder beneficiaries, contingent beneficiaries (for example, beneficiaries who take ownership only if a trust is not revoked or only if a power of appointment is not exercised to defeat their interests), and remote contingent beneficiaries (for example, the beneficiaries who would take only if all descendants of the grantor are deceased). Finally, it is unclear whether all beneficial owners are required to use a property as a primary residence in order to avoid the tax. The "sole beneficiaries" requirement of Tax Law § 1351(d)(4) suggests that all beneficial owners of a trust must use a property as a primary residence; however, Tax Law § 1351(m), if read literally, permits merely one of potentially very many beneficial owners or an immediate family member of that beneficial owner to use a property as a primary residence, thereby potentially vitiating any effect that the requirement that the beneficial owners be the "sole beneficiaries" would have.41

The final regulations should resolve the foregoing uncertainties. We note that Tax Law § 1354(e) grants broad rule-making authority, including, by Tax Law § 1354(e)(1)(A), to address the death of an owner. As trusts often terminate upon the death of a beneficiary, the Department of Finance could rely on that authority in order to rationalize the statutory rules.42

The proposed regulations state that proof that "an individual is the sole beneficiary of a trust" may be established by the trust agreement and a trustee affidavit.[43] The statute thus contemplates that more than one beneficiary of a trust may be a covered owner while the proposed regulation's proof provision is framed in singular terms and can be read to indicate that covered owner status arises only in the case in which "an individual is the sole beneficiary." We are concerned with the proposed regulation's narrowing of the statutory language and believe that final regulations should conform to the statutory language to reflect that trust-owned property with multiple current beneficiaries could qualify for the exemption. Moreover, even if the final regulations are conformed to the statutory language, the regulations should clarify whether all current beneficiaries (or their immediate family members) must use the property as their primary residence.

In addition, the proposed regulations do not indicate whether both the current beneficiaries and remainder and contingent beneficiaries are considered "beneficial owners." That uncertainty is especially problematic for trust planning because beneficial interests often change over time. We recommend that regulations reflect that only current income beneficiaries be taken into account, even though trust agreements often provide for contingent beneficiaries as well as remainder, successor, and other future interests. [44] We do not think this approach would result in circumvention of the surcharge. However, if there is residual concern, an anti-abuse rule could be included to address situations where the principal purpose for the trust structure is to avoid imposition of the tax.

It also is common for individuals to transfer assets, including title to their homes, to a revocable trust to facilitate estate administration and avoid subjecting the property to probate, among other reasons. The revocable trust acts as a substitute for a guardianship during lifetime (as trustees are typically appointed to manage the grantor's assets for the benefit of the grantor if the grantor loses capacity) and also effectively becomes a substitute for the individual's Will following death. Generally, during the grantor's lifetime, the beneficiary of the revocable trust is the grantor. Under New York law, so long as the grantor is a beneficiary (or the trust is revocable), the trust assets are subject to the claims of the grantor's creditors. A revocable trust is treated as owned by the grantor during the grantor's lifetime.45 Following the grantor's death, the executor of the estate and the trustee of the trust may elect to treat the trust as part of the estate for income tax purposes46 and the trust property is includible in the grantor's gross estate.47 We therefore believe that, for covered property held by a revocable trust, the grantor should be treated as a covered owner. In any case, final regulations or other guidance should address such common estate planning structures used to hold real property.

2. Other Entities as Property Owner(s)

The statute defines a "covered owner" to include a majority owner of a partnership, corporation, or limited liability company ("LLC") where the covered property is held by such owner.48 The proposed regulations, however, provide a further limitation by defining "held" as owning an undivided fee interest in the property.49 Not only does this definition seem to go beyond the plain reading of the statute, but we believe it may serve to eliminate owners from the definition of covered owner who have been and will continue to use the property as a primary residence and are not engaging in the type of "gamesmanship" that the regulation purportedly is trying to discourage.50

In addition, by applying that definition of "held" only to corporations, partnerships, and LLCs, the proposed regulations impose a requirement that does not exist for property held by other types of entities, such as trusts, or directly by individuals. For example, consider a covered property that is owned 99 percent by an LLC (itself owned 90% by Mary, a natural person, and 10% by Carol, also a natural person) and 1 percent directly by Sam. Under the statute, Mary appears to be a covered owner, as the majority owner of the LLC. Sam is also a covered owner; the statute does not establish a minimum threshold of individual ownership to qualify as a covered owner. But under the proposed regulations, Mary would not be a covered owner, since the LLC does not own an undivided fee interest in the property, even though she owns a majority of the property through the LLC. But Sam would still be a covered owner since he has direct individual ownership, even though he owns only 1 percent of the property. We question whether that result is consistent with the statute. One option is for the regulations to set a minimum level of direct or indirect ownership in the property to be "held" by the LLC or other covered owner, so that an individual who owns a majority of the property indirectly can still qualify as a covered owner.

Neither the law nor the proposed regulations contemplate a covered property that is owned in a multi-tier structure and it is unclear whether such a property could qualify as exempt from the surcharge. For example, assume that a covered property is owned by an LLC. The LLC members are 1) John, an individual who owns 1 percent of the LLC and uses the property as the primary residence, and 2) a single member LLC that owns 99% of the property. The single member LLC is wholly owned by a trust, whose beneficial owner and sole beneficiary is John. Even though the ultimate owner of the covered property is one individual who uses it as a primary residence, it is not clear under the statute that the property would be exempt from the surcharge.

The law also does not define a "majority owner" of an entity and we would recommend that final regulations do so. For example, if a property is owned by an LLC, which is owned 50-50 by Mary and John, would they each qualify as covered owners or would neither of them qualify? If Mary owns 100% of the LLC's capital but gets none of the profits or losses, would she be considered a "majority owner?" In addition to clarification of the questions above, we would recommend that the regulations clarify that where the statute requires ownership by a "natural person," that should include ownership by an entity disregarded for income tax purposes. Likewise, the ownership interests of spouses or other family members all residing in a residence should be aggregated for purposes of any ownership threshold.

3. Tenant as Covered Owner

The statute defines a covered owner to include one or more lessees so long as the lease was negotiated for a period of one year or more at arm's length.51 The owner can submit proof that the property is the primary residence of the tenant as well as a copy of the lease to demonstrate that the property is exempt from the surcharge.52 The proposed regulations do not specify what type of proof of a tenant's primary residence would be accepted. Noting that it could be exceedingly difficult for lessors to obtain personal information from lessees regarding their personal living arrangements, we urge the Department to accept certification by the tenant (including through a provision in the lease), unless the owner knows or has reason to know that certification is incorrect.

We recognize that there are many permutations that will come up and the Department cannot issue guidance to govern all of these situations. We also recognize that the Department aims to prevent taxpayers from engaging in aggressive planning in an attempt to avoid the surcharge. Nevertheless, taxpayers frequently hold real property in a variety of structures for reasons that are unrelated to taxes or the surcharge (such as for estate planning reasons) and that do not reflect whether the property is used as a primary residence. Additional guidance for the most common of these arrangements, as well as some flexibility in applying the exemption where the intent of the statute is met and there is no indication of aggressive planning, would help affected taxpayers.

C. Administration Issues

1. 30-Day Period to Challenge the Initial Determination

As mentioned previously, the 30-day time period to challenge an initial determination of primary residence is exceptionally short, particularly in Year 1 of the surcharge and given the complexities of the determining primary residence by an agency that has never been tasked to make this type of determination previously. The 30-day appeal period runs from the date that the Department sends the initial determination.[53] We urge the Department to extend the period to appeal an initial determination, at least in the first year, as the process by which an owner can appeal is still not fully fleshed out and the electronic portal for filing the appeal has not yet been created.

In addition, the statute and proposed regulations state that the Department's failure to send notice of the initial determination does not prevent imposition of the surcharge.[54] We note that, if an owner does not receive notice, the statute seemingly leaves an owner with no possible appeal rights, because the filing of a judicial appeal requires an owner to have first gone through an administrative appeal of the initial determination.

2. Refund Provisions

The proposed regulations incorporate the rules and procedures for property tax refunds of overpayments and double payments under chapter 24.[55] The definition of an overpayment contained in 19 RCNY 24-01 might incorporate a refund claim based on an incorrect determination of primary residence, but this is not wholly clear. An overpayment is defined as "a payment that exceeds the amount of the real property taxes, water and sewer charges or assessments for which the payment was intended."[56] If a taxpayer discovers an overpayment, the taxpayer has six years after the date of the payment, or three years from a supreme court order or judgement, to file for a refund.[57] But these provisions do not expressly apply to refunds based on an incorrect determination of primary residence or covered owner status where the owner pays the surcharge amount to avoid a lien on the property. They also do not address the situation where an owner of a cooperative building incorrectly pays the surcharge on apartments that are used by covered owners as their primary residence. The Department might consider issuing regulations (or providing other guidance) to include limited circumstances in which an owner may seek a refund, apart from those already covered by the property tax laws.

3. Cooperative Property

The statute imposes the obligation on the cooperative building owners to collect and remit the surcharge amounts from owners of cooperative dwelling units, whereas the initial determination of primary residence is made with respect to the individual cooperative dwelling unit and an appeal of that determination is made by the owner of the cooperative dwelling unit.58 As such, the failure to fully remit the surcharge could result in a lien on the property. Particularly in the first year, when there may be a large number of owners of cooperative dwelling units appealing initial determinations of primary residence or issues with sending out timely notices, cooperative building owners may be caught in the middle, under a statutory obligation to remit the surcharge (subject to penalties for failing to do so) while under pressure from owners of dwelling units who believe their units are exempt but are still engaged in some sort of appeal. While a refund procedure might alleviate some of that tension, it still leaves cooperative building owners with significant liability while the parameters of the surcharge and its terms are worked out.

III. Conclusion

As noted throughout this Letter, we recognize that there will be issues that arise, particularly during the first year of the surcharge, that cannot be foreseen or easily addressed in advance by regulation or guidance. Nevertheless, we believe that additional guidance, in the form of regulations, or even, where appropriate, in the form of FAQs or a Department notice, could go a long way to clarify many open questions about the surcharge, particularly as to the definition of "primary residence." We believe that a 30-day period to appeal an initial determination is too short a window in the first year of the tax, as many owners may not immediately receive notice of the initial determination and may be ill-prepared to respond quickly with the information that is required for a timely appeal. We believe that additional guidance with examples to address common situations as laid out in this Letter, along with a longer time period to appeal an initial determination, will go a long way in reducing taxpayer confusion and unnecessary appeals.

1 This Letter may be cited as New York State Bar Association Tax Section Report No. 1531, "Report of the Tax Section of the New York State Bar Association Concerning Article 30-C of the New York Tax Law (City Surcharge on Property that Does Not Serve as a Primary Residence) and its First Year Administration" (July 8, 2026). The principal author of this Letter is Elizabeth Pascal with substantial assistance from Austin Bramwell, Noah Chase, Alan Halperin, and Richard Reinhold. Helpful comments were received from John Barrie, Paul Comeau, Lucy Farr, Larry Garrett, Deborah Paul, David Schizer, Michael Schler, Jodi Schwartz, Sara Zablotney, and Libin Zhang. This Letter reflects solely the views of the Tax Section and not those of its individual members or any other party. Opinions expressed are those of the Tax Section and do not represent those of the New York State Bar Association unless and until it has been adopted by its House of Delegates or Executive Committee.

2 We note that Rhode Island recently passed its own Non-Owner Occupied Property Tax Act, which imposes a tax on properties not occupied by its owner. While there are significant differences between the Rhode Island tax and the New York City surcharge, the Rhode Island Division of Taxation issued FAQs that provide clear definitions of "non-owner occupied" and other aspects of the law that should help taxpayers navigate the new tax. See Rhode Island General Laws 44-72. FAQs at https://tax.ri.gov/tax-sections/sales-excise-taxes/non-owner-occupied-property-tax.

3 Section 1, Part HH of Chapter 59 of the Laws of 2026.

4 Governor Hochul Announces Pied-à-terre Tax Proposal for Luxury Second Homes Valued at $5 Million or More, N.Y. Governor's Press Office (Apr. 15, 2026), available at: https://www.governor.ny.gov/news/governor-hochul-announces-pied-terre-tax-proposal-luxury-second-homes-valued-5-million-or-more.

5 A possible interpretation of this legislative history is that the Pied-a-Terre tax was intended to be imposed only on owners who are not New York City tax residents. We also note that public statements by Governor Hochul, Mayor Mamdani, and others about the Pied-a-Terre tax have also referenced the fact that some luxury properties are vacant for most of the year. See, e.g., id. ("If you can afford a $5 million second home that sits empty most of the year, you can afford to contribute like every other New Yorker.") (quoting Governor Kathy Hochul).

6 Tax Law § 1350; NYC Admin. Code § 11-3202.

7 Tax Law § 1351(b), (c), (e); NYC Admin. Code § 11-3203.

8 Tax Law § 1353(a).

9 Tax Law § 1353(b).

10 Tax Law § 1352(a)(1).

11 Tax Law § 1351(q).

12 Tax Law § 1352(a)(2).

13 Tax Law § 1352(b).

14 Tax Law § 1354(e).

15 Rules Relating to Surcharge on Certain Non- Primary Residences, proposed June 9, 2026 (to be codified at 19 Rules of the City of New York (RCNY) § 62-01 - § 62-07), at § 62-06(a)(2) [hereafter 19 R.C.N.Y. § 62- 06(a)(2) (proposed)]. The STAR (School Tax Relief) credit is a tax credit available for taxpayers who are New York State residents, use the property as their primary residence, and meet certain income criteria. See N.Y. Tax Law § 606(eee).

16 The proposed regulations are more specific than the statute in terms of stating the period to be used for purposes of determining whether a covered owner spent a majority of days during the year at the covered property. Whereas the regulation states that the "immediate prior year" will be used, the statute only refers only to "a calendar year." See Tax Law § 1352(a)(1). But since the determination of whether a covered property is a primary residence is made as of January 5th, the difference between the statutory language and proposed regulation may not have much practical meaning.

17 19 R.C.N.Y. § 62-06(a)(4) (proposed). It is not clear from the statute or proposed regulations whether the Department will send an initial determination to property owners only if the property is found to be subject to the surcharge or also if the property will be exempt.

18 Tax Law § 1352(a)(5); 19 R.C.N.Y. § 62-06(a)(4) (proposed).

19 19 R.C.N.Y. § 62-06(b) (proposed).

20 Id.

21 Id.

22 Id.

23 19 R.C.N.Y. § 62-06(c) (proposed).

24 19 R.C.N.Y. § 62-04(a) (proposed).

25 19 R.C.N.Y. 62-04(g) (proposed).

26 Tax Law § 1351(m); N.Y.C. Admin. Code § 11-3201.

27 An individual only need spend more than 183 full or part days anywhere in New York City – whether or not at that abode -- in New York City to be a statutory resident.

28 19 R.C.N.Y. § 62-06(b) (proposed).

29 See 20 N.Y.C.R.R. 105.20(d); see also Matter of Newcomb Estate, 192 N.Y. 238, 251 (1908).

30 See Tax Law § 605(b)(1)(B).

31 See Tax Law § 605(b)(1)(A). There are some additional nuances to the requirements that are not relevant to the discussion. In addition, a second exception to a domiciliary being taxed as a resident exists but would not be impacted by the Pied-a-Terre tax.

32 As discussed in the context of statutory residence, days spent at the property is not typically used to determine residency. We also note, as a matter of administration, that it will be very difficult to prove or disprove the number of days spent at the residence, as opposed to the number of days anywhere in New York City. Most records of location—cell phone; commuting records—do not show an exact location in New York City.

33 In addition to the individual's being subject to New York City income tax as a resident, it is also possible to view the individual as using the New York City property as the individual's primary residence, for example, by treating the maintenance of important personal belongings in the property during the interim as use thereof. The adoption of this view, however, could be seen as having implications for the treatment of the opposite case – i.e., a non-domiciliary of New York City who actually resides for the majority of days in the year at a New York City property before returning to the individual's non-New York City domicile. For example, if the individual maintains important belongings in the non-New York City domicile, an even-handed approach could treat this as a negative factor in determining whether the New York City property qualifies as a primary residence in the year.

34 Tax Law § 1354(b).

35 Tax Law § 1352(b)(2).

36 Tax Law § 1351(m).

37 Tax Law § 1351(d)(4).

38 Tax Law § 1351(d)(5).

39 Tax Law § 1351(d)(4).

40 It is common in trust law to refer to trust beneficiaries as the "beneficial owners" of trust property, in contrast to the trustees, who are considered the "legal owners." If Tax Law § 1351(d)(4) is intended to rely on that common idiom, then there is no distinction between a "beneficial owner" and a "beneficiary." If, however, no distinction is intended, then the proviso that the sole owners must also be the sole beneficiaries would be an empty tautology. We note that a similar potential tautology could be read in Tax Law
§ 1351(d)(5), which requires the covered owners of property held through a partnership, corporation, or limited liability company to hold a majority interest. This requirement is automatically satisfied in the case of any partner, shareholder, or member, if the requirement is intended to be met collectively by the equity owners of the entity, who by definition hold 100% of the equity interests and thus collectively satisfy the majority interest threshold.

41 Another uncertainty, addressed elsewhere in this Letter, is whether covered ownership is possible in the case of tiered ownership structures. For example, it is common for a trust to hold a residence through a limited liability company. Without rules that would permit the beneficial owners to be treated as the owners of the residence (as opposed to beneficial owners of the membership interests in the limited liability company), the tax would be imposed, even if the beneficial owners use the residence as a primary residence. If the trust is revocable, one solution, if the Department agrees to permit some tiered ownership structures to qualify for the exemption, would be to treat revocable trusts as disregarded.

42 Without purporting to resolve the contradictions in the statute, we note that one possible way of reconciling the "sole beneficiaries" requirement with Tax Law § 1351(m) is to require all the beneficial owners or their immediate family members to use the relevant property as a primary residence. In this view, for example, if the beneficial owners of a trust are considered to be a parent and that parent's children and grandchildren, the Pied-a-Terre tax would be inapplicable if the parent uses a trust-owned property as a primary residence, even if children and grandchildren did not so use the residence; this is because, while the children and grandchildren are beneficial owners and do not use the property as a primary residence, their immediate family member (i.e., the parent) does use the property as a primary residence. To take another example, a residence owned in trust for the benefit of siblings, who are considered beneficial owners, would not be subject to the tax, even if only one sibling is using the residence as a primary residence, as the siblings are considered immediate family members of each other.

43 19 R.C.N.Y. § 62-06(b)(2)(v) (proposed).

44 For example, a requirement that all contingent beneficiaries, including a contingent beneficiary that is a charitable organization, use the property as a primary residence would make it difficult for trust-owned properties to be exempt from the Pied-a-Terre tax.

45 See I.R.C. §676. Courts held that revocable trusts are treated as owned by their grantors before Congress confirmed that conclusion by statute. See Stoddard v. Eaton, 22 F.2d 184 (D. Conn. 1927); Catlin v. Comm'r, 25 B.T.A. 834 (1932); Boynton v. Comm'r, 11 B.T.A. 1352 (1928).

46 I.R.C. §645.

47 I.R.C. §2038.

48 Tax Law § 1351(d)(5).

49 19 R.C.N.Y. § 62-02 (proposed).

50 New York City Department of Finance, Notice of Public Hearing and Opportunity to Comment on Proposed Rules (https://rules.cityofnewyork.us/wpcontent/uploads/2026/06/Certified-Rules-Relating-to-Surcharge-on-Certain-Non-Primary-Residences.pdf), at 3 (stating that, "To prevent gamesmanship among owners of real property, [Section 62-02] would prevent individuals who hold a controlling interest in a business entity that holds only a fractional share of a property from receiving treatment as a 'covered owner' for purposes of the application of the primary residency exemption set forth in Administrative Code § 113205.").

51 Tax Law § 1351(m).

52 19 R.C.N.Y. § 62-06(b)(2)(iii) (proposed)

53 19 R.C.N.Y. § 62-04(d)(1) (proposed).

54 Tax Law 1352(a)(5); 19 R.C.N.Y. § 62-05(a)(4) (proposed).

55 19 R.C.N.Y. § 62-05(c) (proposed).

56 19 R.C.N.Y. § 24-01 (proposed).

57 Id.

58 Tax Law § 1354(c).

Opinions expressed are those of the Tax Section and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee

44. Cheryl Cumberbatch – Hilltop Village Co-op #4 – 7/8/2026 – Email

I am writing as a co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building.

The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholders triggered the liability and recover the money from them. This is a tax collection function.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document. It cannot create new categories of financial obligation. The Department has created a collection obligation and provided no collection mechanism.

Because the surcharge attaches as a lien on the cooperative building as a whole, every shareholder in the building is exposed to the consequences of one shareholder's failure to pay. This is not an edge case. It is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders must not bear the financial risk of one shareholder’s delinquency.

I recognize that the Department is working under significant time pressure but the co-op community is not asking for delay for its own sake. We are asking for rules that can actually be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

45. **Christine Wong – 7/8/2026 – Email**

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I recognize that the Department is working under significant time pressure but the co-op community is not asking for delay for its own sake. We are asking for rules that can actually be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

46. Martin Schwartzman – 7/8/2026 – Email

I am writing as a co-op shareholder to comment on the proposed rules related to the Pied-A-Terre Tax.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and the rules must reflect that difference.

A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building.

The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholders triggered the liability and recover the money from them. This is a tax collection function.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document It cannot create new categories of financial obligation. The Department has created a collection obligation and provided no collection mechanism.

Because the surcharge attaches as a lien on the cooperative building, every shareholder in the building is exposed to the consequences of one shareholder's failure to pay. This is not an edge case. It is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders must not bear the financial risk of one shareholder’s delinquency.

I recognize that the Department is working under significant time pressure, but the co-op community is not asking for delay for its own sake. We are asking for rules that can be administered, by real people and institutions, without producing outcomes that no one intended and no one should want.

47. **Desirée van Rensburg – 7/8/2026 – Email**

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48. **Angela Ferrell – 7/8/2026 – Email**

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49. **Alain Conze – 7/8/2026 – Email**

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50. **Nicholas R. Combs, Esq and Jarrett Kalish, Esq – Kalish Law – 7/8/2026 – Email**
We respectfully submit the following comments on the pied-à-terre surcharge.

We recommend that DOF establish a streamlined private letter ruling process so that subjected taxpayers may seek expedited clarity on or challenge the surcharge, supported by additional staffing and approved overtime for City attorneys and staff.

An expedited process would provide taxpayers with timely certainty rather than allowing disputes to accumulate over time. It would also reduce downstream costs to the City, including fewer audit-stage disputes and less strain on the Law Department, and would improve the likelihood that the surcharge is implemented successfully.

Mechanisms of this kind exist in some capacity at the state, city, and federal levels. This administration has demonstrated a willingness to create mechanisms that expedite administrative matters, as evidenced by Mayor Mamdani's SPEED Task Force, and we believe the same approach is warranted here.

At the federal level, the IRS permits expedited handling of letter rulings upon a showing of compelling need (Rev. Proc. 2026-1, § 7.02(4)). Following the Tax Cuts and Jobs Act, the IRS also issued rapid safe-harbor guidance rather than relying solely on case-by-case rulings, an approach DOF may wish to consider alongside the expedited track proposed above.

51. **Laurie Schustr – 7/8/2026 – NYC Rules**
How could this possibly be considered to be implemented retroactively?!? That gives people no ability to plan. 4% is incredibly aggressive. I had heard the minimum threshold might be $5,000,000 but $1,000,000? I thought the City was going after billionaires. But doing this and making it retroactive kills people. If you don't want empty apartments, that is fine but then implement it effective Jan 1 2028 so people can sell.

52. **Andreas Combuechen – 7/8/2026 – NYC Rules**
Appreciate the intent behind this but this implementation is flawed. First, the Governor has been public that the floor would be $5,000,000. Now it is $1,000,000? How is that even possible with no public announcement or awareness? And this cannot be retroactive. This leaves no ability to plan. Implement in 2027 sure but not retroactive.

Good intention and idea but keep to what was stated with $5,000,000 as $1,000,000 was never publicized. And implement moving forward.

53. **P from Brooklyn – 7/8/2026 – NYC Rules**

As a decades-long primary resident and shareholder in a small (4-unit) cooperative, I have several concerns, but two most particularly:

First, our market value, when allocated by shares, translates to about one-third of sales value, not one-fifth. For example, the most recent apartment sale in our building was $1.6 million for an apartment with a 2027 market value per DOF of $551,850. Reviewing more sales history for our building turned up more sales-to-market ratios of similar values.

Second, making the cooperative the responsible party for collecting this pied-a-terre tax puts a terrible potential burden on all of the shareholders, when that burden should be limited to the wealthy owners of the highly valued pied-a-terres. Having to potentially assess many people of modest means for whom these are their primary (and mostly, only) residences is an unreasonable burden. How many of us may be forced from our own homes because we can't afford to pay the wealth taxes owed by the intended targets of this tax? Why must WE have this responsibility? Especially in very small cooperatives with very few people to share this burden, this feels very wrong.

54. **Benjamin Williams - Rosenberg & Estis, P.C. – 7/9/2026 – NYC Rules**

Since 1975, Rosenberg & Estis, P.C. has represented owners, developers, cooperative and condominium boards, managing agents, and other stakeholders in connection with New York City real estate matters. As the largest law firm in New York City focused exclusively on real estate law, we have extensive experience with the legal, practical, and administrative issues affecting New York City property owners. I submit these comments based on my experience representing taxpayers in New York City property tax matters, including thousands of appearances before the New York City Department of Finance and the New York City Tax Commission.

On behalf of our property-owner and tax-paying clients, we respectfully submit these comments regarding the Department of Finance ("DOF")'s proposed rules implementing City Surcharge on Property That Does Not Serve as a Primary Residence (the "Pied-à-Terre Tax"). While we appreciate DOF's efforts to establish a framework for administering the surcharge, as well as efforts to provide clarity and structure to the program, we urge several revisions to ensure the Pied-à-Terre Tax does not create significant compliance challenges, and risk unintended consequences for property owners and the City's housing market. Below is a summary of our key points:

1. Add an Innocent Purchasers Provision

Issue
Absent an exception, a buyer who acquires a covered property during a taxable year and uses it as a primary residence may nevertheless be subjected to surcharge liability based entirely on the prior owner's non-primary-residence use of the property.

Concern

Without clearer standards, buyers could face uncertainty regarding prior noncompliance, filing obligations, or surcharge liability attributable to a previous owner. DOF has addressed similar concerns in other contexts. For example, its RPIE regulations protect innocent purchasers from certain penalties arising from a prior owner's failure to comply with filing requirements. See 19 RCNY § 33-03(a)(7). We therefore urge DOF to adopt a similar safe-harbor provision here, protecting bona fide purchasers who acquire property without actual or constructive notice of a prior owner's noncompliance.

Requested Revision

To prevent inequitable results, the Department of Finance should create a new section in the Rules to create an "Innocent Purchaser" carve-out similar to 19 RCNY § 33-03(a)(7). For example:

“Where title to a covered property is transferred, and the purchaser, at the time of acquisition, neither knew nor reasonably should have known that such property was subject to the surcharge imposed by this chapter, the Commissioner may exempt such purchaser from liability for the surcharge for the remainder of such tax year and may waive or cancel any associated penalty, interest, or lien. Such relief shall be available only upon application, in the form and manner prescribed by the Department, filed no later than thirty days after the purchaser receives notice that the property is a covered property subject to such surcharge. The purchaser shall have the burden of demonstrating reasonable lack of knowledge and the absence of participation in any prior noncompliance.”

2. Continuing Exclusion Certification for Pied-à-Terre Tax

Issue

Primary residency is an annual determination and property owners who have already established their eligibility for an exclusion apparently must repeatedly file substantially identical documentation each year to maintain that exclusion based on the following, as example:

•Primary residency of an immediate family member;

•Primary residency of a tenant;

•Primary residency of a sole beneficiary where the property is held in trust; or

•Primary residency of the majority-interest owner of a corporate entity owner.

Concern

The current process appears to require repeated submission and review of documents that have already been examined and approved in prior years. Even when there has been no change in ownership, occupancy, residency status, or any other material fact, property owners are seemingly required to undergo an annual review process and receive a new determination notice. This results in unnecessary administrative costs and burdens for both taxpayers and the DOF.

Requested Revision

Once the Department determines that a property qualifies for exclusion, instead of requiring a new submission annually, the covered owner should be permitted to submit a Certification of Continued Use (CCU), similar to the process used by DOF for ICIP, ICAP, and Not-for-Profit tax benefits. For example:

“Once the Department has determined that a property qualifies for exclusion under the Pied-à-Terre Tax and has approved the covered owner’s exclusion, such exclusion shall remain in effect from year to year unless there is a material change in the ownership, occupancy, use, or other facts relevant to eligibility. In lieu of filing a new exclusion submission annually, an owner of an excluded property shall submit a Certification of Continued Use ("CCU") in a form prescribed by the Department.”

3. Limit Power of Attorney Requirements for Licensed Attorneys

Issue

The proposed rules require that a determination challenge submitted by a person other than the covered owner be accompanied by an executed power of attorney. This requirement appropriately addresses non-attorney representatives, but imposes an unnecessary administrative burden when the submission is made by a licensed attorney.

Concern

Licensed attorneys are authorized to act on behalf of their clients and are bound by the New York Rules of Professional Conduct. Requiring a separately executed power of attorney solely for the submission of a challenge or supporting documentation is unnecessary and duplicative.

Requested Revision

The Department should distinguish between licensed attorneys and non-attorney representatives for purposes of the power of attorney requirement. For example:

“A challenge, application, certification, or other submission made on behalf of a covered owner by a licensed attorney admitted to practice in the State of New York shall not be required to be accompanied by a power of attorney. A submission signed by a licensed attorney shall constitute sufficient evidence that the attorney is authorized to act on behalf of the covered owner with respect to the matter submitted. A power of attorney shall be required for any representative who is not a licensed attorney. Nothing herein shall limit the Department's authority to request additional documentation reasonably necessary to verify a representative's authority to act on behalf of a covered owner.”

4. Create a Contemplated Use Exclusion

Issue Absent an exception, a taxpayer who acquires a covered property during a taxable year with the intent to use it as a primary residence may nevertheless be subject to the surcharge if the property is not yet occupied due to the acquisition process, necessary renovations, or relocation.

Concern

As drafted, the proposed rules create a gap period during which a covered owner has purchased a residence for use as a primary residence but is unable to satisfy the occupancy requirements because the property is not yet ready for occupancy or the relocation process has not been completed.

Requested Revision

The Department should adopt a contemplated-use standard similar to that used in not-for-profit exemptions. For example:

“A covered owner shall be eligible for a contemplated-use exclusion upon demonstrating an intent to occupy the property as a primary residence within one year of acquisition. Such intent may be established through documentation including, but not limited to:

•A contract of purchase or deed;

•Building permits or construction contracts; and

•Evidence of relocation, including employment-related transfers or lease terminations.”

5. Clarification on Class One Property Primary Residency Determination

Issue

Although the proposed rules appear to evaluate eligibility at the property level, they do not expressly address the treatment of Class One properties containing multiple units.

Concern

Specifically, it is unclear whether a property qualifies for the exclusion where one dwelling unit is used as a qualifying primary residence and another unit is not. Clarification on this point would help ensure consistent administration of the surcharge and provide certainty to covered owners.

Requested Revision

To provide clarity regarding the treatment of Class One properties containing multiple units. For example:

"For purposes of the surcharge, a Class One property shall be deemed excluded for the applicable tax year if at least one dwelling unit within the property is occupied as a qualifying primary residence. Where such qualification is established, the exclusion shall apply to the entire property and not solely to the qualifying dwelling unit.”

6. Clarify § 62-02 to Address Evasion While Preserving Lawful Ownership Arrangements

Issue

Proposed 19 RCNY § 62-02 appears intended to prevent “gamesmanship” by denying “covered owner” status to individuals who hold a controlling interest in an entity that owns only a fractional share of a property. The proposed rule provides that a Class One property, a residential condominium dwelling unit, or cooperative shares are “held” by a partnership, corporation, or LLC only where that entity holds an undivided fee interest in the property or all of the cooperative shares, and that the majority partners, shareholders, or members of such entity will be deemed covered owners only in that circumstance. As drafted, however, the rule appears to impose a categorical 100%-entity-ownership requirement that is not expressly contained in Administrative Code § 11-3201's definition of "covered owner," which recognizes majority owners of partnerships, corporations, and LLCs as covered owners where the property or cooperative shares are held by such entity.

Concern

While DOF may properly seek to prevent abusive fractional ownership structures created for the purpose of avoiding the surcharge, proposed § 62-02 appears to sweep much more broadly. For example, if a property is owned 51% by A LLC and 49% by B LLC, and A LLC is wholly owned by John Smith, the proposed rule appears to prevent John Smith from being treated as a covered owner even if he, or an immediate family member, actually uses the property as a primary residence. That result would cause the surcharge to turn on the form of title rather than on the actual statutory question: whether the covered property serves as a primary residence. The same concern applies to legitimate joint ventures, tenants-in-common, family ownership structures, estate-planning structures, and financing structures that were not created to avoid the surcharge. The statute imposes the surcharge on covered property that is "not a primary residence," and defines primary residence to include use by a covered owner, an immediate family member of a covered owner, or a qualifying lessee/sublessee under a bona fide arm's-length lease of at least one year. A categorical rule that disregards actual majority beneficial ownership and actual primary-residence use would be overinclusive and could deny primary-residence treatment in non-abusive situations

Requested Revision

DOF should withdraw or narrow proposed § 62-02 so that it targets only abusive fractional ownership arrangements, without disqualifying legitimate ownership structures. The rule should provide that a natural person may be treated as a covered owner where that person directly or indirectly owns or controls a majority beneficial interest in the covered property, whether through one or more entities, unless DOF determines that the ownership structure was created or maintained for the principal purpose of avoiding the surcharge. DOF should also clarify that § 62-02 does not limit the separate statutory tenant primary-residence exemption, so that a property owned by multiple entities, tenants-in-common, or joint-venture participants may still be treated as a primary residence where it is occupied by a natural-person lessee or sublessee pursuant to a bona fide, arm's-length lease with a term of not less than one year. For example:

"For purposes of determining whether an individual is a covered owner under Administrative Code § 11-3201, DOF may consider direct and indirect beneficial ownership of the covered property, including ownership through one or more partnerships, corporations, limited liability companies, trusts, or other entities. An individual who directly or indirectly holds a majority beneficial interest in a covered property shall not be denied covered-owner status solely because the covered property is owned by more than one person or entity, unless DOF determines, based on credible evidence, that the ownership structure was created or maintained for the principal purpose of avoiding the surcharge. Nothing in this section shall limit an owner's ability to establish that a covered property or residential cooperative dwelling unit is the primary residence of a qualifying lessee or sublessee under Administrative Code § 11-3201."

7. Clarify Cooperative Collection Obligations for Unit-Specific Surcharges

Issue

The proposed rules should clarify the collection rights and obligations of cooperative corporations when a Pied-à-Terre surcharge is imposed with respect to a particular residential cooperative dwelling unit. Administrative Code § 11-3205(f) provides that, "notwithstanding any provision of law to the contrary," where the Department adds a surcharge for a residential cooperative dwelling unit to the statement of account of a residential cooperative property, "each such surcharge shall be collected by the cooperative corporation from the tenant-stockholder" whose shares are allocated to that dwelling unit. However, the proposed rules do not specify how the cooperative corporation is to bill, collect, or enforce payment of that unit-specific surcharge from the responsible tenant-stockholder.

Concern

Without a clarifying rule, tenant-stockholders who are assessed the surcharge may argue that the cooperative corporation lacks authority under its proprietary lease, by-laws, offering plan, or other governing documents to charge the surcharge back to the affected unit-owner or to pursue collection remedies if the surcharge is not paid. That uncertainty creates a serious practical problem. The surcharge is imposed because of the status of a particular residential cooperative dwelling unit, but it is added to the statement of account of the cooperative corporation. If the responsible tenant-stockholder refuses to pay, the cooperative corporation remains exposed to City collection remedies, including interest, liens, tax lien enforcement, and other proceedings, and the economic burden may be shifted unfairly to all other shareholders. That result would be inconsistent with the statutory command that each such surcharge be collected from the tenant-stockholder whose interest is represented by the shares allocated to the subject dwelling unit. It would also create unnecessary disputes between co-op boards and shareholders, and may create hardship on cooperative corporations.

Requested Revision

DOF should add a new rule expressly confirming that, to the fullest extent permitted by Chapter 32 of Title 11 of the Administrative Code, a cooperative corporation is authorized and required to bill and collect each residential cooperative dwelling unit surcharge from the tenant-shareholder whose shares are allocated to that dwelling unit, notwithstanding any contrary or inconsistent provision in a proprietary lease, by-laws, house rules, offering plan, or other governing document. The rule should further state that the tenant-shareholder is responsible for the surcharge, together with any interest, penalties, and reasonable costs incurred by the cooperative corporation by reason of that tenant-shareholder's failure to pay, and that the cooperative corporation may collect the amount as a unit-specific charge or assessment collectible through the same billing and collection procedures the cooperative corporation uses for maintenance, assessments, real estate tax charges, or other amounts payable by tenant-shareholders. For example:

§ 62-08 Collection of surcharge by residential cooperative corporations. Where the department adds to the statement of account of a residential cooperative property a surcharge imposed with respect to a residential cooperative dwelling unit pursuant to Administrative Code § 11-3205(a), such surcharge shall be billed to and collected from the tenant-shareholder whose interest in such residential cooperative dwelling unit is represented by shares of stock in the cooperative corporation. Such obligation shall apply notwithstanding any contrary or inconsistent provision in any proprietary lease, by-laws, offering plan, house rules, or other governing document of the cooperative corporation. The cooperative corporation may bill such surcharge as a separate unit-specific charge or assessment and may collect such amount, together with any applicable interest, penalties, and reasonable costs of collection, through the same billing and collection procedures available to the cooperative corporation for maintenance, assessments, real estate tax charges, or other amounts payable by tenant-shareholders, to the fullest extent permitted by law. Nothing in this section shall limit the obligation of a cooperative corporation to pay any surcharge added to the statement of account of the residential cooperative property or the authority of the department to administer and enforce the surcharge pursuant to Administrative Code Chapter 32.

Because this issue is central to the statute's administration, if DOF believes it lacks rulemaking authority to adopt the full clarification requested above, DOF should recommend a technical legislative amendment expressly providing that a unit-specific cooperative surcharge is deemed a charge payable by the tenant-shareholder to the cooperative corporation and is enforceable by the cooperative corporation notwithstanding any contrary proprietary lease, by-law, or other governing-document provision

8. Phase One Co-op/Condo Apartments Worth Less Than $5M

Issue

The proposed rules do not provide a mechanism for a Phase One cooperative or condominium apartment with a DOF "phase one market value" of $1 million or more to be excluded from the surcharge where the owner can prove that the apartment's actual sales-based market value is less than $5 million. This is an important gap because the Legislature expressly found that the surcharge is intended to apply to second homes "with values of $5 million or more when measured by the sales of comparable properties," while recognizing that Phase One uses existing DOF valuation methods only as a transitional measure. The proposed rules acknowledge the statutory Phase One thresholds but do not create a clear rebuttal process for owners whose DOF-derived Phase One value is at least $1 million even though comparable sales demonstrate that the apartment is below the $5 million market-value level that the law was designed to reach.

Concern

Without such a rule, the surcharge may be imposed on cooperative and condominium apartments that are not $5 million homes in the ordinary market sense. The $1 million DOF market value threshold for Phase One is a proxy, not a direct sales-based valuation, and it may over-identify apartments for the surcharge because DOF's current valuation methodology for co-ops and condos does not necessarily correspond to the price at which the apartment would sell. This overidentification is especially true for tax class 2C co-ops and condos. This creates a particularly unfair result during Phase One: a co-op or condo apartment with credible comparable-sales evidence showing a value below $5 million could be taxed solely because its DOF Phase One market value exceeds $1 million, while a Class One property with a market value below $5 million would not be taxed. That result is inconsistent with the Legislature's stated purpose and will likely increase unnecessary valuation disputes before DOF, the Tax Commission, and the courts. The statute already permits review where the market value determined for surcharge purposes is excessive or unlawful, including where the property is not subject to the surcharge, and the rules should make clear how that review applies to apartments that fall below $5 million on a sales-comparable basis.

Requested Revision

DOF should revise the proposed rules to provide that, for fiscal years beginning July 1, 2026 and July 1, 2027, a residential condominium dwelling unit or residential cooperative dwelling unit with a Phase One market value of $1 million or more will be excluded from the surcharge if the owner, tenant-stockholder, cooperative corporation, or duly authorized representative proves that the apartment's sales-based market value is less than $5 million as of the applicable taxable status date. Acceptable proof should include, without limitation, a recent arm's-length sale or contract of sale, a certified appraisal, and/or comparable sales of similar cooperative or condominium apartments, with appropriate adjustments for location, size, condition, building attributes, views, outdoor space, amenities, restrictions, maintenance/common charges, financing limitations, and other relevant market factors. If such proof is accepted, DOF should remove the unit from the surcharge roll, withdraw any notice of surcharge, and refund or credit any surcharge already paid. For example:

"For fiscal years beginning on July 1, 2026 and July 1, 2027, a residential condominium dwelling unit or residential cooperative dwelling unit shall not be subject to the surcharge if the owner, tenant-stockholder, cooperative corporation, or duly authorized representative establishes to the satisfaction of the department, or upon review by the Tax Commission, that the sales-based market value of such dwelling unit is less than five million dollars as of the applicable taxable status date, notwithstanding that the Phase One market value determined by the department is equal to or greater than one million dollars. This subdivision provides an additional, non-exclusive method for proving that the Phase One market value determined by the department is excessive and does not limit or preclude any owner, tenant-shareholder, cooperative corporation, condominium board, or duly authorized representative from relying on any other competent evidence, valuation method, appraisal analysis, allocation method, or legal ground to prove that the market value determined by the department is excessive or unlawful."

If DOF concludes that it cannot create a full exclusion by rule, DOF should at minimum revise the rules to state expressly that comparable-sales evidence showing a value below $5 million is a valid basis for challenging the Phase One market value as excessive or unlawful under Administrative Code § 11-3206, and DOF should support a technical legislative amendment confirming that the Phase One $1 million co-op/condo threshold is rebuttable where the apartment's sales-based market value is below $5 million.

9. Phase One Co-op/Condo Market Value Shall Not Exceed 20% of the Sales-Based Value

[As a broader alternative to #8 above.]

Issue

The proposed rules should also provide that, for Phase One cooperative and condominium valuation challenges, credible sales-based evidence may be used as alternative proof that DOF's Phase One market value is excessive. The Legislature found that the surcharge is intended to apply to second homes with values of $5 million or more when measured by comparable sales, while permitting a temporary Phase One system using current valuation methods and corresponding surcharge rates. The statutory structure for cooperative and condominium apartments appears to translate sales-based value into a 20% Phase One proxy: $1 million, $3 million, and $5 million Phase One thresholds correspond to $5 million, $15 million, and $25 million sales-based thresholds, and the Phase One co-op/condo rates of 4.0%, 5.25%, and 6.5% are five times the corresponding Phase Two rates of 0.8%, 1.05%, and 1.3%.

Concern

If the Phase One DOF market value is treated as conclusive unless the owner proves a sales-based value below $5 million, then cooperative and condominium apartments may still be materially overtaxed during Phase One even when reliable sales evidence shows that DOF's Phase One value exceeds the statute's apparent 20% transitional proxy. For example, if a condominium apartment has a DOF Phase One market value of $2 million but credible comparable-sales evidence establishes that its actual sales-based market value is $9 million, the Phase One proxy value should be $1.8 million, not $2 million. Similarly, if a unit has a DOF Phase One market value slightly above $3 million but credible sales evidence supports a sales-based value below $15 million, the unit should not be pushed into the higher 5.25% surcharge tier. This approach also preserves the original below-$5 million exclusion request: if the proven sales-based value is less than $5 million, then 20% of that value is less than $1 million, and the unit should fall below the Phase One co-op/condo threshold. The Administrative Code expressly allows owners to challenge the surcharge market value as excessive or unlawful, but the proposed rules do not clearly state that comparable-sales evidence may be used for that purpose during Phase One.

Requested Revision

DOF should revise the proposed rules to provide that, for fiscal years beginning July 1, 2026 and July 1, 2027, the Phase One market value of a residential condominium dwelling unit or residential cooperative dwelling unit may be challenged as excessive by submitting credible evidence of the unit's sales-based market value. Where such evidence establishes that the unit's sales-based market value is less than five times the Phase One market value determined by DOF, the Phase One market value should be reduced to an amount not greater than 20% of the proven sales-based market value. If the resulting Phase One market value is less than $1 million, the unit should not be subject to the surcharge for that fiscal year. For example:

"For fiscal years beginning on July 1, 2026 and July 1, 2027, an owner of a residential condominium dwelling unit or residential cooperative dwelling unit, a cooperative corporation, or a duly authorized representative may establish that the Phase One market value determined by the department is excessive by submitting credible evidence of the sales-based market value of such dwelling unit. Such evidence may include, without limitation, a recent arm's-length sale or contract of sale, a certified appraisal, or comparable sales of similar residential condominium dwelling units or residential cooperative dwelling units. This subdivision provides an additional, non-exclusive method for proving that the Phase One market value determined by the department is excessive and does not limit or preclude any owner, tenant-shareholder, cooperative corporation, condominium board, or duly authorized representative from relying on any other competent evidence, valuation method, appraisal analysis, allocation method, or legal ground to prove that the market value determined by the department is excessive or unlawful. Upon a determination by the department, or upon review by the Tax Commission pursuant to Administrative Code § 11-3206, that the sales-based market value of such dwelling unit is less than five times the Phase One market value determined by the department, the Phase One market value shall be reduced to an amount not greater than twenty percent of such sales-based market value. If the resulting Phase One market value is less than one million dollars, such dwelling unit shall not be subject to the surcharge for such fiscal year."

Conclusion We respectfully urge DOF to adopt rules in order to make the Pied-à-Terre Tax workable, fair, and aligned with the legislative intent of imposing a surcharge on covered owners who maintain high-value New York City residences as non-primary residences. We appreciate the opportunity to submit these comments and look forward to continued collaboration

55. **Philip Tucker, Esq. – 7/9/2026 – NYC Rules**

    This comment pertains to the application of "excluded property" to any parties selling condominium units or cooperative apartments pursuant to an offering plan.

    Administrative Code Section 11-3205(i)(1)(iv) authorizes the department of finance to promulgate rules necessary for implementation of the non-primary residence surcharge, including to establish when the sale of a residential condominium dwelling unit, or a transfer of an economic interest in a residential cooperative dwelling unit, has occurred for purposes of whether such residential condominium or cooperative dwelling unit constitutes "excluded property".

    The definition of "excluded property" under Section 11-3201 includes a class one or class two property that is a residential condominium dwelling unit or residential cooperative dwelling unit that is subject to an offering plan required by section 352-e of the General Business Law and such unit has not been sold, or an economic interest in such unit has not been transferred, by the person, partnership, corporation, company, trust or association who has filed such plan.

    It seems clear that the legislature intended for a party that is offering residential condominium units or residential cooperative dwelling units pursuant to a duly filed offering plan to be exempt from the surcharge. Such an exemption applies because the unsold dwelling units in question remain empty not because the owner has elected to make his or her primary residence outside of New York City, but because the dwelling unit needs to remain empty in anticipation of sale. As sales volume varies from season to season, it is possible that unsold dwelling units may remain vacant for an extended period.

    The department of finance should use its authority under 11-3205(i)(1)(iv) to eliminate any risk of confusion and explicitly provide that a sale or transfer of an economic interest from (a) the sponsor entity that originally filed the offering plan, to (b) a successor sponsor or holder of unsold units or unsold shares that continues to offer the unsold units or unsold shares to residential purchasers pursuant to a duly filed amendment to the offering plan, does not constitute a "sale" or "transfer" for purposes of loss of the exemption, and that such successor sponsor or holder of unsold units or unsold shares remains exempt from the surcharge.

Without clarification of the occurrence of an exempted sale or transfer under an offering plan, which clarification the department of finance has been expressly authorized to make, the legislation would have an unintended and burdensome impact on parties who have succeeded to the interest of a sponsor under a duly filed offering plan, without furthering the stated intent of the surcharge.

56. **june barwick, treasurer, 14th Ward Industrial Building – 7/9/2026 – NYC Rules**
    Small cooperative buildings (class 2C, less than 10 units) should not have PAT eligibility and tax amount calculated at $1 million and 4% of market value. this tax is meant to tax high-end properties with absentee owners.

    In addition, most tax changes are published in advance. the new tax should be based on status as of January 5, 2027 and implemented during the NYC 2027-28 tax year to allow taxpayers time to adjust their taxable status if they choose.

57. **Warren Dubitsky – 7/9/2026 – NYC Rules**
    I am a partner at the firm Herman Katz LLP, and my practice is primarily devoted to property tax. I also serve as Chair of the NYC Bar Association's Tax Certiorari & Condemnation Committee.

    I submit the following comments regarding the proposed rules from the Department of Finance ("DOF) regarding the administration of the newly enacted tax on certain non-primary residences:

    1) Communication Issues:
    While the proposed rules require DOF to transmit notice to covered unit owners, the notices should be required to provide specific information to the affected owner including but not limited to:
    -The basis for DOF's belief that the property is not a primary residence
    -An explanation of the determination of value that the City relied upon to establish that the property met the required valuation threshold
    -The projected amount of the tax
    -Describe the administrative and legal appeal options available to an owner affected by the tax and the deadlines to file those appeals

    2) Clarification regarding "edge" case scenarios:

DOF should provide rule guidance regarding specific edge cases that are likely to arise while administering this tax. These include but are not limited to:
-How an innocent purchaser who intends to use a property as a primary residence can avoid being subject to the tax upon purchase of a property that had previously been subject to the tax, including clarification that the new owner would not be subject to retroactively applied taxes or penalties based on the actions/residency status of a prior owner. This is especially important given the 6 year lookback audit provision in the statute.
-Clarification regarding the treatment of a property subject to the tax when an owner who uses the property as a primary residence dies or is ill.
-Rules regarding the treatment of a property that is under construction/renovation by an owner who intends to use the property as a primary residence once the construction work is complete.

3) The City needs to provide guidance regarding the administrative review process for the application of the tax:
While the Rules that are the subject of the comment period today are being issued by DOF, the statute that authorizes the tax specifically designates the NYC Tax Commission as the body charged with reviewing and correcting assessments made pursuant to the administration of this tax. To my knowledge, the Tax Commission has not yet proposed any rules regarding how that process would be conducted and we are less than 60 days away from the deadline for DOF to issue initial determinations regarding this tax.

58. **Nicholas R. Combs, Esq and Jarrett Kalish, Esq – 7/9/2026 – NYC Rules**
We respectfully submit the following comments on the pied-à-terre surcharge.

We recommend that DOF establish a streamlined private letter ruling process so that subjected taxpayers may seek expedited clarity on or challenge the surcharge, supported by additional staffing and approved overtime for City attorneys and staff. An expedited process would provide taxpayers with timely certainty rather than allowing disputes to accumulate over time. It would also reduce downstream costs to the City, including fewer audit-stage disputes and less strain on the Law Department, and would improve the likelihood that the surcharge is implemented successfully.

Mechanisms of this kind exist in some capacity at the state, city, and federal levels. This administration has demonstrated a willingness to create mechanisms that expedite administrative matters, as evidenced by Mayor Mamdani's SPEED Task Force, and we believe the same approach is warranted here.

At the federal level, the IRS permits expedited handling of letter rulings upon a showing of compelling need (Rev. Proc. 2026-1, § 7.02(4)). Following the Tax Cuts and Jobs Act, the IRS also issued rapid safe-harbor guidance rather than relying solely on case-by-case rulings, an approach DOF may wish to consider alongside the expedited track proposed above.

59. Tener Consulting Services – 7/9/2026 – NYC Rules

Please see attached comments to the proposed rule.

Tener Consulting Services is a tax consulting firm assisting real property owners with tax and valuation matters. Since the announcement of the so-called "pied-à-terre" surcharge, our firm has had several conversations with clients that own covered property as defined in §1351(e) of the Administrative Code who are quite concerned that providing the documentation necessary to establish themselves as a covered owner to the Finance Department and/or the Tax Commission will create multiple opportunities for the release of personal information that is tax secret under §697 (e) of the Tax Law. Yet nowhere in Article 30-C of the tax law nor in Chapter 32 of Title 11 of the New York City Administrative Code is there an affirmative statement that information provided to support a claim of primary residence is subject to the tax secrecy that their original tax returns are covered by.

The sensitivity of the information that will be provided is no different from what is provided on the RPIE. At a minimum, the Department of Finance should state that information provided will be afforded the same degree of protection that IT-201 filers have under §697 (e) of the tax law for NY State returns and RPIE filers have under §11-208.1 of the NYC Administrative Code. An owner that squarely qualifies to be exempt from the surcharge should not have to ask themselves, "is it worth it to me to risk the disclosure of my personal or family information to avoid the surcharge?"

We fully support the comments made by stakeholders urging for clarification regarding commonly occurring scenarios, for example, treatment of units under renovation and/or combinations, a vacant apartment listed for lease as of the taxable status date, and death of a covered owner, among others. For such situations, we support the recommendation that the Department look to its current "contemplated use exemption" for not-for-profit organizations so as to avoid unfair application of the surcharge when the unit is intended to be a primary residence but may not be for good reason.

Finally, we ask that the Department of Finance clarify how covered owners may preserve their right to challenge residency status following an adverse determination by the Tax Commission, such that such claims will not prejudice ongoing challenges to the assessed value and/or market value.

Thank you for your consideration of these points.

60. **Beth Haroules, President, 120 West 70 Owners Corp. – 7/9/2026 – NYC Rules**
Please see our attached comments. We also join in the comments submitted by Roberts & Holland, as well as those submitted by CNYC. We also note that, while property tax reform has long been considered one of NYC's multiple 3rd rail political issues, there is no disputing that the current property tax system in NYC is entirely inequitable. Prior reform work including a number of boro by boro public meetings and expert panel convenings, under the DiBlasio mayoral administration, was derailed by the COVID-19 pandemic. The pied a terre legislation, negotiated behind completely closed doors by the Hochul and Mamdani administrations and giving broad regulatory authority to the NYC Department of Finance, appears to be working towards property tax reform without any public inputs.

Position: Opposition to Proposed Rules relating to new NYC Administrative Code Chapter 32, Imposing a Surcharge on Certain Residential Properties that Do Not Serve as Primary Residence

We submit this testimony on behalf of the residents of 120 W.70 Owners Corp., a 38-unit cooperative on the Upper West Side. Our building became a housing cooperative in 1979 and the residents include a broad mix of young and old working poor, middle class, professional working class families, including individuals who have lived in this building for more than 50 years. The market re-valuation of the taxable value of our entire building for New York City taxes that is contemplated by the so-called "pied a terre tax" is a looming economic disaster for the residents of our building – and, of course, many others in this City.

There are several issues – immediately and in the longer term -- presented by the proposed DOF rules.

Co-ops Are Inappropriately Forced to Shoulder a Tax Collection Function and/or Become Guarantors of Individual Shareholder Obligations: A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building. The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholder/s triggered the liability and recover the money from them. Under the proposed rules, cooperative corporations are legally responsible for remitting the pied a terre tax directly to the City, even though it is the individual shareholder's liability. This is a tax collection function that is being placed inappropriately on the cooperative corporation. If a non-primary resident shareholder fails to pay the surcharge, DOF can place a tax lien on the entire building.

Violation of Underlying Building Mortgage Covenants and Reimbursement Nightmares: Under the proposed rules, cooperative boards are being forced to shoulder the administrative and legal costs of chasing down delinquent shareholders for reimbursement of funds that the corporation must pay to prevent liens from being assessed against the cooperative property. Boards must engage in this activity in order to avoid violating the terms of any building mortgage that is in place securing the corporation's obligations to the mortgage holder.

Unclear Valuation Rules: The tax is designed to cover residences with a fair market value of $5 million or more. However, DOF believes that the assessed market value of cooperative and condominium apartments is currently much lower than the fair market value. Thus, the proposed rules adopt a two-phase approach to taxing cooperative and condominium apartments. During the first phase (effective until June 30, 2028), the tax applies to co-op units with an assessed market value of $1 million or more. During the two-year period, the DOF plans to implement a new valuation methodology for cooperative and condominium apartments by using comparable sales to bring the assessed market value up to fair market value. the rules for translating current assessed values into actual market values are complex and have generated significant uncertainty, The entire revaluation process DOF contemplates is currently entirely unclear and appears not to contemplate any stakeholder involvement. It is important to note that the City has simply not ever been able to come up with a methodology for valuing condos and co-ops based on comparable sales for over 30 years. We respectfully suggest that DOF use the documented sale prices from the City's property register to ensure that only co-op and condo apartments that sold for $5 million or more would be potentially subject to the tax.

Primary Residence Disputes: The burden of proving an apartment is a primary residence relies heavily on New York City tax filings. DOF also retains the authority to audit any primary-residence certification for up to six years from the date it was submitted. The rules' reliance on concepts like "permanent home address" and days spent at the specific property – rather than the broader income tax residency framework – raises an important threshold question about exactly which owners are exposed to this tax in the first place. Among the lack of clarity that the proposed rules do nothing to address is whether the state intended to essentially double-tax people with a primary residence outside New York City, but who are considered "statutory residents" because they are in the city at least 183 days a year and, as statutory residents, already pay New York City residence taxes.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and DOF rules must reflect that difference.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document. It cannot create new categories of financial obligation. Because the surcharge attaches as a lien on the cooperative building as a whole, every shareholder in the building is exposed to the consequences of any one shareholder's inability, or failure, to pay an assessed tax. This is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders must not bear the financial risk of one shareholder's delinquency.

We urge DOF to take these concerns into consideration before adopting any final rules concerning new part 32 to the NYC Administrative Code.

61. **anonymous – 7/9/2026 – NYC Rules**

There should be a proration applied to this tax during any year. For example, if a person moves into a second home as a primary resident (i.e. son moves to New York to work in June 2026 and moves into the second home of his parents. The son becomes a primary resident of New York and will pay city and state taxes for a portion of 2026). That residence is now a primary residence for an immediate family member, the son. The owner of the home should only be liable for the pied a terre tax for the portion of 2026 when the home was not used as a primary residence by his/her son. Instead, the law reads as if the owner of the second home will owe the pied a terre tax for the entire year. This is not in line with how regular state and city taxes are applied

62. **Mary Ann Rothman (CNYC Inc) – 7/9/2026 – NYC Rules**
Please see attached testimony.

Good Morning, and thank you for this opportunity to comment on the pied-a-terre tax. My name is Mary Ann Rothman and I am the executive director of the Council of New York Cooperatives and Condominums, a not-for-profit membership organization that has been providing information, education and advocacy to and for housing cooperatives and condominiums 1975.

We have submitted extensive written comments on the Department's rules for implementing this tax and my colleague will provide an overview in her testimony. I would like to use my time to address two critical aspects of the State legislation that imposes the pied-a-terre tax, which we feel need to be changed.

Seeking very swift implementation of the pied-a-terre tax, the enabling legislation has set an interim threshold of 1 million of DOF's imputed market value as being comparable to the sales price of $5 million that the legislation was designed to tax. Our research finds this to be an unreasonably low threshold. Consideration must be given to clear documentation of sales value well below $5 million in accepting protests during this interim period.

The pied-a-terre legislation also makes cooperatives responsible for collecting and remitting to the Department the pied-a-terre tax owed by individual shareholders. This is a huge departure from past practices where DOF has provided documentation to enable cooperatives to distributed credits to shareholders who qualified for exemptions and abatements.

Any cooperative unable to collect from a shareholder in time for property tax payment will need to find the funds to keep the building's property taxes current or suffer consequences from their mortgage lender, from fines and penalties, and from the likely lack of availabilty of share loans. The smaller the building, the larger the portion of the non-resident owner's pied-a-terre tax that each resident shareholders will have to find a way to pay.

Instead, the Department of Finance should collect the pied-a-terre tax directly from each affected shareholder. It is our hope that the Department of Finance will be supportive of future legislation to make this essential correction.

63. Anonymous – 7/9/2026 – NYC Rules

The tax should be prorated for instances where a second home becomes a primary residence during any particular year. For example, the adult son of a second home owner moves to New York in June 2026 to start working in New York City. The son moves into the second home owned by his parents. The son becomes a New York resident and will owe city and state taxes for a portion of 2026. The second home is now the primary residence of the son of the owner of the home. The way the current law reads is that the owner of the second home will pay tax for the entirety of 2026 based on the fact that the home was not a primary residence as of January 5, 2026. The pied a terre tax should be prorated for the time when the home was not used as a primary residence (from January to June 1, 2026).

64. Resident of NY – 7/9/2026 – NYC Rules

Dear NYC Department of Finance,

I respectfully submit this comment to request that in-laws be recognized and treated as "immediate family member" for purposes of policies, exemptions, and determinations administered by the Department.

Thanks for your consideration.

65. Anonymous – 7/9/2026 – NYC Rules

Tax, Tax, Tax – that is all these blue cities do and it's never enough. The budget has exploded in recent years and quality of life has gone down. Anyone who thinks giving this govt more money will actually improve anything is a fool. The city has huge budget deficits in lucrative years for Wall Street (where most of the tax $ comes from), should be interesting in the not so good years. CUT THE BUDGET!

66. Jeff Rose, President 36 West 88th Street Owners Corp – 7/9/2026 – NYC Rules

I share the concerns and comments provided by the Council of New York Cooperatives and Condominiums. In particular, I want to flag issues involving (i) deaths of owners/shareholders; (ii) issues surrounding the gap between purchase of an apartment and occupancy and (iii) concerns related to some of the requirements for proof of primary residence status. As an overall guiding principle, I also wish to draw the attention of the Department of Finance to the intent of the legislature that this tax be imposed on second homes and non-resident New Yorkers and not inadvertently be imposed on New York residents.

67. **Martha E. Stark, Esq. – 7/9/2026 – Email**

I submit these comments on the Department's proposed Chapter 62 rules implementing the surcharge on property that does not serve as a primary residence. I served as Commissioner of the Department of Finance for more than seven years, and I maintain a property tax certiorari practice through StarkPatch Legal. I am also a Clinical Professor at the New York University Wagner Graduate School of Public Service, where I teach financial management. I write in my individual and professional capacity, and not on behalf of the University or of any client.

The Department has done substantial and genuine clarifying work here, and it should be credited. The look-through provisions for entity and trust ownership in § 62-06(b)(2)(iv)–(v) address real ownership structures with a substance-over-form approach that the statute permits but does not compel. The allocation of the burden of proof to the Department at penalty hearings under § 62-04(f)(6), and the separation-of-functions requirement in § 62-06(c) barring the official who made an initial determination from deciding the appeal, are procedural-fairness provisions the Department was under no obligation to adopt. On a rule that has been characterized in some quarters as enforcement-driven, these deserve acknowledgment.

My comments concern five discrete matters. None asks the Department to expand the surcharge's coverage or to contract it. None asks the Department to exercise authority it does not have. Each asks that the rule reach what the statute reaches, and that it be administrable on a record the Department can actually build.

I. Section 62-06(b)(2)(v) provides no proof pathway for trusts the statute plainly covers. Administrative Code § 11-3201 recognizes covered-owner status where the beneficial "owner or owners are the sole beneficiaries" of a trust. The plural is not accidental and it is not surplusage. It contemplates that more than one individual may together constitute a trust's entire beneficiary class — two spouses, for instance, who are a revocable trust's only beneficiaries and who occupy the unit as their primary residence. That is among the most common ownership structures in the affected population.

Proposed Rule § 62-06(b)(2)(v) provides a proof pathway only for "the sole beneficiary" of a trust, in the singular, and specifies a trust agreement and a trustee affidavit each identifying a single beneficiary. As drafted, co-beneficiaries who together are a trust's sole beneficiaries — a structure the statute covers on its face — have no mechanism by which to establish their eligibility. The rule is narrower than the statute it implements.

The narrowing appears inadvertent: nothing in the rulemaking record suggests the Department intended to exclude two-beneficiary trusts, and no policy rationale would support doing so.

The final rule should conform § 62-06(b)(2)(v) to the statutory text by accommodating one or more beneficiaries who together constitute the entire beneficiary class of the trust.

I want to be precise about the limits of this point. The statute's underlying requirement — that the covered owner or owners be the trust's exclusive beneficiaries — originates in § 11-3201, not in the proposed rule. Trusts with contingent beneficiaries or remaindermen therefore present a question the Department cannot resolve by rulemaking, and I do not ask it to. What the Department can do is stop the rule from excluding trusts the statute includes.

II. The rule makes occupancy something the Department may consider but an owner cannot invoke.

Administrative Code § 11-3203(a)(1) identifies occupancy — whether the unit "was occupied in aggregate for a majority of days during a calendar year by a covered owner" — as a central factor in determining primary residence. That is the Legislature's chosen touchstone, and it is a factual question about where a person actually lives.

Under the proposed rule, however, an owner seeking to establish primary residence on appeal may do so only through (A) a permanent-home address on a state or federal income tax return, or (B) two or more enumerated identity documents. § 62-06(b)(2)(i). Direct evidence of occupancy appears only as a factor the Department "may" consider on its own initiative when the automatic pathway is not met, § 62-06(a)(3)(i); it is not among the forms of proof an owner may affirmatively submit. The statutory touchstone is available to the Department and unavailable to the owner.

The consequence is not hypothetical. A genuine primary resident who occupies the unit for the majority of the year — but whose most recent return reflects a prior address, who has recently moved in, who files jointly under a spouse's address, or who is not required to file at all — is left with the residual "other proof … acceptable to the department" catch-all in § 62-06(b)(2)(i)(B)(III). That provision supplies no standard, no articulated criteria, and no record on which a determination could be reviewed. An unstructured catch-all is not a proof pathway.

The Department has already written the provision it needs. Its rules governing the cooperative and condominium abatement address the identical question — whether a dwelling unit serves as an owner's primary residence as of the taxable status date — and, where the presumption is not met, expressly permit the owner to "file a supplemental application … to prove eligibility for the primary residence abatement." 19 RCNY § 50-06(b)(3). Chapter 50 gives the owner a defined route. Chapter 62 does not. I am aware that an abatement confers a benefit while the surcharge imposes a charge, and that presumptions may reasonably run in opposite directions on that account. But the direction of the presumption says nothing about the mechanics of proof. Primary residence on January 5 is the same fact in both chapters, and it is found the same way.

The final rule should expressly permit an owner to establish primary residence through direct occupancy evidence — including the majority-of-days measure the statute itself names, together with utility usage records, building access records, and comparable documentation.

Separately, one of the enumerated identity documents — a voter identification card issued by the New York City Board of Elections, § 62-06(b)(2)(i)(B)(II) — is an unsound proxy for primary residence. Under New York law a person maintaining two residences may choose either as her residence for Election Law purposes, provided she has legitimate, significant and continuing attachments to it. Matter of Ferguson v. McNab, 60 N.Y.2d 598 (1983); Election Law § 1-104(22). Registration therefore establishes that a voter made a lawful choice among residences. It does not establish which residence she principally occupies, which is the question § 11-3203(a)(1) asks. At minimum, the absence of a New York City voter registration should not operate to the disadvantage of an owner who lawfully votes elsewhere.

III. The automatic exclusion pathway names no return year, and the return it contemplates may not exist on the date it is consulted.

Section 62-06(a)(2)(i) provides that the Department will not treat a property as non-primary where a covered owner has listed the property as their permanent home address on a state or federal income tax return. The rule does not say which return. Taxable status is determined as of January 5 of the calendar year preceding the fiscal year of imposition. Administrative Code § 11-3203. Returns for the immediately preceding calendar year are not due until April 15 and, under extension, may not be filed until October. On any January 5 determination date, the return for the year that just closed does not yet exist.

Here again the Department has already solved this problem in its own rules. The abatement presumption in 19 RCNY § 50-06(b)(1)(B) attaches where an owner entered the address of the dwelling unit as a permanent home address "on a New York State Resident Income Tax Return filed during the calendar year immediately preceding the calendar year in which such fiscal year commences." The anchor is the year of filing, not the tax year. A return so identified is guaranteed to be in existence, and in the Department's possession, on the taxable status date. Chapter 62 contains no equivalent anchor.

The final rule should adopt the Chapter 50 formulation, or an equivalent, and state affirmatively that the absence of a not-yet-filed return for the immediately preceding calendar year does not, standing alone, defeat the automatic pathway. This creates no exemption and alters no eligibility. It asks only that the Department name a document that exists on the day it looks for it.

I raise a related matter for the Department's attention rather than as a request for relief. The January 5 taxable status date falls within weeks of a substantial volume of residential closings. An owner who takes title and occupies in late December is a primary resident on January 5 under ordinary principles of domicile and intent, but will have neither a qualifying return nor a meaningful occupancy record on that date. I do not know how many such owners there are, and I do not think a remedial mechanism should be built for a population that has not been counted. The Department, however, records every deed and can determine the volume of December closings in the affected value ranges from data it already holds. It should do so, and should monitor whether the automatic pathway and the occupancy pathway together reach these owners, before concluding that no further proof route is needed. I would add that a mechanism permitting a later-filed return to undo a surcharge already imposed would invite the reclassification of intent after the fact, and I do not propose one.

IV. The phase-one threshold is a proxy, and the rule does not say how sales evidence may be used.

For cooperative and condominium units, the surcharge applies in phase one at a Department market value of $1 million, and in phase two at a sales-based value of $5 million. The Department's own ratio studies establish that its market values for these properties, developed under the income approach required by Real Property Tax Law § 581, capture a fraction of sales-based value at the upper end of the market. The $1 million phase-one threshold is therefore not an alternative measurement of the same quantity. It is a proxy for the $5 million sales value, calibrated to a ratio that holds on average and diverges at the individual parcel.

The statute forecloses an appeal in phase one on the ground that the true market value of the property is below $5 million. That is a legislative judgment, and I do not ask the Department to disturb it. It follows that some phase-one payers will pay a surcharge for two years against a sales value that the statute's own phase-two standard would exempt. The Legislature accepted that consequence.

What the Department has not addressed is what an owner may do with sales evidence in the meantime. The Department maintains an existing administrative channel — the taxpayer-initiated request for review — through which it may correct an assessed valuation that is erroneous due to "an error in the valuation of such property." 19 RCNY § 37-06(e)(1). That ground stands separate from the ministerial clerical-error and error-of-description grounds in § 37-06(e)(2) and (3), as the Department stated when it adopted the provision. The rule does exclude corrections resulting from "a discretionary act or an act based in whole or in part on an individual's judgment." § 37-06(e-1)(1).

That exclusion answers a challenge to the Department's income-approach judgment. It does not answer the submission of a sales value the Department has made no judgment about — because in phase one the Department does not determine sales value at all. In phase two it must. An owner who possesses an appraisal or a recent arm's-length sale establishing a value below $5 million is not attacking the Department's phase-one determination; she is supplying a fact the Department is statutorily obligated to develop before phase two begins.

The final rule should state whether, and by what means, an owner may submit sales evidence during phase one for consideration in the Department's development of phase-two values. This creates no phase-one exemption, contradicts no statutory appeal bar, and builds the record phase two requires. Its absence leaves owners and practitioners to guess at a question of ordinary administration.

For the same reason, the Department should describe the methodology it intends to apply to cooperatives in phase two. Because the cooperative corporation — not the unit — remains the assessed and taxed entity, a comparable-sales estimate must still be allocated among units. Whether that estimate is developed at the building level and then allocated by shares, or developed at the unit level directly, produces materially different results and different grounds for challenge.

V. Cooperative unit values rest on an allocation the owner cannot see.

In a cooperative, the cooperative corporation — not the individual apartment — is the assessed and taxed entity. The surcharge is added to the corporation's statement of account and collected by the corporation from each tenant-stockholder. Administrative Code § 11-3205(a), (f). Because no separately assessed tax lot exists for an individual cooperative unit, any per-unit surcharge must be derived by allocating a building-level value among the units, and the only available allocation key is each unit's share of stock in the corporation. In phase one the statute makes the allocation explicit: the imputed cooperative phase one market value is the product of the Department's market value for the entire corporation and the ratio of the unit's shares to total shares. Administrative Code § 11-3201. In phase two the valuation method changes but the assessment unit does not, so the allocation step and the potential for error in it persist. An owner receiving a per-unit figure therefore confronts a number produced by two inputs, neither of which is disclosed. She cannot determine whether the figure reflects an error in the share allocation attributed to her unit or an error in the building-level valuation. Those are different errors, with different remedies, before different fora. A correction procedure that does not disclose its inputs is one an owner must invoke blind.

For each affected cooperative dwelling unit, and in both phases, the Department should disclose — in or with the notice of surcharge — the share allocation attributed to the unit and the building- or corporation-level market value from which the unit figure is derived. The Department maintains current, unit-level share-allocation data as an ordinary incident of its administration of the property tax. Disclosure costs it nothing it does not already possess.

VI. No agency has told owners where to file, and the first deadline is in October.

This final matter is not of the Department's making, and I do not suggest otherwise. But the Department is the only body of the three now promulgating a rule, and it is therefore the only one positioned to say what it understands the procedural landscape to be.

The statute confers on the Tax Commission jurisdiction over market value determinations and primary residence determinations under the surcharge. Both grants are new. The Commission's longstanding jurisdiction has run to assessed valuation; it has not previously reviewed market value as such, and it has never adjudicated primary residence. The Commission has indicated to the certiorari bar that it does not intend to issue rules. The Office of Court Administration has not issued rules governing petitions under Article 7 of the Real Property Tax Law as applied to a surcharge that is not an assessment and does not appear on the assessment roll.

The practical sequence facing an owner in the first year is therefore as follows. She receives the Department's notice no later than August 30, 2026. To preserve a judicial remedy she must file an Article 7 petition in Supreme Court by the statutory deadline in mid-October. She has no rule from the Commission telling her what an administrative application looks like, no rule from the Office of Court Administration telling her what a petition looks like, and no provision of Chapter 62 telling her whether the request-for-review process is available to her at all. A remedy foreclosed by an October deadline cannot be restored.

The Department should state, in the final rule or in the statement accompanying its adoption, what it understands the division of labor to be: which determinations it regards as reviewable through the request-for-review process, which it regards as committed to the Tax Commission, and what it understands the relationship to be between an administrative application and the preservation of a judicial remedy. Such a statement binds no other body and costs the Department nothing. Its absence will cost owners their rights.

Conclusion

The matters above share a common character. None asks the Department to make a policy judgment the Legislature reserved to itself. Each asks that the rule implement the statute as written, and that it permit an owner to see the basis of a determination and to correct it when it is wrong. A surcharge of this magnitude, administered on a compressed schedule against a population never before required to affirmatively establish primary residence, will generate error. The question this rule answers is whether that error can be found and fixed administratively, or whether it must be litigated. In three places the Department has already written the better answer into its own rules. It should carry those provisions forward.

I appreciate the Department's consideration of these comments and would welcome the opportunity to discuss any of them.

68. **Norman A Ellis – 7/9/2026 – NYCRules**

As happened with the AMT (Federal Alternative Minimum Tax administered by the IRS), originally designed to tax the wealthy, inflation will eventually turn this into a tax on the middle class and eventually even moderate and lower income owners. This is called

Bracket Creep. Even if indexed to inflation, governments incapable of keeping to a rational budget will legislate ways around it.

I advocate for the elimination of all graduated taxes, including graduations on real estate and transfer taxes.

Bracket creep inevitably occurred with the Federal Income Tax itself, which when originally proposed was supposed to be temporary, and later when re-imposed was supposed to affect only the “robber barons” and wealthiest citizens. It now strangles everyone and is added to by state and local government income taxation along with burdensome and unequally apportioned real estate taxes and elevated sales taxes.

The federal income tax in the United States traces back to two foundational proposals: the Civil War-era Revenue Act of 1861 (the first U.S. income tax) and the Revenue Act of 1913 (following the ratification of the 16th Amendment).

1. The Revenue Act of 1861 (Civil War)The very first federal income tax was proposed to fund the Union’s Civil War effort.
Rate: A flat rate of 3% on incomes.
Amount: Applied only to annual incomes over $800. (At the time, this exempted roughly 97% of the American population).
Permanence: Designed explicitly as a temporary emergency measure.

2. The Revenue Act of 1913 (The 16th Amendment) After an 1895 Supreme Court ruling struck down a later income tax attempt, Congress passed the 16th Amendment in 1909 and ratified it in 1913. Rep. Cordell Hull then introduced the first permanent income tax law under the new amendment. Proponents framed the tax as a way to force wealthy “robber barons” to pay their fair share.

Rate: A graduated (progressive) tax starting at 1%. The base rate was 1% on net personal income up to $20,000. It included progressive surtaxes that increased up to a maximum of 7% for the ultra-wealthy.

Amount: Enormously generous exemptions were put in place to ensure everyday citizens were completely shielded from the tax. It was levied only on incomes: Over $3,000 for single individuals. Over $4,000 for married couples.(Because the average American family made a fraction of this, less than 1% of the population was required to pay it).

Permanence: The ratification of the 16th Amendment established the income tax as a permanent and lasting part of the United States Constitution.