

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

Notice is hereby given in accordance with section 1043(b) of the New York City Charter (“Charter”) that the Taxi and Limousine Commission (“TLC”) proposes amending the provisions of Title 35 of the Rules of the City of New York to permit all entities licensed by the TLC to be limited liability companies.

These rules are proposed pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. The proposed rules were included in the TLC’s regulatory agenda for Fiscal Year 2010.

A public hearing on these proposed rules will be held by the TLC at its offices at 40 Rector Street, 5th Floor, New York, New York 10006 on Thursday, October 21, 2010 at 10:00 a.m. Persons wishing to testify at the hearing may notify the TLC in advance, either in writing or by telephone to the TLC’s Office of Legal Affairs at the address and telephone given below. Any request for a sign language interpreter or other form of reasonable accommodation for a disability at the hearing must be submitted to the Office of Legal Affairs in writing or by telephone no later than October 13, 2010.

Written comments in connection with these proposed rules must be received no later than October 20, 2010. Comments may be submitted through the NYC Rules website at www.nyc.gov/nycrules, or may be submitted to the Office of Legal Affairs at:

Charles R. Fraser
Deputy Commissioner for Legal Affairs/General Counsel
Taxi and Limousine Commission
40 Rector Street, 5th Floor
New York, New York 10006
Telephone: 212-676-1135
Fax: 212-676-1102
Email: tlcrules@tlc.nyc.gov

Written comments and a transcript of all comments received at the hearing will be available for public inspection at that office.

New Material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. It is proposed to amend Section 8-05(e) of Title 35 of the Rules of the City of New York by adding a new paragraph (4) to read as follows:

(4) Limited Liability Companies (LLCs).

(i) If the Applicant is a limited liability company it must file the following with its Taxicab License application:

A. A copy of its articles of organization

B. A copy of its operating agreement

C. A list of the members, with the percentages of the Applicant owned by each.

(ii) No LLC or trade name will be accepted by the Commission that is similar to a name already in use by another Owner.

(iii) All members of the LLC Taxicab License Applicant must disclose each and every Medallion in which he or she has any interest whatsoever, including, but not limited to, any interest as an individual Owner or any interest as a Business Entity Person in a Business Entity that owns other Medallion(s); this disclosure must be made:

A. Upon the original application for the Taxicab License,

B. Upon application for renewal of a Taxicab License, and

C. Upon application for transfer of a Taxicab License.

(iv) All members of the Owner are subject to the same standards and criteria as individual Owners.

(v) The Commission will only recognize members that have been approved by the Commission.

(vi) It is a violation of these Rules for an Owner that is an LLC to add a new member without the approval of the Commission.

(vii) The standards and criteria for Ownership are equally applicable when membership interests in a LLC Owner are held by another Business Entity.

Section 2. It is proposed to amend Section 9A-03(n) of Title 35 of the Rules of the City of New York to read as follows:

(n) Owner or Vehicle Owner in this Sub-chapter refers to the title owner, registered owner or lessee of a For-Hire Vehicle. An Owner can be a Business Entity or a person.

Section 3. It is proposed to amend Section 9A-04 of Title 35 of the Rules of the City of New York by adding a new subdivision (m) to read as follows:

(m) Business Entities. An Applicant which is a Business Entity must provide the following documents:

(1) Partnerships. If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(2) Corporations. If the Applicant is a corporation, it must file with its application:

(i) A certified copy of its certificate of incorporation

(ii) A list of officers and shareholders

(iii) A certified copy of the minutes of the meeting at which the current officers were elected.

(3) Limited Liability Companies (LLCs) If the Applicant is a limited liability company, it must file with its application:

(i) A copy of its articles of organization

(ii) A copy of its operating agreement

(iii) A list of the members, with the percentages of the Applicant owned by each.

Section 4. It is proposed to amend Section 9B-03(n) of Title 35 of the Rules of the City of New York to read as follows:

(n) Owner in this Sub-chapter refers to a For-Hire Base Owner. An Owner can be a Business Entity or a person.

Section 5. It is proposed to amend Section 9B-04 of Title 35 of the Rules of the City of New York by adding a new subdivision (g) to read as follows:

(g) *Business Entities.* An Applicant which is a Business Entity must provide the following documents:

(1) *Partnerships.* If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(2) *Corporations.* If the Applicant is a corporation, it must file with its application:

(i) A certified copy of its certificate of incorporation

(ii) A list of officers and shareholders

(iii) A certified copy of the minutes of the meeting at which the current officers were elected.

(3) *Limited Liability Companies (LLCs)* If the Applicant is a limited liability company, it must file with its application:

(i) A copy of its articles of organization

(ii) A copy of its operating agreement

(iii) A list of the members, with the percentages **of the Applicant** owned by each.

Section 6. It is proposed to amend Section 10A-03(c) of Title 35 of the Rules of the City of New York to read as follows:

(c) *Business Entity.* A Paratransit Business Entity [must] can be [either] a corporation, [or] a partnership or a limited liability company.

Section 7. It is proposed to amend Section 10A-04(k) of Title 35 of the Rules of the City of New York to read as follows:

(k) Other Required Documents. In addition to copies of the certificate of title and the certificate of registration, the following documents must be filed with the application:

(1) A copy of the motor vehicle tax stamp receipt for the Paratransit Vehicle.

(2) A current Rate Schedule.

(3) A New York State Department of Transportation inspection checklist.

(4) A copy of the leasing agreement, if Applicant is leasing the vehicle.

(5) [A partnership Applicant must file a certified copy of its partnership certification from the County Clerk.

(6) A corporate Applicant must file a certified copy of its certificate of incorporation and a list of its current shareholders and officers.]Business Entities. An Applicant which is a Business Entity must provide the following documents:

(i) Partnerships. If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(ii) Corporations. If the Applicant is a corporation, it must file with its application:

A. A certified copy of its certificate of incorporation

B. A list of officers and shareholders

C. A certified copy of the minutes of the meeting at which the current officers were elected.

(iii) Limited Liability Companies (LLCs) If the Applicant is a limited liability company, it must file with its application:

A. A copy of its articles of organization

B. A copy of its operating agreement

C. A list of the members, with the percentages of the Applicant owned by each.

Section 7. It is proposed to amend Section 10B-03(f) of Title 35 of the Rules of the City of New York to read as follows:

(f) *Business Entity.* A Paratransit Business Entity [must] can be [either] a corporation, [or] a partnership or a limited liability company.

Section 8. It is proposed to amend Section 10B-04(e) of Title 35 of the Rules of the City of New York to read as follows:

(e) *Additional Documents Required.*

(1) A copy of the Applicant's New York State Department of Transportation Certificate of public convenience and necessity to operate as a common carrier of passengers by motor vehicle (operating authority).

(2) The copy of the current Rate Schedule.

(3) [A corporate Applicant must file a copy of its certificate of incorporation and a list of its shareholders and current officers.

(4) A partnership Applicant must file a copy of its partnership agreement, if any.] Business Entities. An Applicant which is a Business Entity must provide the following documents:

(i) Partnerships. If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(ii) Corporations. If the Applicant is a corporation, it must file with its application:

A. A certified copy of its certificate of incorporation

B. A list of officers and shareholders

C. A certified copy of the minutes of the meeting at which the current officers were elected.

(iii) Limited Liability Companies (LLCs) If the Applicant is a limited liability company, it must file with its application:

A. A copy of its articles of organization

B. A copy of its operating agreement

C. A list of the members, with the percentages of the Applicant owned by each.

Section 9. It is hereby proposed to amend section 11A-03(f) of Title 35 of the Rules of the City of New York to read as follows:

(f) Owner in this Sub-chapter refers to a Commuter-Van Vehicle Owner [and]. An Owner can be a Business Entity or a person. The term Owner in this Sub-chapter, in addition to complete ownership of the Vehicle, includes those individuals or entities with the following ownership interests:

(1) Entitlement to the use and possession of a Vehicle subject to a security interest held by another, regardless of the terms of the contract. (Owner does NOT include any party with a security interest in a Vehicle that is not in that party's possession.)

(2) The right, by any lessee or bailee, to exclusive use of the Vehicle for more than 30 days.

Section 10. It is hereby proposed to amend Section 11A-04 of Title 35 of the Rules of the City of New York by adding a new subdivision (i) to read as follows:

(i) *Business Entities.* An Applicant which is a Business Entity must provide the following documents:

(1) *Partnerships.* If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(2) *Corporations.* If the Applicant is a corporation, it must file with its application:

(i) A certified copy of its certificate of incorporation

(ii) A list of officers and shareholders

(iii) A certified copy of the minutes of the meeting at which the current officers were elected.

(3) *Limited Liability Companies (LLCs)* If the Applicant is a limited liability company, it must file with its application:

(i) A copy of its articles of organization

(ii) A copy of its operating agreement

(iii) A list of the members, with the percentages of the Applicant owned by each.

Section 11. It is hereby proposed to amend Section 11B-03(c) of Title 35 of the Rules of the City of New York to read as follows:

(c) *Business Entity* is a sole proprietorship, partnership, limited liability company or corporation.

Section 12. It is hereby proposed to amend Section 11B-04 of Title 35 of the Rules of the City of New York by adding a new subdivision (k) to read as follows:

(k) *Business Entities.* An Applicant which is a Business Entity must provide the following documents:

(1) Partnerships. If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(2) Corporations. If the Applicant is a corporation, it must file with its application:

(i) A certified copy of its certificate of incorporation

(ii) A list of officers and shareholders

(iii) A certified copy of the minutes of the meeting at which the current officers were elected.

(3) Limited Liability Companies (LLCs) If the Applicant is a limited liability company, it must file with its application:

(i) A copy of its articles of organization

(ii) A copy of its operating agreement

(iii) A list of the members, with the percentages of the Applicant owned by each.

Section 13. It is hereby proposed to amend Section 12-04 of Title 35 of the Rules of the City of New York by adding a new subdivision (h) to read as follows:

(h) Business Entities. An Applicant which is a Business Entity must provide the following documents:

(1) Partnerships. If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(2) Corporations. If the Applicant is a corporation, it must file with its application:

(i) A certified copy of its certificate of incorporation

(ii) A list of officers and shareholders

(iii) A certified copy of the minutes of the meeting at which the current officers were elected.

(3) Limited Liability Companies (LLCs) If the Applicant is a limited liability company, it must file with its application:

(i) A copy of its articles of organization

(ii) A copy of its operating agreement

(iii) A list of the members, with the percentages of the Applicant owned by each.

Section 14. It is hereby proposed to amend Section 13-04(b) of Title 35 of the Rules of the City of New York to read as follows:

(b) Who May File an Application. An application or renewal application for an an [Business Entity] Agent's License may only be submitted by the following:

(1) An individual

(2) The Proprietor, on behalf of a sole proprietorship

(3) A general partner on behalf of a partnership

(4) An officer or director on behalf of a corporation

(5) A member on behalf of a limited liability company

Section 15. It is hereby proposed to amend Section 13-04 of Title 35 of the Rules of the City of New York by adding a new subdivision (h) to read as follows:

(h) Business Entities. An Applicant which is a Business Entity must provide the following documents:

(1) Partnerships. If the Applicant is a partnership, it must file with its application a certified copy of the partnership certificate from the clerk of the county where the partnership's principal place of business is located.

(2) Corporations. If the Applicant is a corporation, it must file with its application:

(i) A certified copy of its certificate of incorporation

(ii) A list of officers and shareholders

(iii) A certified copy of the minutes of the meeting at which the current officers were elected.

(3) Limited Liability Companies (LLCs) If the Applicant is a limited liability company, it must file with its application:

(i) A copy of its articles of organization

(ii) A copy of its operating agreement

(iii) A list of the members, with the percentages of the Applicant owned by each.

Section 16. It is hereby proposed to amend Section 14-04 (h) of Title 35 of the Rules of the City of New York to read as follows:

(h) *Corporate or LLC Filings.*

When the Applicant is a corporation, it must file with its License application all of the following:

(1) One of the following certificates:

(i) A certified copy(ies) of its certificate(s) of incorporation with a filing receipt issued by the secretary of state if the Applicant was incorporated less than one year from the date of the License application

(ii) A certificate of good standing if the Applicant was incorporated more than one year from the date of the License application

(iii) A copy of the certificate of incorporation, filing receipt, and authority to do business within the State of New York if the Applicant is an out-of-state corporation

(2) A list of its officers and shareholders, including names, residence addresses, telephone numbers, and percentage of ownership interest of each shareholder

(3) A certified copy of the minutes of the organizational meeting at which the current officers were elected

(4) *Limited Liability Companies (LLCs)* When the Applicant is a limited liability company, it must file with its application all of the following:

(i) A copy of its articles of organization

(ii) A copy of its operating agreement

(iii) A list of the members, with the percentages of the Applicant owned by each.

Section 17. It is hereby proposed to amend section 18-10 of Title 35 of the Rules of the City of New York to read as follows:

§18-01 Hearings – Who Must or Can Appear for the Respondent

(a) Licensees. A Respondent who is a Licensee can be represented at a Hearing by an attorney or by an authorized non-attorney Representative.

(b) Corporations. If the Respondent is a corporation, it can also be represented by an officer, director, or employee of the Respondent corporation designated as an agent for the Respondent.

(c) Limited Liability Companies. If the Respondent is a limited liability company, it can also be represented by a member or employee of the Respondent limited liability company designated as an agent for the Respondent.

(c)d) Partnerships. If the Respondent is a partnership, it can also be represented by any partner.

(d)e) Non-Licensees. A Respondent who is not a Licensee must appear personally and can be accompanied and represented by an attorney or an authorized non-attorney Representative.

(e)f) Non-Licensee Business Entity. If the non-Licensee Respondent is a corporation or partnership, an officer, director, employee, or partner must appear.

(f)g) Proof of Relationship to Respondent. Any individual appearing who is not a Respondent must provide proof of his or her relationship to the Respondent.

(g)h) The Commission can, for cause, deny any non-attorney (other than an authorized Representative or the Respondent) the opportunity to appear at a Hearing.

Statement of Basis and Purpose

These rules amend TLC rules, where needed, to authorize all business entities licensed by the TLC to be limited liability companies (“LLCs”). The rules also specify the organizational documents that LLCs seeking a license must present for licensure.

The TLC is aware that many small and medium sized businesses of the type it licenses often prefer the LLC form of organization for a variety of tax and other reasons, and the TLC is aware that this form is in fairly common usage in New York. The TLC believes that use of the LLC structure in no way impairs its regulatory interests.

Indeed, in 2006, the TLC amended its medallion owner rules to authorize taxicab medallions to be owned by LLC. The TLC notes that its own experience is that the LLC form is a popular form of organization within that industry and nothing in its experience suggests that there are compelling reasons not to authorize other business entity licensees to be LLCs. On the contrary, the TLC believes that it is capable of regulating and monitoring the licensed activities of LLCs in just the same way as it monitors those organized as sole proprietorships, partnerships, or corporations.

In addition, in an effort to make documentary requirements for business entity licensees consistent, these rules impose requirements for the documentation that must be provided for licensure where existing rules do not set forth specific requirements. With these amendments, it will now be clear that license applicants that are partnerships, corporations, and LLCs will need to provide certain organizational documentation with their applications.