

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Amendments to Rules Governing Revocation of Tax Exemptions and Abatements

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by Section 1802 of the New York City Charter and Sections 420-c, 421-a, 421-b, 421-g, and 489 of the New York State Real Property Tax Law, and in accordance with the requirements of Section 1043 of the City Charter, the Department of Housing Preservation and Development is amending chapter 39 of Title 28 of the Rules of the City of New York to clarify the meaning of certain provisions governing revocation of tax exemptions and abatements for which the Department of Housing Preservation and Development makes eligibility determinations.

A notice of proposed rulemaking was published in the City Record on January 30, 2017. A public hearing was held on March 6, 2017.

Statement of Basis and Purpose of Rule Amendment

In New York City, HPD is responsible for making eligibility determinations for as-of-right exemptions from, or abatements of, real property taxation pursuant to New York State Real Property Tax Law §§ 420-c, 421-a, 421-b, 421-g, and 489, provisions of the City of New York Administrative Code enacted pursuant thereto, and rules of the City of New York promulgated pursuant thereto.

HPD ensures that applicants for these benefits comply with the relevant eligibility requirements. For example, Real Property Tax Law § 421-a (“421-a Statute”) provides real property tax exemptions for eligible, new multiple dwellings (“421-a Benefit”), and requires that rental units receiving a 421-a Benefit be rent stabilized (“Rent Stabilization Requirement”). If an applicant fails to comply with these eligibility requirements, HPD may revoke the 421-a Benefit.

Chapter 39 of Title 28 of the Rules of the City of New York governs the revocation procedures for such tax exemptions and abatements (“Revocation Rules”). HPD is proposing amendments to the Revocation Rules to clarify the definition of the term “Revocation Date” and the addresses to which notices must be sent.

The current definition of “Revocation Date” in the Revocation Rules provides that it may not precede the “Cause Date,” defined as the first date upon which any Violation, Misrepresentation, Omission, Failure, or Discrimination occurred. For those properties that enjoy an exemption and/or abatement before meeting all of the eligibility criteria, however, the Revocation Date may precede the Cause Date because the property enjoyed real property benefits to which it ultimately was never entitled.

For example, the 421-a Benefit consists of construction period benefits and final benefits. If a property converts to a commercial project during the second year of its construction benefits period, the 421-a Benefit should be revoked retroactively to the commencement of the construction. Similarly, if a property receives construction period benefits and does not rent stabilize its rental units at completion, all of the 421-a Benefit the property enjoyed should be revocable.

HPD's rule amendment reflects what has traditionally been HPD's practice by clarifying HPD's ability to revoke tax benefits granted before all eligibility criteria are fulfilled when those criteria are not fulfilled in a timely manner.

HPD's rule amendment also clarifies the wording of §39-05 to unambiguously reflect HPD's policy of delivering notices by mail to both the fee owner and, where relevant, the mortgagee, in addition to the notices delivered by mail to the real property tax bill addressee and both the agent and the owner identified in the multiple dwelling registration.

In addition, HPD's rule amendment adds "Noticed Property" as a defined term, in order to put §39-05 in plainer English and thus make it easier to read and understand.

HPD's authority for this rule is found in sections 1043 and 1802 of the New York City Charter and sections 420-c, 421-a, 421-b, 421-g, and 489 of the Real Property Tax Law.

New material is underlined.

[Deleted material is in brackets.]

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

Adopted Rule Amendment

Section 1. The definition of "revocation date" in section 39-01 of chapter 39 of title 28 of the Rules of the City of New York is amended to read as follows:

Revocation Date. "Revocation Date" shall mean the date as of which HPD proposes to Revoke, or does Revoke, a Tax Benefit. The Revocation Date may be upon such date as HPD may determine, but shall not precede the Cause Date unless the Property received a Tax Benefit before fulfilling all eligibility criteria for such Tax Benefit, in which case the Revocation Date may precede the Cause Date.

§ 2. Section 39-01 of chapter 39 of title 28 of the Rules of the City of New York is amended by adding a new definition to be inserted in alphabetical order and to read as follows:

Noticed Property. "Noticed Property" shall mean a Property that is the subject of an Initial Notice, Pre-Hearing Notice, Hearing Notice, or Determination Notice.

§ 3. Section 39-05 of chapter 39 of title 28 of the Rules of the City of New York is amended to read as follows:

§39-05 Notices.

HPD shall deliver all Initial Notices, Pre-Hearing Notices, Hearing Notices, and Determination Notices to the Taxpayer by mail to (i) the address to which DOF delivers real property tax bills for the Noticed Property [that is the subject of such notice], (ii) the last address indicated in documents recorded in the office of the City Register for any Taxpayer holding fee

title to [or a mortgage on] the Noticed Property [that is the subject of such notice], [and] (iii) the last address indicated in documents recorded in the office of the City Register for any Taxpayer holding a mortgage on the Noticed Property, (iv) the address of [the] any owner [or agent] registered for the Noticed Property [that is the subject of such notice] in accordance with article two of subchapter four of chapter two of title twenty-seven of the Administrative Code, [if any] and (v) the address of any agent registered for the Noticed Property in accordance with article two of subchapter four of chapter two of title twenty-seven of the Administrative Code. Any such notice shall be deemed to have been given upon the third day after such notice has been deposited in the United States mail.